

ON THE LOOM OF TIME

Portrait of My Life and Times



Certificate of Honour

I joined as a lecturer in 1960, and was selected within two years to become a Post-graduate Lecturer in English at the Magadh University, Gaya. I joined the Indian Revenue Service in 1964, and retired, after a career of 35 years of blameless service to our nation, from the post of the Chief Commissioner of Income-tax. Though I was enrolled as an Advocate in 1977, I commenced working as an Advocate at the Supreme Court on the very morrow of my retirement on 31 March 1998. I have gratefully acknowledged my debt to my days in the IRS in the Chapter 18 ('On My Retirement'). This Certificate of Honour seems to me a climax of joy for which I am indebted to all. The words of Lord Bacon come to mind expressing my gratefulness to the learned profession:

"I hold every man a debtor to his profession; from the which as men of course, do seek to receive countenance and profit; so ought they of duty to endeavour themselves by way of amends to be a help and ornament thereunto."

Shiva Kant Jha

APPRECIATION & COMMENTS

“But *On the Loom of Time* is not an ordinary biography. It does not merely give an account of the life of the autobiographer. It is a source of great learning. While taking the reader down the memory lane and giving hindsight [account] of the place & the people and the events of life, the book enlightens him about many contemporary issues like unearthing of black money, tax administration & reforms, corruption, good governance, abuse of international treaties, judicial system, public interest litigation and so on. The book also gives an insight into the working of the government departments and breakdown of constitutional institutions. Shri Jha held important positions in his illustrious official career and had first-hand experience of their working. He has expressed his views on these issues frankly and boldly.

Above all, as we turn over the pages we find an undercurrent of ethics and spirituality which reflects the author’s character and philosophy of life.”

Justice S. N. Jha

*Former Chief Justice of Jammu & Kashmir and Rajasthan High Courts,
and Chairperson, Bihar Human Rights Commission*

“I have had the pleasure of reading the first edition of ‘*On the Loom of Time*’ and I must admit that I am eagerly awaiting Shiva Kant Jha’s additions to the riveting book. While writing is not a daunting task by itself, writing well requires skill. Shiva Kant Jha has mastered this skill in his autobiographical memoirs, succeeding in his endeavour to keep the reader engaged. I have had the privilege of seeing the author address arguments in a Court of law, reading his articles, and witnessing his views on the vexed subjects of economic investment. I would, however, be giving you an incomplete picture of the man he is, if I did not mention his deep understanding of spirituality.

Mr. Jha is imbued with a deep spiritual background, powerful values and profound learning which is characteristic of the *kshetra* called *Mithila*. The teachings of the Bhagavad Gita have been his guide and he has led his life on the principles imbibed in the holy treatise. In the modern world, conflict is bound to arise between a spiritual mind in the loom of its pursuits and the abstruse and opaque reality typifying human greed and selfishness. But to be a voice of reason and intellect, to speak fearlessly, to confront authority and to stand up with honesty, are values which symbolize a rare component of human courage.

This book is a beautiful amalgam of words that stay with you long after you set it down. Not only does it give a first-hand account of one of the biggest Income-tax departments, it also elegantly ties in spirituality with life and the law. From *Mithila* to the *Bhagwad Gita*; from his birth to his joining the civil services; from the *ought* to the *is* of income tax law and administration; from the *Mahabharata* to the Indo-Mauritius Tax Treaty; the author takes you on a unique journey that gives you both joy and hope alongside glimpses of the past, present and future.”

*Shri Gopal Subramaniam, Senior Advocate of the Supreme Court of India,
& former Solicitor-General of India*

“ ‘*On the Loom of Time*’ is not a mere autobiography, but is a reflective & critical treatise presenting not only the portrait of author’s life but also provides a deep study of his times. The book is a great monument of human intelligence that captures the key problems of our days, and provides insightful solution which deserves consideration.

I am highly impressed and enlightened by going through the treatise. His style is lively. If you start reading it you cannot leave it until you come to the last. It is a story told by an honest and sincere officer of his experience, delights and woes of his life. He is true Indian. He has his legs in our proud heritage. His mind is full of love for the country. He has not only realized the problems of the country but has own practical solutions for the same. His sincere wish is India should come out as a model before the entire world in financial field also as it has been in spiritual and religious matter.”

*Justice P. C. Agarwal, Senior Advocate, Supreme Court of India;
Former Judge of Madhya Pradesh High Court*

“Shri Shivakant Jha has honoured me by inviting me to write about his memorable autobiography “ON THE LOOM OF TIME” (which for reasons I do not deem valid at all he calls only an autobiographical memoir), when its Second edition is almost to be launched. I am not being modest when I say I am honoured by his invitation.

First of all the autobiography is of an intellectual and moral giant not because of its excellent diction but the contents relating to what he has done, what dilemma he encountered, how he resolved them and how he kept away from solutions that could have compromised his morals, integrity or commitment to the good of the nation.....”

*Shri Ram Jethmalani, Member of Parliament; Senior Advocate,
Supreme Court of India; Professor Emeritus,
Symbiosis College of Law, Pune*

“For all those who have experienced the joy of river-rafting, this compilation promises a similar joyful ‘flow’, riding the currents of the real-life river of experiences. Although, for serious readers, its heavy size is a joy for many weeks but for some, it may demand an additional ounce of patience to finish it. I personally find it a bundle of precious experiences which would continue to enlighten many generations to come. It is indeed a must read for the students of history, politics and law of all age groups who can extend their support to his Charitable Trust which retains the copyright of this book.”

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Important Information for my Readers

1. This book deals with many of the topics which are of great contemporary relevance. I intend to write short 'Notes and Updates' on some of these on my website www.shivakantjha.org, or on my blogs <http://ontheloomoftime.wordpress.com/> and <http://shivakantjha.wordpress.com/>. This is my wish, not a commitment.

2. Over years, I wrote articles and comments on topics as dissimilar as literature, law, commerce, polity, sociology, culture and the nuclear deal. These are cast and organized in the folders listed up on the Home-page of my website mentioned above. The 2012 Web edition of *Judicial Role in Globalised Economy* (published in 2005), can be accessed at my website (www.shivakantjha.org).

3. I have donated all my rights and interests in this book to the 'Draupadi Devi Gopi Kant Jha Charitable Trust' that I had founded in 2001 in the memory of my parents whose contributions to India's Struggle for Freedom were great, and would come up in the Chapters 3 and 4 of the book.

4. The entire royalty from the First Edition of this book, received from the Publishers, would go as the Trust's contribution towards public charity.

5. On reading this book, my readers would come to know certain ideas close to my heart. I read the text of the fast changing times with fascinating apprehensions. I feel we are at a crossover point exploring the possibilities of paradigmatic changes ahead. I request my readers to send their comments and suggestions so that I can enrich my ideas, and correct myself.

6. On reading point 1, my wife smiled but her smile failed to conceal her taunting thought. I could see what she had in her mind. I have nothing to defend myself. I would quote what the sparrow said in the prayer with which Lord Hailsham of Marylebone ended his autobiography, *A Sparrow's Flight* :

Father, without whose word no sparrow falls,
Hear this, Thy weary sparrow, he calls.
Mercy, not justice, in his contrite prayer,
Cancel his guilt, and drive away despair

7. I end this NOTE expressing my wish in the words of Lord Denning with which he chose to end the Preface to his *Leaves from my Library*: "In any case please do read the book and, if you feel like it, write and tell me how you get on. I will try to reply, but at my age I had better say, for all our sakes, *D V (Deo volente)* God willing." There is one difference. Lord Denning wrote that on his 87th birth anniversary: I write it after completing my 77th year.

Shiva Kant Jha

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ON THE LOOM OF TIME

Portrait of My Life and Times

(Book I : *The Fragrant Years*; Book II: *A Cog in the Machine*; Book III: *Illusion and Reality*)

SHIVA KANT JHA

Second Edition, Revised and Enlarged

त्वदीय वस्तु गोविन्दं तुभ्यमेव समर्पये

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Shiv Kant Jha



Mrs Veenapani Jha

ॐ नमो भगवते वासुदेवाय

TO
VEENAPANI
My Wife

xii
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CONTENTS

<i>Message on the Second Edition</i>	PAGE
<i>(from Dr. Justice Vineet Kothari, Judge, Rajasthan High Court)</i>	xxi
<i>Preface to the Second Edition</i>	xxiii
<i>Foreword</i>	xxv
<i>(by Hon'ble Mr. Justice R.C. Lahoti, former Chief Justice of India)</i>	
<i>Appreciation</i>	xxvii
<i>Observations</i>	xxix
<i>An Overview</i>	xxxi
<i>Preface to the First Edition</i>	xxxv
<i>List of Photographs</i>	xxxviii
Introduction	1
Thematic Structure	5

BOOK I

THE FRAGRANT YEARS (from 1937- 1964)

1. My Land, My People	17
Defining my observation-post – The Mithila as I see her before my mind's eyes (in my <i>manasloka</i>) – The Seeds of Revolution sprout from the soil – the Greatest <i>Krantiveeja</i> – Janaki (Sita) – The glory of Mithila – Mithila's Unique Contribution to the World – Tradition and Individual talent – The worldview generally shared – Maithil culture does not promote consumerism, Our agricultural way of life - Our religious syncretism – Dome of many coloured glass – Reflections on the present-day Mithila.	
2. My Ancestors	31
The Quest – The Kashyap <i>gotra</i> – My ancestors – Their world – The family tree.	
3. Profile of my Father	42
Introduction – The <i>tamrapatra</i> given to my father by Mrs. Gandhi – As a Freedom Fighter – The Trial – The period of imprisonment – How the Movement began at Rosera – The Agitation at Rosera – The Forces which sustained my Father in the period of crisis – The Gandhian edict at the Wardha Ashram – When I see the present in the light of the past – As an Educationist – He was an <i>astik</i> – Simple living and high thinking – The Declaration of Emergency : my father's response – Prof. (Dr) Bishwanath Prasad's assessment.	
	xiii

CONTENTS

		PAGE
4.	Portrait of My Mother	58
	Down the memory line : My Mother – Her birth; her name – Art of suffering with tongue-tied patience – Her Education – My <i>Diksha</i> – The craze for a son, & her distress – The Mahabharta in her family – My Mother and Father : their excellent chemistry – Her economic management – Her spiritual pursuits – Attitudes towards food, and the art of proper eating – I saw her in phantom before she died.	
5.	My Birth : My odyssey thus began	72
	My Birth: reflections on this idea – Defining my observation-post – What my birth meant for my parents – The Starry Messenger – What my birth meant for me – What does it mean to the world - What it means in the cosmic flux – The First Faces I saw – The Goddess : the Chhatthi Mata.	
6.	My Childhood Days: The halcyon years	81
	The Naming Ceremony (the <i>Naamkaran</i>) – My Parents' attitudes towards children : they saw the Archer's hand – Down the memory lane – I hold myself under an infinite gratitude towards my Mother whose fragrance is ever fresh, ever sweet for me – The canoes adrift in the streams – The stories which amazed & enchanted, taught & delighted – The hyper-active inner courtyard – Round and round the prickly pear : how the bullocks trampled grain out – The House and its courtyard – The Witches – The Myna – The Creative Plasticity – What has ashamed me over all the years – When I drew my alphabet – The <i>Upanayana</i> (initiation).	
7.	My Adolescence: On swimming through the rainbow	93
	Scripting life on the five inches of ivory through the Storm and Stresses of the world – Love that led me to our classics : the fount of wisdom and delight – My Village – I came to Darbhanga – The Loiterer – At M.L. Academy – <i>Kavi Sammelan</i> (the Gathering of the poets) – The <i>Brahmacharyashrama</i> : our way of looking at sex – Our philosophy of life – The Mysteries.	
8.	The Flowering of Mind: My Academic World	104
	At C. M. College, Darbhanga – The visit of Mrs. Indira Gandhi – My Teachers – The Darbhanga Raj – The Centenary Celebration of the First War of Independence – Darbhanga & Laheriasarai – At L. S. College, Muzaffarpur – The Department of English, The Cambridge English – My Teachers – My indiscretion : under the threat to “lay me by the heels” – The Sadhu and the Vaishya (a whore) – The Ways of God: The Book of Job – My Four Years of Lectureship (1960-1964) – The Chinese Aggression : India's dismal response – The Plight of Education – My quest for the Government Service.	

BOOK II

A COG IN THE MACHINE (from 1964-1998)

- 9. On Joining Civil Service** 125

At the National Academy of Administration – At the Income-tax Staff Training College, Nagpur.
- 10. My First Innings at Patna : Part-I** 128

Ascended the Chariot in 1965 to get down in 1998 – My First day in the office – The Problem of Black-money : the Art of pretending to solve the problem without ever solving it – I regret I prosecuted a good man – Assessing the Maharaja and the Raja to income-tax – The Aiyar Commission – The Moot Court & the Law of the Sea – India's acme of glory: The emergence of Bangladesh – The Flood.
- 11. My First Innings at Patna : Part-II** 143

Introduction to this Chapter – The Emergency – The circumstances in which the Emergency was declared – Portrait of the excesses during the Emergency – The Emergency: my critique – My Assessment – The JP Movement – The Bihar Movement – JP Movement against the Emergency – The Shah Commission of Inquiry – The Fate of the Commission's Report.
- 12. Patna: My Second Innings (The Fodder Scam)** 154

Introduction to this Chapter – An Overview of the Fodder Scam, & the response of the Government of Bihar – The Drama of the Absurd : where the Buffaloes travelled on the bike – Fraud on our Constitution : “Nero fiddled while Rome burnt” – The monitoring of the Cases by the Patna High Court – The concept of Judicial Monitoring: a critique of the concept – Objections raised – Reasons which called for the judicial monitoring – The nature and ambit of Mandamus – Grant of continuing Mandamus – The irrelevance of the doctrine of the Separation of Powers – The Province of the Functions of the State organs – My suggestions – The Plight of the CAG : this glamorous ‘Constitutional orphan’ – The Legislature that betrayed trust – “The Root of All Evil” grew apace – My Dismay & the Lessons to be drawn from Bihar's Fodder Scam – It is time to frame a new law to prevent the nation's loot – My visits to Orissa.
- 13. Plight of our Public Administration – Extracts from the Shah Commission of Inquiry Report** 178

Extracts from the general observations in the *Report of the Shah Commission of Inquiry* (1978), Chapter XV & XXIV – When RUMOURS ruled – The Plight of the Press – The idea to clip the wings of judiciary brooded upon – Motivated appointments and

CONTENTS

	PAGE
subversion of public service – The Administration of MISA, and the duty of law-enforcing authorities – Moral component in public administration – The derelictions in the conduct of the civil servants – The story of demolitions – The conditions in the jails of our country – The way the government departments function: the CBDT & CBI – The degradation in civic culture, and the flawed role perception – Abuse of powers by persons nearer to the seats of power – What our nation expects from our public servants.	
14. My years at Nagpur	188
The place – Dr. Ambedkar: A man turned into an icon – A visit to the Wardha Ashrama – Shivaji: my hero – My lectures and academic involvements – My Lecture at the Judicial Officers Training Institute – As the Commissioner of Income-tax – Facing allegations with Lord Krishna in my mind – When I ascended Sri Rama's arrow – Concluding Reflections.	
15. My Phases in Calcutta, now Kolkata	199
On witnessing the Barbadhu – My assignments at Calcutta – As the Department's Senior Representative before the Income-tax Appellate Tribunal – the idea of 'Tax Court' and the 'National Tax Tribunal' – As an Examiner for the LL.M. Examination – Dr. T.B. Smith – Dr. Bernard Schwartz – Dr. Rene David – Reflections on Calcutta – 'Hare Krishna' – My visit to Krishannagar and Mayapuri.	
16. My Reflections on the Income-tax Law	211
Introductory comments – Taxation reflects values of a society, & attitudes towards 'property' – Popular, but perverse, attitudes towards taxation law – How the British Judges fared when they came to have the tryst with the Income-tax Law – The British courts adopt a new perspective, – Certain Changes in the Statute of the Income-tax Suggested: (a) Apt illustrations to the legal provisions may be incorporated in the statute, (b) 'Legislation in detail be abandoned, and replaced by legislation setting forth principles', (c) The linguistic and thematic structure of the Income-tax Law deserve to be simplified, (d) Plain English would help – Suggestion for constituting certain Committees for ongoing reforms – The Role of Parliament in 'Taxation' – Changing Judicial Perception of tax-evasion situations – The justification of the annual Finance Act – U.N. Multilateral Convention on Tax Treaties – The idea of constituting International Tax Authority (ITA) – 'Democratic Deficit' in framing tax treaties – Our Government's 'knowledge deficit'.	
17. My Reflections on the Income-tax Administration	228
I joined the statutory Civil Service – The subversion of our Constitution and law – Those were the best days: My experience	

CONTENTS

	PAGE
in the Aiyar Commission phase – The Emergency – The Loot of the Nation. Whose Government? – Lack of Transparency: its lethal effect – The encroaching shadow of the WTO on the Laws of Direct Taxes – Shouldn't we go in <i>for droit administratif</i> ? – The Problem of Vigilance – The Union Administrative Services Commission – What is obvious is not always known – Hubert Monroe on the British tax administration – Classical Indian ideas on 'taxation'.	
18. On my Retirement	240
My retirement – Under debt to the profession – the Farewell – The story about a wise old bird – Reflections on my retirement – The way ahead.	
BOOK III ILLUSION & REALITY (from 1998-2014).	
19. Understanding the Imageries at the Supreme Court of India	247
On joining the Supreme Court – The imageries are metaphors – The visuals make poetic statements – The impression we get from the architecture of the Supreme Court – The Mural that evokes and suggests – The Goddess of Justice – On being weighed in the balances – <i>Kaliyugi</i> administration of Justice – The Emblem of the Supreme Court – On the <i>Chakra</i> – On <i>Dharma</i> – The Flag – Musings on the Mahatma at the Supreme Court – Conclusion.	
20. My Reflections on Krishna & the Galaxy of the Great	262
My reflection on Krishna – The Prelude – The historicity and reality of Krishna – The <i>Bhagavad-Gita</i> stated in brief – A remedy against the 'moral deficit' of our times – Our Problem – The 'Wallace Syndrome' – Our Guide to Duties, and the standards for evaluating actions – The Imperatives of the Grammar of Life – Krishna's attitudes towards 'Property' – Krishna's ideas of the Welfare State – Krishna and Buddha – Krishna and Jesus – Krishna and Muhammad – Krishna and Marx – Krishna and Gandhi – The Grammar of Revolution.	
21. Our Constitution at work	284
Dr. T.B. Smith's questions, and the answers given – The creatures of the Constitution must accept the discipline of the Constitution – Our 'Constitutional Socialism' – Historical Perspective – The collective consciousness of the Constituent Assembly – 'Socialism' under our philosophy – The Dimensions of our Constitutional Socialism – Philosophical dimension, Political Dimension, Social Dimension, Economic Dimension – Attitudes towards 'PROPERTY' under our 'Constitutional Socialism' –	

	PAGE
The criticism of our Constitution's 'socialist mission' – 'Democratic deficit' in the exercise of our Government's Treaty-making – <i>Reductio ad absurdum</i> – Suggestions on valid Treaty-Making Procedure – Our Republic is in crisis – What went wrong with the Roman Republic – We are, when all is said, incorrigible optimists.	
22. Our Democratic Republic and its Great Institutions	311
Introduction: The euphoria on the declaration of the Republic of India – Duties that our destiny casts on us – ' <i>Women beware of Women</i> ' – Democracy – I cannot forget the vernal breeze from our classical India – Impact on the collective consciousness of our Constituent Assembly – The Western view of 'Democracy' – The nature and the parameters of the Western Democracy – Parliament: Expectations and achievements – An overview of history: how Parliament declined in England: lessons to be learnt – The widening role of the Executive Government – The Executive's attitudes towards Parliament: an instance of gross 'democratic deficit' – The Role of our Parliament: the years of shocking decline – The Plight of our Parliament – Our Parliament at work – The character of our Parliament: our Constitution conceives it as the "Parliamentary Democracy" – The ethos of the day, and the ways of our Citizenry – Prayer - Our Political Parties; The nature of our polity – Political parties: whether essential for a democratic polity; our experience – The assessment of the role of political parties – On the Anna Hazare Movement – The Grammar of Revolution – Time to restructure our Polity: the idea of 'Partyless Democracy'.	
23. Profile of a PIL in Revenue Matters	342
Introduction to the Chapter – PIL in the Revenue Matters – A Paradigm shift – Historical Perspective – the Trojan Horse on march – Material Points in the profile of the Indo-Mauritius Tax Treaty – An instance of the touch of Comus, the Fraudster – Storm in the tea cup – the context and the <i>casus belli</i> – Mauritius makes hay while the sun shines – It helps the emergence of the <i>entente cordiale</i> of Collusion and Fraud – Our Embassy did not give good account of itself – The Abuse of a Tax Treaty Case before the Delhi High Court – The Supreme Court reverses the High Court on Appeal – A critique of the Supreme Court's decision – " <i>Quis custodiet ipsos custodes?</i> " – Who will watch the watchers?"	
24. Our Worldview & the Trends of Our Times	368
Introduction – Understanding the Grammar of the Dominant Western Worldview – The Trends of our Times – What they learnt from Modern History: India's First War of Independence – the lessons they learnt – The emergence of the syndrome of the 'Sponsored State' – From the Hall of Mirrors to World War	

	PAGE
I – the folly of the governments – The tragic error in judgment – The Great Wars as the metaphors : World War I – The royal road to World War II – Scripting human destiny sans wisdom, sans foresight – World War II – the <i>Mahabharata</i> provides perspective which the world must not overlook – The World at the tinderbox – Towards World War III – Our illusion that the economic globalization is a sufficient guarantee against a major war – Institutions for international peace, and the operation of international law – The clash of civilizations – Our Cultural Crisis – The Judgment – Conclusion.	
25. Certain Stories as my ‘Objective Correlatives’	396
“Objective correlative” – as metaphors – Certain revealing stories briefly stated – (i) ‘Story of Two Frogs’ – (ii) ‘ <i>Satranj Ke Khiladi</i> ’ – (iii) ‘Our Taj Mahal Economy’ – (iv) ‘ <i>Sone ki Lanka</i> ’ – (v) ‘The three Indias’ – (vi) the ‘Sparrow’s Delight’ – (vii) ‘Extraordinary Popular Delusions and Madness’ – (viii) ‘Dance on the hood of the most venomous snake’ – (ix) ‘ <i>Kalaye tasme namah</i> (कालाये तस्मै नमः)’ – (x) ‘Bali questions Rama’ – (xi) ‘Bindumati’ – and (xii) ‘HOPE – Penelope’s story’.	
26. The Realm of Darkness : The Triumph of Corporatocracy	407
The Realm of Darkness – Conrad’s <i>Heart of Darkness</i> and the world we see – A short profile of Kurtz and Comus at work in this neoliberal global economic architecture – The Story of Maharaja Parikshit as narrated in the <i>Mahabharata</i> – The global state system – classical state system yielded to the ‘neoliberal’ state system – The Indian Position – The Instruments of Darkness – The post-World War II scenario – the emergence of the corporate <i>imperium</i> , The nature of corporate consciousness in the world of the humans – A corporation cannot be an impervious cover-let of gross abuse – Crafting the structures of deception – “Let there be light”, the Emergence of Corporatocracy, and the plight of Democracy – The Problem of Black Wealth stashed in foreign jurisdictions – I see a ray of light at the end of the tunnel – My advice to the think-tanks working for the corporate <i>imperium</i> – Conclusion.	
27. Veenapani (वीणापाणि) – My wife	444
My musings on her photograph – My heart-attack – when She played the role of Savitri – She worshipped Lord Shiva, and performed <i>Rudravisheka</i> – Our marriage – She was a <i>Padmini</i> – Her First Coming to the house of her in-laws – The Festivals and the family rituals – When she met Mrs. Indira Gandhi, the then Prime Minister – Her judicial verdict in <i>A Rickshaw Puller vs. A Rickshaw Puller</i> – The <i>Srimad Bhagavad Mahapurana</i> – Her song that moved Dr. Sri Krishna Sinha – Her life : a many coloured dome – She could smile even on the Wheel of Fire – Conclusion.	

CONTENTS

	PAGE
28. From Darkness to Light: My Reflections on the Black Money Case, & on the Anna Hazare Movement	461
<p>Reflections on the Black Money Case - the judicial technique examined - Broad constitutional principles of fundamental importance - a critique of the Case - The Judicial observations on the Indo-German Tax Treaty - Court's jurisdiction on Treaties - Our Parliament Weighed - The <i>Black Money Case</i> : our institutions weighed and found wanting - Anna Hazare Movement.</p>	
29. The Portrait of our Time	485
<p>Introduction to the Chapter, <i>Towards Corporatocracy</i>: An Overview of the Western Political Thought - When the Republic comes on the edge: Abraham Lincoln's apprehensions - When crooks shake hands: G.K. Chesterton tells the story of Pilate and Herod - Capitalism, Corporate <i>imperium</i> and Corruption go together; <i>When Greed is Good</i>: the Black Magic of Capitalism - When Mammon Reigns - 'Corporatocracy' rules the world - 'Capitalism' and 'Corruption' go together - 'Corruptions' in our country ; Bound upon the Wheel of Fire : Wealth clouds one's sense of Duty - Karna's dream : - <i>Conclusion</i></p>	
30. A Miscellany of my Ideas from my Personal Journal	509
<p>This Chapter is a compilation, from my Personal Journal, of my comments on diverse public issues of great contemporary relevance. For the topics touched see the first page of the Chapter 30.</p>	
31. Some Reflections on my life's Sonnet : The Closing Chapter	530
<p>At the confluence of the past and the present - my Three Passions - an overview of this Memoir - On the intellectual traditions of the East and the West - My Life: its grammar and loadstone - I tender an apology: my perspective on self - As we are now - Krishna: My Light and Delight - Reflections on My Life</p>	
Postscripts	
I. Further Reflections on our Anti-corruption Movement : Challenge and Response	539
II. Some of my Recommendatory comments for our Government and Citizenry to consider	544
III. What I BELIEVE	548
IV. SIT on black money: the first decision of the Modi Government	552
V. The Destiny of our Nation: the advent of Narendra Modi	562
VI. Reflections on the Constitution of India: Ambit of the Constitutional Restraints on the Treaty-Making Power	571
Appendix to Postscript VI : Global Economy : A Deal with the Devil	593
INDEX	603

DR. JUSTICE VINEET KOTHARI
B.Com.(Hons.), LL.M., Ph.d., A.C.A., F.C.S.



Judge
Rajasthan High Court



MESSAGE

“*Powerful Pen of a Brilliant Brain*” is how I would like to describe, ‘On the Loom of Time’, an autobiography by a ‘young man’ (because youth is a state of mind, as a great poet said) of 77 years i.e. Shri Shiva Kant Jha, a former bureaucrat at the level of Chief Commissioner of Income Tax, where he served for over three decades and writing the leading beacon light like “*Judicial Role in Globalised Economy*” and few more books indeed makes an interesting reading and that is why on a greater public demand, I think Mr. Jha, should get an applaud for coming out with a revised edition of his autobiography.

My introduction with Mr. Jha is of recent past when I was searching for good study material for my participation in the forthcoming 68th Congress of *International Fiscal Association* at *Mumbai in October, 2014* on ‘International Taxation’ in the Judges’ Seminar and my interest created in the said subject last year, when I contributed a Paper on ‘*Secret Comparables in Transfer Pricing*’ in *Amsterdam in August 2013* in the Congress of *International Association of Tax Judges*, of which I am a Member, and my search incidentally took me to his book ‘*Judicial Role in Globalised Economy*’ and being impressed with the rich contents of the said book, I traced the learned author, who himself contested the PIL

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B.Com.(Hons.), LL.M., Ph.d., A.C.A., F.C.S.

Judge
Rajasthan High Court

before Delhi High Court and then before the Supreme Court in '*Azadi Bachao case*', to congratulate him for the wonderful exposition of law given by him and then the budding friendship brought the two souls together in this manner as friends.

'*On the Loom of Time*' gives a deep insight into the towering personality of Shri Jha and touching comments by our former Chief Justice Shri S.N.Jha and leading legal luminaries like Mr. Gopal Subramaniam and Mr. Ram Jethmalani indeed makes me happy and filled with joy to pen these few words in the praise of the person who richly deserves the same. Coming from the family of a freedom fighter, the national character which Shri Jha appears to have imbibed in himself, amply shows in the various Chapters of the said book and indeed human assets like Mr. Jha can only be complimented enough when their rich experience is spread far & wide in this manner. The attraction of the beautiful language composition, rich legal, philosophical and practical knowledge embedded with '*shlokas*' from Geeta and Shakespeare's writings with equal fluency indeed makes it appear like the two poles of the earth are brought together in the writings of Mr. Jha. It is indeed a great pleasure to go through the said book and I strongly feel that those who have the good luck of reading his book will definitely feel inspired and encouraged to lead such a meaningful life as *Shiva* (God) *Kant* (Grace) *Jha* (Brahmin – the Noble Soul).

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Jodhpur
2nd October, 2014
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PREFACE TO THE SECOND EDITION

Every man's work, whether it be literature or music or pictures or architecture or anything else, is always a portrait of himself.

Samuel Butler (1835-1902) *Way of All Flesh*, Ch. 13

The Second Edition of my Memoir is going to come out. It delights me, it amazes me. It delights me as my readers have found in it something worth reading. It amazes me to see that my readers found it prudent to read this Memoir of a person neither notable, nor notorious. I am lucky to experience this joy in this phase of time when the habit of book reading is declining fast. My life has been a prickly process of gathering surprises, but, as someone aptly said: "There is no surprise more magical than the surprise of being loved." I am grateful to my readers.

My autobiographical Memoir is, when all is said, my life's graph (*auto + bios + graphein*), and it reveals just what my destiny has made me over more than these seven decades. I know I could not descend deep into myself mainly because the affairs of the world, of which I have been a participative witness, never freed me to pursue that mission. True, my ideas have been determined by my observation-post, and they have conditioned me, and guided me all through. In my assessment, my life is just a potpourri of dried leaves and rose petals in which thorns abound to enrich the rest. As my life, to say in the words of James Russell Lowell, is still being 'woven on the roaring loom of time', my reflections on its chiaroscuro and patterns have been profoundly cathartic, but not final.

I am thankful to the Supreme Court Bar Association for considering 'On the Loom of Time' deserving the grant of the Certificate of Honour. I hope you have gone through, on the first few pages of the book, the insightful comments by Justice S.N. Jha, former Chief Justice of Jammu & Kashmir and Rajasthan High Courts; and Chairperson, Bihar Human Rights Commission; Justice P.C. Agarwal, Senior Advocate, Supreme Court of India, former Judge of Madhya Pradesh High Court; Shri Gopal Subramaniam, Senior Advocate of the Supreme Court of India, & former Solicitor-General of India; and Shri Ram Jethmalani, Member of Parliament, Senior Advocate at the Supreme Court of India, and Professor Emeritus at Symbiosis College of Law, Pune. I am grateful to Dr. Justice Vineet Kothari, the Hon'ble Judge of the Rajasthan High Court, for his MESSAGE on the Second Edition of my Memoir. I am grateful to them for their comments each word of which is precious for me not only as an appreciation of this humble self but as the words of tribute to my land, my teachers, and the cultural ethos in which I grew. I acknowledge gratefully my debt to all those who sent me comments and suggestions on the First Edition of my book to help me enrich and improve this second edition. I owe my duty to express my gratefulness to the eminent Dr. Ashok Seth, and the other cardiologists of his team, who have helped me, over these twenty-five years, to get over my severe cardiac problems the latest episode being on November 12, 2013. God helps in many ways.

The Second Edition of this Memoir is thoroughly revised and substantially enriched edition. Whilst at most places substantial additions have been made, Chapters 29, 30 and the Postscripts to the Second Edition, are wholly new. Most

other Chapters have been updated: viz. 'The Problem of the Black Wealth stashed in Foreign Jurisdictions' in Chapter 26 (at pp. 428-431). The Index of the book has been revised and enriched.

I have appended to this edition seven **POSTSCRIPTS** divided into two Segments. **The Segment 'A'** consists of three Postscripts: the first, outlines some recent developments in the Anti-corruption Movement in our country; the second, sets forth some of my suggestions, made *pro bono publico*, for our Government and citizenry to consider for taking appropriate actions; and the third, mentions some of my core beliefs which shape my worldview and guiding principles. My presentation in the postscripts is cryptic, referential, and precise, but my readers will find them illustrated in, and ensuing from, the exposition in this Memoir that is both an expanded metaphor of my life and times, and a short spectrographic account of things which have mattered most for me, for you, and for all others on our Mother Earth. **The Segment 'B'** consists of three postscripts (**Postscripts IV-VI**) which I conceptualized on the sick-bed in the Room No. 1504 in the Jaslok Hospital undergoing treatment from 30 April 2014 to 17 May 2014 for serious stroke. I watched the 2014 General Election in our Republic on the television. I had occasions to see all the elections held in our free India right from the commencement of our great Constitution. But this Election seemed unique, and enormously interesting. From May 17 to May 26, my mind waded through what I had heard and seen in the media. On May 26, Shri Narendra Modi became India's 15th Prime Minister. His words, his tone and tenor, his verve and *elan vital* suggested that we were at the threshold of a great 'paradigm shift' capable of shaping our response to the challenges we would face in the difficult times ahead. What I felt on the issues led me to compose these postscripts hoping that some of my ideas would make my readers think and act better for our national weal.

You would notice many references to my book, *Judicial Role in Globalised Economy*, published in 2005. It is out of print now. In deference to the wishes of some of my readers, I have put the whole text of the book¹ (the 2012 Web Edition) on my website: (www.shivakantjha.org).

Before I end this preface, something personal. I bless Nandini Choudhary (Gauri), the eldest daughter of my youngest daughter Anju Jha Choudhary. She is a student of the University of Maryland, USA. She bore, for two months (July & August 2014), the burden of proofreading the whole text of about 300000 words with gladness that delighted me. All my blessings for her success and happiness.

JaiHind.

Vijay Dashmi
3 Oct. 2014

Shiva Kant Jha

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1. The book's **Chapters** are: 1. Towards the Sponsored State; 2. An Opaque System; 3. Not on the Trident of Lord Shiva; 4. The Frontiers of the doctrine of *Ex Debito Justitiae*; 5. Judicial hierarchy and the resultant norms; 6. *McDowell*: the decision and the *ratio*; 7. The Pragmatics of the Right Judicial Role; 8. Reading with Discrimination: on the use of a textbook in a judicial proceeding; 9. A Corporation cannot be an impervious coverlet of gross abuse; 10. Fraud unravels everything; 11 Treaty Shopping; 12. Supreme Court on Treaty Shopping; 13. The CAG on Treaty Shopping; 14. International law and the foreign administrative acts; 15 Treaty-making power; 16. *Quis Custodiet ipsos Custodes*: Who will watch the watchers?; 17. A Morbid story of the Indo-Mauritius DTAC; 18. The Uruguay Round Final Act: A Betrayal of the Nation; 19. Status of a tax treaty vis-a-vis the Statute; 20. A paradigm shift in Tax Jurisprudence; 21. CBDT Circular making power: Frontiers still to be settled; 22. Public Interest Litigation in Revenue Matters; 23. Epilogue.

FOREWORD

A Reflection in brief

Authoring a biography - a life story of someone else, is an easier thing to do than to write an autobiography, which is a difficult task indeed; one has to steer clear through the two extremes, self appreciation on one hand and understatement of achievements on the other. One has to be true to himself and be more than just and honest and at the same time courageous enough penning down the realities, the truth of oneself.

Autobiography is a hazardous attempt. It needs a clear understanding of oneself, and then the art of articulating the understanding in the choicest words with lucidity of style. Someone has said that history is the essence of innumerable biographies/autobiographies; any departure from truth therein may have the effect of embellishing the history. The best of autobiographies are those which are not ego-centric. An autobiography is worth being written if the author has played a role in life impacting the society and events around. He should have been not a mute spectator but one who has also moved the needles. The narration called autobiography then focuses on contemporaneous events and developments worth being placed on record with the autobiographer's self in the centre.

The manuscript of '*On the Loom of Time*' is in my hands and I have turned over its pages. I did not have an opportunity of personally knowing Shri Shivakant Jha. His sketch emerges life size from the '*Loom of Time*'. As a member of IRS he has always lived by his conscience and performed at his best. While honouring the discipline of a true government servant he has been bold enough to the occasions, responded to the calls of times and never missed an opportunity of taking decisions and acting thereon

FOREWORD

as a true citizen of India, as an upholder of the constitution and the laws, and, as a reformist. He has been critic on points of principles but not on personalities. A reading of the autobiography reveals that he is one who has no regrets in his life. He has never looked back. He has marched with the times with firm footsteps and played well his role in life as assigned by the Divine. Teachings of *Shrimad Bhagwad Gita* have been his guide. For him work has been worship. He has believed in 'work is thy duty, reward is not thy claim'. He has rightly described '*On the Loom of Time*' not as an autobiography but as an autobiographical memoir.

A crusader has to stand alone, to suffer at times, and also to pay the price but in the long run he earns admirers and followers too. Today, such memoirs as this one are needed the most, to instruct and inspire the youth who might be searching for a role model. These memoirs provide an interesting reading apart from satisfying the intellectual urge of an astute reader.



R.C. Lahoti,
Former Chief Justice of India

New Delhi
Sept. 12, 2011

APPRECIATION

Bihar, and particularly its area Mithila, has always been known as the greatest centre of learning and intellectual achievements. It has produced over various centuries, some of the greatest thinkers and philosophers of India, who have shaped the spiritual, philosophical and intellectual Indian traditions.

Shivakant Jha is a towering intellectual coming from Mithila. He demonstrated this by his impressive arguments in the Supreme Court in the case relating to the Indo-Mauritius Double Taxation Treaty.

He has now written his autobiography which not only gives us an insight into his illustrious life, but also gives us a view of the development of the spiritual philosophy of this great country.

I wish Shivakant Jha many more years of productive endeavours.

Shanti Bhushan

Senior Advocate of the Supreme Court of India
Former Law Minister of the Union of India

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On the Loom of Time

OBSERVATIONS

Dr. Justice G.C. Bharuka

Former Actg. Chief Justice, High Court of Karnataka; Former Chairman, E-Committee, Supreme Court of India; Visiting Professor, Chanakya National Law University, Patna.

Usually, an autobiography is the story of how a man thinks he lived. But it is not true of all the autobiographies. '*On the Loom of Time*' by Shri S.K. Jha depicts a journey full of turns, achievements, shattering of images, impressions and convictions.

Apart from telling the story of his life and family, he has made a sincere effort to raise some issues of social and constitutional importance. These issues have as well been analyzed in the spiritual and moral perspective with rare and remarkable skill of presentation. Upon his retirement in 1998 after having served as a member of the Indian Revenue Service for almost 34 years, he joined the Supreme Court bar. He firmly believed that moral values propounded in Shrimad Bhagwad Gita should be kept in mind while interpreting our Constitution and administering justice. The later part of the memoirs is more a work on jurisprudence and spiritual expositions and at times, it is the blending of the two.

Even if one disagrees with the approach on certain aspects, but certainly the writing reflects an in-depth study of the topics attended and his sincerity and commitment with which the views have been expressed. The writer has spoken about the making of our Constitution and the underlying philosophical and ethical values. He rightly expresses concern about such values being gradually eroded under the guise of development, open economy and globalization but more regrettably, for serving the personal interests of the person in power.

It cannot be lost sight of that human values are implicit in every instrument of governance, maybe, constitutional or statutory. I agree that all the three organs, in varying degrees, are equally responsible for this gradual degradation. This has led to obvious mal-governance resulting (recently in August 2011) in public outburst in the form of Anna Hazare movement.

The Supreme Court judgment, in *Black Money* case,¹ has triggered a serious discussion among the intellectuals. This judgment was rendered on a petition of Shri Ram Jethmalani, senior advocate, who had requested the court to intervene in getting the black money stashed in the foreign banks back to the country. The Bench expressed dissatisfaction over efforts made in this connection by the Government and observed that it was a failure that goes to the very heart of the

1. Judgment delivered on July 4, 2011 by a bench comprising of Justice B. Sudershan Reddy and Justice S.S. Nijjar in *Ram Jethmalani v. Union of India*, reported in 2011 (6) SCALE 691.

OBSERVATIONS

constitutional imperatives of the government. It said: “unaccounted monies, especially large sums held by nationals and entities with a large presence in the nation, in banks abroad, especially in tax-havens or in a jurisdiction with a known history of silence about sources of monies, clearly indicate a compromise of the ability of the state to manage the affairs in consonance with what is required from a constitutional perspective.”

I congratulate Shri S.K. Jha for sharing his life’s experiences, thoughts and views through this illustrative work.

AN OVERVIEW

ON THE LOOM OF TIME

Shri Shailendra Kumar

Senior Journalist & Tax Expert

Today, India's political economy stands at a crossroad! There has literally been a deluge of scams all around us in the past two years. Even as the 2G Scam continues to take toll of political and corporate heavyweights, Mauritius, which alone accounts for about 40 per cent of FDI inflows into the country, has emerged as the most titillating destination for the laundered money being talked about. Whether you are either a votary or an opponent of the growing abuse of the India-Mauritius tax treaty, you cannot overlook the two most glaringly connected facets of this most controversial tax treaty - one is the Supreme Court's oft-cited *Azadi Bachao* decision, and the other is the democratically-spirited custodian of the national interest *pro bono publico*. Yes, I am referring to the author of this highly readable autobiography which reflects the eventful journey of the 'representative common man'. Though it is largely believed that the story of a common man in India cannot be more interesting than a 'tensured' mountain but here is a 'representative commonman' who has belied his skeleton-based worldly look and shown the rocky determination to take on the might of the treaty-abusers and also the misguided vision of the Union of India. Although the final verdict went in favour of the FIIs but the author succeeded in 'implanting' a new window in the mind of highest judiciary to see the future events differently. And that is how what we see today in terms of the latest Apex Court decision in the case of *Ram Jethmalani v. Union of India*, goes to vindicate his premonitions about the risk and the threat the blatant abuse of the India-Mauritius tax treaty poses not only to the interests of our exchequer but also our national security.

Let's now go straight to his precious compilation of intellectually-energising experiences spanning over more than seven decades. The First Part deals with his family of freedom fighters, his own people, his parents who embraced the lathi of the British-Raj, his childhood days, ruminations of his adolescence period and finally the flowering of his mind - a tryst with the academic world. Starting his career as a Lecturer at the age of 20, he later joined the Sardar Patel-initiative Steel Frame of India as an Indian Revenue Service Officer. While working with the Income Tax Department, he had two innings of posting in Patna, and both were eventful. The second inning was particularly more exciting as he had to deal with the most celebrated scam involving one of India's most rustically eloquent politician Laloo Prasad Yadav. He has a lot to share on the fodder scam and also to lend an insight into how to conduct investigations into such high-profile cases. The author has devoted a full chapter on intricacies of the monitoring of cases by the Patna High Court and also talked about 'The Concept of Judicial Monitoring:

A Critique of the Concept'. This has become more relevant in the light of the recent decision of the Apex Court directing the Govt. to notify Special Investigation Team (SIT) on the cases relating to black money. He has also spoken of the plight of our continuously decaying public administration, courtesy the Shah Commission Inquiry Report. He has sumptuously reflected on the existing Income Tax law and also the tax administration. Readers may recall the Income Tax Department has been celebrating 150th Year of its service to the Nation, and if we find their services worthy of any encomium, it is only because of the officers like the author.

The most engrossing and contemporaneous is the part III which vividly depicts both the illusion and the reality of our system. It begins with the author's perceptions and expectations submerging in the realities prevailing on the campus of the Supreme Court. Experiencing the medley of *homo juridicus* on the campus, the author states: "I found many learned friends either busy breaking the wings of butterflies on the Catherine wheel of logic, or in denigrating (or admiring) the idols they were accustomed to worship, or just talking, without rhyme or reason about kings and cabbages." If any reader wants to have a tryst with the musical architecture, the pregnant murals, the fantasy to be weighed in the balances and the emblem of the Supreme Court, the first few pages are elegantly rich in details. Then follows the serious food for thoughts for the present and the coming generations. The author has richly reflected on Hindu's famous God Lord Krishna and the magnum opus *Bhagavad Gita*. How deeply this religious-*cum*-wisdom-studded empirical compilation has dominated the mind of the author and his understanding of our various democratic and legal institutions in that context can be seen through the cross-titles like "Our Problem: The 'Wallace Syndrome'", "The Imperatives of the Grammar of Life", "Gita providing a remedy against the 'moral deficit' of our time", "Krishna and Buddha, Krishna and Jesus, Krishna and Muhammad, Krishna and Marx and Krishna and Gandhi" - a fascinating landscape of analogies.

Then comes our Constitution at work - a critical commentary on constitutional socialism and a warning for the creatures of Constitution to accept the discipline of our Constitution. For the votaries of constitutional democracy, this part is perhaps the most sumptuous insight. It is followed by the 'Democratic deficit' in the exercise of our Govt.'s treaty-making which has become a major bone of contention between India and Mauritius today. For issues like black money and illicit funds secreted away in tax havens, inadequacies in our treaties have come under scathing attack, and that is how we see today the Govt. of India hurriedly signing dozens of Tax Information Exchange Agreements and the amendments in Article 26 of the existing DTAA's numbering about 80. While delineating on this aspect, the author has extensively taken a hard look at the achievements of, and expectations from our Parliament; Executive's attitude towards Parliament - An instance of gross 'democratic deficit'; the opening up of our economy - what went wrong; Political parties - Whether essential for a democratic polity and 'On the Anna Hazare Movement'. For those who care for the holistic insight into the evolutionary issues of democracy, the author has elegantly analysed the Western Views and the nature and the parameters of the Western Democracy. In this context, no reader should miss the chapter on 'Our Worldview & The Trends of

Our Time'. Here, the author has analysed the grammar of the dominant Western worldview and our illusion that the economic globalisation is a sufficient guarantee against a major war.

Apart from treaty-shopping, the author has also focussed on the GATT Agreement (the World Trade Organisation) and aptly titled the chapter as 'The Realm of Darkness: The Triumph of Corporatocracy'. This chapter is indeed an eye-opener for the 'shut eyes' of the Third World which is being gobbled up by the aggressive trading giants of the First World, and the WTO tends to pave the way for them by removing tariff wall and trade barriers. How India has succumbed to the WTO pressure, and what are the powerful instruments of the 'Darkness', can be clearly discovered in this chapter.

Given his 40 years of experience in revenue matters, he finally moves to his famous PIL in tax matters a la *Azadi Bachao*. He has devoted a good space to material points in Indo-Mauritius DTAA which can be a realistic guide for our policy-makers holding talks with the Mauritian Revenue authorities for amendment in the treaty. The legal materials stuffed in dozens of pages give valuable insight for our judiciary and the legal fraternity having interest in tax matters. Then he shifts to some of the gems of wisdom he has collected over 70 years in the form of never-to-forget small stories; clash of our civilisations. 'The Three Indias' etc.

For all those who have experienced the joy of river-rafting, this compilation promises a similar joyful 'flow', riding the currents of the real-life river of experiences. Although, for serious readers, its heavy size is a joy for many weeks but for some, it may demand an additional ounce of patience to finish it. I personally find it a bundle of precious experiences which would continue to enlighten many generations to come. It is indeed a must read for the students of law of all age groups.

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PREFACE TO THE FIRST EDITION

I

It was 1993 autumn. I was on my way to Krishna Nagar from Kolkata to hold my camp as the Commissioner of Income-tax of that area. My wife had accompanied me. On our way, we passed through a village of weavers. We found a number of them at work on the loom. Observing what they did in rhythm, my wife intoned Kabir's *jhini jhini bini chadariya, jhini re jhini*. We couldn't restrain our curiosity. We went inside a cottage to see how the weaving operation was being done. We saw a weaver at work on the loom. We saw how the fabric was being made through the interactions of the warp and weft threads. For quite some time, we observed him at work, and enjoyed the poetry he composed on the loom. We saw fascinating patterns emerging on the loom. We watched the weaving operations that he conducted with yarns of variegated colours. Myriad patterns were being created. After spending a while observing his creativity, we went to Mayapur to stay for two days at the guest house of the International Society for Krishna Consciousness. After the *darshan* of Radha-Madhava, we sat on the bank of the Ganges. My mind travelled back to the loom, whilst my eyes counted the waves of the Holy Ganges. I asked my wife to sing again *jhini jhini bini chadariya, jhini re jhini*. The weaver prepares a chaddar on the loom. Kabirdas was born in the family of weavers. He says he made his life's chaddar, he wore it all his life, but he kept it unsullied till his last moment of his life. The imagery of 'the weaver on the loom' has become for me a metaphor that I have enjoyed at various levels: the loom on which the individuals are at work; the loom on which destiny shapes human history, the loom on which the Creator Himself weaves, and unweaves, the ever changing patterns of events. My mind sailed into the past touching several shores, near and distant. But the imagery of the 'loom of time' yielded its richness with deep intensity when I chanced to go through Goethe's *Faust* where the poet expressed felicitously how life itself is the process of working on the loom of Time. I decided to call my autobiographical memoir 'On the Loom of Time'. Salutation to thee, O Time (कालाये तस्मै नमः).

Sometime in 2001, I was on the sick-bed at the Escorts Heart Hospital, New Delhi, for some interventional cardiac treatment. My mind turned into a chrysalis of thoughts on my sick-bed. The past had come alive. The imageries of my Krishna Nagar visit unfolded their infinite beauty, and enormous wealth of meaning and suggestions. The imagery of the fabric being made on the loom made me reflect on my life and the world I had seen. Yarn and skein come from my actions and thoughts, and also from the actions and thoughts of all others.

II

While writing this autobiographical Memoir, I have no narcissistic interest in self, nor have I any agenda of self-justification, or self-glorification. Such stuff, I know, can obviously be of no interest to others. This autobiographical Memoir presents the world in which I have acted and thought. The facts of the realm that it explores become metaphors which I have tried to explore. I had suffered with joy the euphoria of our Struggle for Independence, and have suffered with pangs witnessing the ruin of our great vision for which we had made great sacrifices during our Struggle for Freedom. Like the art and craft of the artist on the loom, my Memoir would focus often on myself as the *karta* (an acting agent), but most often, on the *karma* (action) for which I hold myself responsible. I have tried to interpret, with utmost good faith, the metaphors of events with which my life, and the life of our nation, abound.

III

I deem myself under an infinite gratitude to my parents. Like Michelangelo, my father carved and chiselled me from a marble rock; and like Krishna, my mother sang through my life music, a few tunes of which you would listen to in this autobiography. It was my joint Hindu family which helped my limestone to get metamorphosed into marble. My wife, Veena, has acted in my life playing her roles from a catalytic agent to an inspiring and creative force. I wouldn't have lived my years rich with thoughts and actions unless she would have acted as Sita had done in Sri Rama's life. In the *Adhyatma Ramayan* Sita assesses her role in the life of Sri Rama in words of great beauty and accuracy: "Though all the acts that the Lord has done from his advent to becoming the King were done by me, people say they were done by Him alone." My wife can assess her role in my life in precisely the same words. I gratefully acknowledge great debt to my teachers from whom I have learnt the grammar of life of which the most valued maxim is what Krishna said: "स्वल्पमप्यस्य धर्मस्य त्रायते महतो भयात्" ('Even some small endeavour on the path of righteousness saves one from the dreadful ruin').

In writing this book, I have drawn on the works of a number of distinguished writers, to mention a few: Jawaharlal Nehru, Noam Chomsky, Joseph Stiglitz, J. K. Galbraith, Peter Watson, Ramdhari Singh 'Dinkar', Bertrand Russell, Arnold Toynbee, H.M. Seervai and Kiran Tandon. I have drawn on their writings liberally as they had showed great insight into the problems on which this humble self has reflected over half a century. Two lines from the *Ramcharitmanas* of Tulsidas come to mind to express my feelings of gratefulness to all such writers: 'the great amongst the humans build bridges on yawning rivers, but the bridges facilitate tiny ants to go across the river'. My father had once instructed me to function as a bee collecting nectar from many flowers to produce honey. A little of that habit persists all through my life, as you will see in this autobiographical Memoir.

I am grateful to Shri R. C. Lahoti, former Chief Justice of India, for his illuminating 'A Reflection in brief' that constitutes the 'Foreword' of this autobiographical Memoir. His every word is precious for me. His reflections bring out valuable ideas, and show deep insight into the points he has touched. I deem it my great luck and privilege to receive from him appreciation for whatever a little I

could do. I express my gratefulness for Shri Shanti Bhushan, Sr. Advocate of the Supreme Court of India, and a former Minister of Law for the Republic of India, who has written the words of 'Appreciation' for this work. He could do this despite his very busy schedule of work at the courts, and his involvement in the national public upsurge against corruption. I must express my gratefulness to Shri Rajindar Sachar, former Chief Justice of Delhi High Court; Prof. Noam Chomsky of the Massachusetts Institute of Technology; and Prof. John Carry Sims of the McGeorge School of Law for their profoundly perceptive comments. I am grateful to Dr. Justice G.C. Bharuka, who has written an enlightening "Observations" on this book highlighting certain issues of great contemporary importance. I am profoundly indebted to Professor M. L. Upadhyaya who went through the text, and ventured his comments on the work. I am thankful to Dr. Zafar Mahmood who went through parts of the text, and came out with his insightful assessment. I must thank Shri Shailendra Kumar, Managing Editor of taxindiaonline.com, who has written a comprehensive critique of this work focussing on its perspective, and important points highlighting their relevance to the problems we are facing in various areas of governance. I must admit that there are many others to whom my debt is heavy. I am grateful to them all.

I must bless my youngest daughter Anju Jha Choudhary, Advocate, who had helped me in conducting research for arguing several matters before the Delhi High Court and the Supreme Court. The knowledge that I acquired in that process has helped me write a lot of things in this Memoir. She helped me correcting the text of this Memoir, though I treat myself alone responsible for all its blemishes. I must bless Kishori Jha, my second daughter, who has drawn up the cover design, and settled the structure of the book so aesthetically satisfying. I would be failing in my duty if I do not express my gratitude to the Publishers who have put in hard labour, and have shown excellence in publishing this book.

IV

After writing my autobiographical Memoir, I could go through the reasoned Order passed, on July 4, 2011, by our Supreme Court (*coram*: B. Sudershan Reddy and Surinder Singh Nijjar JJ.) in *Ram Jethmalani & Ors. v. Union of India & Ors.*, popularly known as *the Black Money* case. The reasons given by the Court provide us a sound perspective to comprehend our Constitution, and the role of the State in the governance of our country. It spells out the worldview that I wholly share. It is a masterly exposition of the ills that beset the present-day neo-liberal view of polity and governance. I consider this *Black Money* case as one of the most important Supreme Court decisions in recent times. As many of my premises have found implied approval in this Order, I have appended a short Postscript to this autobiographical Memoir*. I have expressed in the Post-PostScript of this book my gratefulness to Anna Hazare for the great work he has done for our nation.

Shiva Kant Jha

New Delhi
September 1, 2011

*The matter of the postscript stands incorporated to Chapter 28 of this Memoir (Second Edition).

LIST OF PHOTOGRAPHS

BOOK I

My Father: Gopi Kant Jha;

My Mother: Draupadi Devi;

Tamrapatra presented by Smt. Indira Gandhi, the then Prime Minister of India, in recognition of his memorable contribution to India's Struggle for Freedom;

Veenapani Jha and Shiva Kant Jha visit the cell in the Cellular Jail at Port Blair on the Andman & Nicobar Islands;

The Gandhi Edict at the Wardha Ashram, mentioning the Seven Social Sins;

Shiva Kant Jha, a student at M.L. Academy at Laheriasarai;

Shiva Kant Jha, a student at C. M. College at Darbhanga.

BOOK II

My garden in 1978 at the Imambara, Lucknow;

Myself, my father, and my sister Phul at the Aayakar Bhawan Dhanbad (1978);

JP's statue near the Central Revenue Building, Patna;

Holding a camp office of the Chief Commissioner wearing Mithila's typical *paag*;

Veenapani Jha and Shiva Kant Jha stand near the Chariot wheel of the Konarak Sun temple;

Laying the Foundation stone of the Income-tax Office, and the Income-tax Residential Quarters at Berhampur, Orissa;

My wife at 6 Bailey Road, Patna, the official residence of the Chief Commissioner of Income-tax. Bihar, Orissa, Assam, & the North-East

BOOK III

Veenapani Jha reading the *shlokas* of the *Bhagavad-Gita* at the Geetai Mandir at Wardha, near Nagpur;

We two (Veenapani Jha & Shiva Kant Jha);

Smt. Veenapani Jha, President of the Draupadi Devi-Gopi Kant Jha Charitable Trust;

Shiva Kant Jha, Mrs. Anju Jha Choudhary and John Cary Sims, attending the 43rd Congress of International Association of Lawyers;

Veenapani offering *aargh* at the Chhath at Juhu Beach, Mumbai;

Veenapani meditating on the radiant glow of an earthen *Pradeep*;

Tara, my love, my deity, my soul's song;

Veenapani Jha meets Mrs. Indira Gandhi, the then Prime Minister of India;

Veenapani Jha & Shiva Kant Jha at the Taj Mahal at Agra;

The Force that sustained me, the Light that led me;

Shiva Kant Jha addressing the National Semnar on Treaty-making power of the Government;

My father-in-law late Shri Hem Narayan Jha.

'As we are now';

'Veenapani Bhawan', Laxmipur at Laheriasarai, Darbhanga.

INTRODUCTION

*The One remains, the many change and pass;
Heaven's light forever shines, Earth's shadows fly;
Life like a dome of many coloured glass,
Stains the white radiance of Eternity,
Until Death tramples it to fragments.*

— Shelley in 'Adonais'

I have called my autobiographical Memoir 'On the Loom of Time' inspired by Goethe's following insightful lines:¹

At the whirring loom of Time unawed
I work the living mantle of God.

This 'On the Loom of Time' consists of three Books devoted to the three broad phases of my life, each with its characteristic name :

Book I: The Fragrant Years (from 1937- 1964)

Book II: A Cog in the Machine (from 1964-1998)

Book III: Illusion & Reality (from 1998-2014).

The Book I pertains to my halcyon years of my boyhood and adolescence. The Book II pertains to the years I spent as a cog in the vast machine of governance as a member of the Indian Revenue service when I bore with joy, often with tongue-tied patience and fortitude, the heat and burden of the Revenue Service. The Book III pertains to the phase from 1998 onwards when I dabbled, *pro bono publico*, in so many spheres. I conducted *pro bono publico* some important Public Interest Litigations before the Delhi High Court and the Supreme Court of India; wrote a book under the title *Judicial Role in Globalised Economy*²; and set up the 'Bhagavad-Gita Swadhyaya Kendra' under the umbrella of 'Draupadi Devi-Gopi Kant Jha Charitable Trust'³ that I had founded at the 'Veenapani Bhawan' at Laherisarai. Over the years I heard certain stories from many knowledgeable persons, and I felt that some of these expressed metaphorically profound ideas on which, as the vigilant members of the Republic of India, we must ponder. In Chapter 25 of this Memoir, entitled "The Certain Stories as my 'Objective Correlatives'," I have tried to tell some of these.

II

My Memoir contains certain fragments of my life. It highlights certain events in which I participated in some measure, and the ideas which guided me to act,

INTRODUCTION

and on which I often reflected for light and delight. I have lived, thought and acted. I have seen in my life, as Krishna had seen in His life; “the play of the contingent and the unforeseen.”

I had my successes and failures for me to reflect on. I had moments to exult at the good things I experienced; I had moments of astonishment at my own actions. I have felt excoriating agony seeing how our country allowed herself to be turned into “one vast vision of imbecility”.

I have seen in the world a dance on the still centre: I have seen our brave new world illustrating copiously the syndrome of the fast changing technology but stagnant, if not decadent, morality. In this Memoir I intend to look back over the seven decades of my life. But on an overview of my life, I have felt amazed to see how my stars yoked together the contraries and contradictories in my life. I have felt life just a sparrow’s temporary sojourn in the space we call our world. The imagery of a sparrow’s sojourn is a powerful ‘objective correlative’⁴ to express what human life is. Lord Krishna considers it so (the *Bhagavadgita* II.28), and Lord Hailsham of St Marylebone has even called his autobiography *A Sparrow’s Flight*. I would revisit this profound imagery several times in this Memoir.

In a sense, this autobiographical Memoir is a potpourri of the petals gathered on the stream of Time. It deals with myriad events and many disjointed ideas. The journey of my life, like that of the Ganges, is from the Gangotri to the ocean, observing and participating in God’s *Lila*. I have gathered in this spectrum the varied rays refracted on my life’s many-coloured dome of glass. Whilst I have touched on a number of topics, and you might on good grounds consider this Memoir a mere collage of varied worth and effect, I hope you will discover that it is my observation-post that unites them all into a perspective, and creates a symphony. You would notice my assertive presence all through this book. As I have written this Memoir in different moods, and at different times, in the fast shifting contexts, you might find me sometimes a rocking horse dragging load on rough roads, but at times a Pegasus soaring high in the sky. But this has been my life, which I would try to portray with fidelity and utmost good faith.

I have often found myself in a plight which the great Tulsidas described thus in the *Ramcharitmanasa*:

भाग छोट अभिलाषु बड़ करूँ एक बिस्वास
पैहहि सुख सुनि सुजन सब खल करिहहिं उपहास

[With my dim luck, I crave a lot. The sympathetic amongst you will draw some delight; but those not so inclined would have many things to laugh at.]

III

When I set out writing this autobiographical Memoir, my mind was distracted and wrenched by Ronald Duncan’s observations in his autobiography, *All Men are Islands*: “We settle down to write our life when we no longer know how to live it.” I wondered how to write about my life when its fabric was “still being woven on the roaring loom of time”. But I received light from the well-known *rubāiyāt* (quatrains) of Omar Khayyām. I felt what had gone belonged to the past, hence could be seen before my mind’s eye, and reflected upon.

INTRODUCTION

The Moving Finger writes; and, having writ,
Moves on: nor all thy Piety nor Wit
Shall lure it back to cancel half a Line,
Nor all thy Tears wash out a Word of it.

Hume, the author of *Treatise On Human Nature* drew an account of his life only in eight pages with an initial caveat. "It is difficult for a man to speak long of himself without vanity; therefore, I shall be short." But I have spoken quite long about myself. It has its reasons. I have lived in several universes. My life has been, like Keats's, a mansion of many apartments, a web integrating various spheres. I have tried in this Memoir to gather the broken fragments of my past. I know I might have committed errors of judgment. That happens often in an autobiography. This is price of being a judge in one's own cause.

IV

As a student I had formed a habit of altering things to make them better, though often these pursuits were counterproductive and frustrating. Every time I read what I had written myself, I changed the text, often even ideas. So my quest at perfection kept me stranded without producing much. Now I have reached a point in my life where I cannot afford to do that. A couplet of a poet from Maharashtra, which Bal Gangadhar Tilak quoted in the Introduction to his immortal *Gita-Rahasya*, comes to mind:

यम सेना की विमल ध्वजा अब जरा दृष्टि में आती है
करती हुई युद्ध रोगों से देह हारती जाती है

[Old age, which is the spotless white banner carried by the
army of the attendants of Death, is already in sight!
And my body is exhausted in the struggle with diseases,
which are the advance guard of that army.]⁵

I have never considered my life a thing of my own. I am what the world has made me, shaped me. Even my individual talent is a part of the whole, my own creativity has drawn much from others' creations. I hold myself under debt not only to my parents but to all the humans, nay to all the creations, from the mosquitoes, which have kept me awake to write these lines, to the galaxies which provided me vistas to soar and roam. I recall what thirty years back, I had heard from my father-in-law : these lines from *aghazal*⁶ :

क्या राह में परिचय करूँ, राही हमारा नाम है
चलना हमारा काम है

[What should on our way I tell you about myself? I am just a wayfarer on my way.]

V

Writing this autobiographical Memoir began almost a decade back, precisely when I retired from the Indian Revenue Service in 1998. I felt greatly indebted to that service. I would have more to say about it in the Chapter on 'Retirement' in the Book II of the Memoir. I summed up my debt to it in the words like these:

INTRODUCTION

“It was the ethos of this Department which became for me a chrysalis. A village-bred and ‘mufassil-educated’ lad, who had studied English grammar on the mango-tree or at the mound of hay, and enjoyed tending his cows with pleasure infinite, was transformed from dross into gold (at least in his assessment.) His journey in life from literature to law has been through his days in the IRS.”

I have benefited from many others in writing this. I have acknowledged some, but I have failed in acknowledging most others. I hope you will forgive me for my lapses. While posted in Kolkata as a Commissioner of Income-tax, I had watched in Kumhartoli how the images of Goddess Durga were made. They brought clay from ponds, and hay and straw from the fields, created colours from vegetables, drew thoughts from the *Shastras*, and revealed in the images their religious and aesthetic sensibility: making the earthen images of Durga into the divine presence of the Goddess Herself.

VI

I hope you will find something of worth if you, whilst reading this Memoir, relive your past too. It hardly matters if our ideas differ, and perceptions vary. Such things get ultimately resolved in harmony. For me the writing of this Memoir has been a vast continuing cathartic experience. I am grateful to you that you have come to my parlour to see how I have lived and thought. I must thank you for sharing some moments with me to reflect on the cavalcade of events in which I have been both a participant and a witness: in fact, most often a participative witness:

अच्छा हुआ तुम मिल गए
कुछ रास्ता ही कट गया⁷

NOTES AND REFERENCES

1. Goethe in his *Faust* (R.Anstell's Translation quoted by Arnold J. Toynbee in *A Study of History*, p. 632)
2. Published by 2005 by Wadhwa & Company, Nagpur
3. See at www.shivakantjha.org
4. Explained in Chapter 26
5. As translated by A.S. Sukthankar in his English translation of the *Gita Rahasya*.
6. Shri Hem Narayan Jha of village Gosaigoan in the district Bhagalpur
7. It is good we met on the way and waded through together for a while.

ON THE LOOM OF TIME

THEMATIC STRUCTURE OF THE MEMOIR

(The contents of the Memoir in outlines)

John Keats in his letter to J. H. Reynolds said: “I compare human life to a large mansion of many apartments, two which I can only describe, the doors of the rest being as yet shut upon me.” I feel I have sojourned in its three apartments: each one of which is the subject-matter of the three Books of this Memoir. This is my life at grosser level. As this Memoir is autobiographical, it is broadly unilinear. But nobody’s life, when deeply reflected, is flat. Life is not straight. I have seen two straight lines, sure and certain: one is one’s journey from the point of birth to that of death, and the other is the ever abiding line in human society, which Ernest Barker described to Albert Einstein, as “one straight line that will always remain –the straight line of right and justice” for the triumph of which we all endeavour, and we must endeavour. I intend to write something about the three apartments of my life’s mansion in this autobiographical Memoir. I have seen some other apartments too: ajar and inviting, but I am yet to acquire the right vision to see what is inside them. Whatever complex play of the contingent and the unforeseen I have seen and experienced, I have tried to express with utmost fidelity in the idioms I could discover, and invent. For an easy comprehension of this Memoir, I attempt, at the outset, a short overview of its thematic structure.

BOOK I: THE FRAGRANT YEARS (from 1937- 1964)

Chapter 1 ('My Land, My People'): I have written about Mithila where I set out weaving the fabric of my life 'on the loom of time'. I have organized my thoughts under the following three heads: '(i) the Mithila as I see her before my mind’s eyes (*manasloka*); (ii) the glory that Mithila was; and (iii) the agony of the present-day Mithila.' I have reflected in this Chapter on Mithila’s cultural ethos which helped me develop my worldview. Its cultural consciousness conceives the universe as the cosmic *kriya*, human life as *karma*, and its objective: *karmayoga*. I have mentioned something of Mithila’s cultural oeuvre because the model of *karmayoga* that Mithila presented to the world through the thoughts and actions of Janaka, was appreciated even by Krishna in the *Bhagavad-Gita*. Mithila provided our country’s ultimate revolutionary role model in Sita, the daughter

of Janaka. I have discussed these with utmost brevity. I have felt that these cultural values have shaped the way I have lived, thought and acted.

Chapter 2: ('My Ancestors') : After much research I have drawn up the genealogy of my family (direct line) which on all probability goes back to the times when 'Ala-ud-din Khilji was ruling this country, nearly 7 hundred years back. I have abstracted the family tree in direct line only: it can be seen at the end of Chapter 2. I have reflected on some of the great persons figuring in the genealogy about whom I could find some materials as to their social and intellectual attainments. In my detailed genealogy (<http://shivakantjha.org>), I noticed a branch that had broken off on the daughter's side to become the famous family of the Raj Darbhanga, the annals of which began in 1577, and of which the last holder was Maharajadhiraja Dr. Sir Kameshwar Singh about whom I would write something in Chapter 10 in the Book II of this Memoir.

Chapter 3 ('Profile of my Father') : This Chapter presents a short account of my father's life. He was a freedom-fighter, and an academician. He received a *tamrapatra* (copper-plate) from Shrimati Indira Gandhi on 15 August 1972 with an inscription that it was presented to him for his "memorable contribution" to our nation's struggle for freedom". I would tell you something about the way he fought and struggled, the values he shared, and the great sacrifice he made for our nation. I would tell you how, like Gandhi, Tilak and Subhas, he was sustained by the *Bhagavad-Gita*, both when in jail and when outside that. He was a patriot who illustrated in his life the values which had led our country to independence. Besides, he was a distinguished academician, who taught several generations over 45 years. He was one of those who deserve the tribute which is often expressed by quoting these lines of Muhammad Iqbal:

*Hazaaron saal nargis apni be-noori pe roti hai
Badi mushqil se hota hai chaman mein didavar paida*

Chapter 4 ('Portrait of My Mother') : She came from a feudal family, and had rolled in wealth. But as the wife of a freedom-fighter she lived facing poverty and hardship. She bore her claustrophobic sufferings when her husband was fighting for the country's freedom. It was she who had sustained my father's revolutionary spirit. A moment came when she advised my father in the words of Vidula '*Muhurtam jvalitan sreyah, na tu dhumayitam cirama*' (Better to blaze for a moment than to smoke continuously for long). Her words expressed the grammar governing the actions of the freedom-fighters throughout our country right from the days of the celebrated Jhansi-ki Rani Laxmi Bai to the day we became free from the British yoke. Her life had become, during the short period she visited this earth, a piece of poetry. I felt its meaning at different planes. If I would not have seen her closely, I could not have believed that a daughter of Mother India could be so impeccable in her art of life. The readers should try to imagine how those days the freedom-fighters' wives and their children suffered in the remote villages where no news, but only rumours, could reach. For quite some time my mother did not know whether she was a widow, or had her husband alive.

Chapter 5 ('My Birth: My odyssey thus began') : I would agree that there is nothing to feel so great about one's birth. What is there to become so proud, when, in effect, one becomes bound again to run a course:

“But helpless pieces in the game He plays
Upon this chequer-board of Nights and Days” ?

In this Chapter, I would try to reflect on what my parents believed I had been endowed with by Creator at my birth. I have portrayed what the starry messengers were believed to ‘have brought for me’. But what I have made of myself is my own *karma* for which I hold myself alone responsible. While reflecting on the endowment at my nativity, I shared the state of mind which John Milton had expressed in his sonnet ‘On His Blindness’: how to render the Final Accounts of life to the Master when much of the God-given talent had been wasted.

Chapter 6 (‘My Childhood Days: The halcyon years’): I would tell you that I was born to Sweet Delight. I would tell you something about the ‘carefreeness’ of my childhood. My parents never bothered to rack their heads to mould me this way or that: they never expected much from me. Their approaches resembled Khalil Gibran’s. The children resemble the arrows which the Great Archer sends off from his bow towards the targets which God alone knows. Whether the arrows shot off the bow reach their targets, or are lost on the way, the bow must not bother about. I would also tell you about my canoes adrift in the streams of rain waters, and how I derived thrills of macabre delight seeing the canoes turn turtle with the whole crew of ants and insects gasping for sometime before they died. I would tell you something about the annual blood-sports organized as customary rituals in my village where cruelty shown to the poor pigs indicated socially shared depravity recalling to our mind the heartless treatment shown to the animals in Part Five of Dostoyevsky’s *The Brothers Karamazov*. I would tell you about my Manai’s art of storytelling, and how I fed my birds on grasshoppers, and how I conducted six bullocks at a time going round and round the bamboo pole to trample grain out of stalk cast around the pole. In this Chapter, I would tell you about these, and many other things.

Chapter 7 (‘My Adolescence: On swimming through the rainbow’): I would portray in this Chapter how I enjoyed building rich rainbow, and then enjoyed the raptures of sinking and swimming through the colour bands. This often resulted in emotional crises. An adolescent’s worldview is distinct from that of a child. A gale of creative destruction sweeps over the images and values built and cultivated during childhood. Mysterious demands are made by flesh; and strange urges stimulate the psyche to respond to myriad stimuli. Often strange emotional haze overtakes one’s mind, and great demand is made for the exercise of moral imagination and courage.

Chapter 8 (‘The Flowering of Mind: My Academic World’): This Chapter portrays certain things of the period when I was a student at C. M. College and L.S. College from (1954-60), and also when I was a lecturer for four years before joining the IRS in 1964. I would tell you what happened when Shrimati Indira Gandhi visited my College in 1958. She was sweet and lovely, but was egotistical and full of vanity. I would tell you something about Darbhanga: about its great temples; about its tower, with clocks gone, standing in the stable campus of the Raj as if some magician had turned it into Pablo Picasso’s *Guernica*; about one Bhikku Aryadeva, who had been a French General during the Second World War, but was making research on *Dhamma*. His love for Sanskrit, and his deep study of the *Bhagavad-Gita* reminded me of J. Robert Oppenheimer, the Director of the Manhattan Project working to develop nuclear weapon. I would also tell you how

we celebrated the Centenary Celebration of the First War of Independence 1857. I would tell you a little about my great teachers, and about the 'Cambridge English' they taught us those days; about my visit to the 'red-light' area to meet the Sadhu and the Vaishya (a whore); and also how I annoyed the Churchman because I felt the *Bible* showed that God was unwise in evading the apt questions which Job had put to Him: why should a good man suffer for no fault on his part?

BOOK II: A COG IN THE MACHINE (from 1964-1998)

Chapter 9 ('On Joining Civil Service'): In this short Chapter, I would tell you, in brief, what led me to join the government service leaving my post as a Postgraduate lecturer in the Magadh University, and how I spent my training period at Mussoorie and Nagpur.

Chapter 10 ('My First Innings at Patna : Part-I'): I would tell you what I experienced at Patna after joining my post as one of the Income-tax Officers Class I. I started working at a point of time when the efforts to unearth black-money was going on with full intensity. I find that even after 45 years, the same problem is vexing our nation by turning more labyrinthine, more complex, and of much greater magnitude. I would tell you something about the art of prosecution: and also some of the lessons I learnt from the great criminal lawyer Shri Nageshwar Prasad who had been a Judge of the Patna High Court in the pre-Constitution days, and was rightly considered one of the greatest criminal lawyers in our country. I would tell you about the great Aiyar Commission, headed by Justice Venkatrama Aiyar, a former Judge of our Supreme Court, constituted to examine the charges against 6 former Ministers of Bihar. I held special income-tax jurisdiction on those six towering politicians who had ruled Bihar over years. For sometime, I worked in close informal association with the Aiyar Commission. Besides, I was the Assessing Officer of some of the biggest Maharajas, and Rajas in Bihar whose affairs made me understand the developments in the history of income-tax law and administration right from the day the law of income-tax began its history in our country. I would tell you how I developed my love for international law; how I made preparation in 1973 for the Philip International Law Moot Court; and how I argued a case pertaining to the Law of Seas before the moot court consisting of three Judges: Justice A. N Grover,¹ Chief Justice N. L. Untwalia,² and Shri G Parthasarthy³. I would tell you about the moment of the greatest joy which we Indians felt when at 4.21 p.m. on 16th December 1971 Lt. General Niazi, Commander of the Pakistani forces in Bangladesh, surrendered unconditionally to General Arora at the Decca Race Course ground. Really, that was a great moment.

Chapter 11 ('My First Innings at Patna : Part -II'): This Chapter deals with the 1970s which were traumatic years both for me, and for our country. In 1973 my mother died of cardiac arrest. I felt that every straw of my life's nest had been blown away; and my supreme sanctuary had gone. I apprehended that my journey through life would become desolate and dreary, and that I would no longer get any place to unwind. Some of the moments, about which I have reflected in the Chapter, were: the Emergency, the JP Movement, and the Shah Commission. I have examined the circumstances in which the Emergency was declared. I have drawn up the portrait of the excesses during the Emergency. I have mentioned what I felt about the JP Movement which I witnessed. You would see the photograph of the location where JP had fallen lashed by the police *lathis*.

We had seen all that had happened from the roof of the Central Revenue Building. I would tell you how the gongs of *thallis* worked as if the unseen was blowing its conch, perhaps the *Panchjannya*. I have written about the Shah Commission of Inquiry that examined the excesses done during the Emergency, and also the fate of its famous Report.

Chapter 12 ('Patna: My Second Innings: Fodder Scam'): My second innings at Patna was to supervise the investigation into the Fodder Scam Cases being closely monitored by the Patna High Court. In this Chapter I would tell you about the vast vision of imbecility that the Government of Bihar had become. I would tell you about the way the High Court monitored the investigation into such Cases, and also how the governmental agencies failed to rise up to the occasion. I would also show how the great institution of the CAG became a sort of 'constitutional orphan'! I felt the Constitution made it a hound, but circumstances made it a lapdog! This Chapter mentions how the legislature betrayed its constitutional duty, and it throws light on the Root of All Evil that grew in our polity. We saw how our constitutional institutions broke down when they were put on the testing track. I was sad seeing the melodrama of the Great Betrayal enacted by the government functionaries, even the PAC (Public Accounts Committee)

Chapter 13 ('Plight of our Public Administration; Extracts from the Shah Commission of Inquiry Report'): This Chapter presents a miscellany of certain extracts from the 'General Observations' of the Shah Commission's Inquiry Report. As this Report is not available in the public domain, I have drawn up a short compilation of extracts for our brother citizens to go through. H. M. Seervai has rightly said that Justice Shah's 'Report conveyed the spirit of the memorable words, "Our country, right or wrong. If right, to keep right, if wrong, to put right."'

Chapter 14 ('My years at Nagpur'): In this Chapter, I have reflected on my phase at Nagpur (from 1986-1992). Whilst I was happy to be posted in the land of Rukumini (Vidhabhaja), I felt sad seeing the "Theatre of the Absurd" enacted at the National Academy of Direct Taxes. I would mention in this Chapter my reflections on Shivaji, and Dr. Ambedkar, and on Gandhi's Wardha Ashrama where I read Gandhi's most valuable edict against the Seven Social Sins. You can see the photograph of the said board of edict in Chapter 3 of this Memoir. I would tell you about my association with the Nagpur University, my lecture on Tagore to mark the Tagore Day Function at the University Convocation Hall. I would also tell you about some agonising experiences I had borne with patience, as Krishna had borne them in the 'Syamantaka' episode narrated in *Srimad Bhagavad Mahapurana*. My experiences at Nagpur led me to assess my those days at Nagpur, to say in the opening words of Charles Dickens' novel *A Tale of Two Cities* (1859),: "It was the best of times, it was the worst of times..."

Chapter 15 ('My Phases in Calcutta, now Kolkata'): I had three phases in Calcutta: the first was from 1976-79 when I functioned there as the Appellate Assistant Commissioner; the second from 1982-86 when I worked as a Senior Authorised Representative before the Calcutta Benches of the Income Tax Appellate Tribunal; the third from 1992-96 when I worked on various assignments, viz. the Commissioner of Income Tax, the Director of Investigation, and then the Secretary in the Settlement Commission, and, on promotion, as the Director General of Income-Tax (Exemption) having all India Jurisdiction. I have

reflected on the working of the Income-tax Appellate Tribunal, and suggested the setting up in our country a body, of the type of the Council on Tribunals in the U.K., for the supervision of the tribunals, like the ITAT, in our country. I have recorded something about my academic pursuits. I have given a comprehensive account of the Durgapuja in Kolkata, and some details of my visit to the place of Chaitanyadeva in Nadia. I was closely associated with the Calcutta University, and for days I had close contacts and interactions with such world renowned jurists as Dr. T.B. Smith, Dr. Bernard Schwartz, and Dr. Rene David. They helped me develop my juristic ideas on which I would draw while writing Book III of my Memoir.

Chapter 16 ('My Reflections on the Income-tax Law'): Based on my experience and study, I have pointed out the nature and effect of the changing attitudes towards 'taxation', and the judicial responses to statutory interpretation. I have suggested for certain changes: (i) to provide in the statute itself illustrations to the complex legal provisions; (ii) to avoid legislation in detail and to go in for legislation setting forth principles; (iii) to simplify the linguistic and thematic structure of the Income-tax Law. I have suggested the constitution of certain permanent committees for ongoing reforms. Besides, it is suggested that if democracy is to survive, our Parliament must not abdicate its exclusive control on 'taxation' whether by way of tax imposition or tax exemption. I have shown how lobbyists can influence even legislation.

Chapter 17 ('My Reflections on the Income-tax Administration'): This Chapter summarizes my reflections on the Income-tax Administration. I have suggested that it is right time to consider the adoption of the *droit administratif* in our country, and the setting up an effective Union Administrative Services Commission. I have expressed my concern at the opaqueness in our administrative system. I have suggested the drawing-up and adoption of U.N. Multilateral Convention on Tax Treaties; and the setting up of the International Tax Authority (ITA). I have drawn attention to the encroaching shadow of the WTO on the Laws of Direct Taxes. As the systems of taxation and the patterns of tax administration in India and the U.K. are broadly the same, certain issues touching the administration of tax laws are discussed in a comparative perspective. I have also examined in brief the assumptions pertaining to the tax law administration in the light of ideas set forth in our classical literature.

Chapter 18 ('On my Retirement'): Certain gnawing ideas wrenched me on the morrow of my retirement from the government service in 1998. But from the deep well of my mind certain ideas emerged to help me reorganize myself for a new role. I drew light from the situations in the great *Bhagavad-Gita* and the *Ashtravarka-Gita*, and from the story of an old bird which I have mentioned in this Chapter. I drew inspiration from Seneca's dialogue "On Tranquility of Mind" to discover my mission after that great divide. This Chapter deals with the situations which most government servants face on their retirement, and get baffled.

BOOK III: ILLUSION & REALITY (from 1998-2014).

[I devoted almost the whole of the first decade of this century conducting several rounds of litigations at the Delhi High Court, and the Supreme Court seeking remedies against the operation of the opaque administrative system, and for the removal of the 'democratic deficit' of our polity. Most of the Chapters in

the Book III of this Memoir are based on my researches conducted for those litigations, and the experiences I gained in course of my such pursuits.]

Chapter 19 ('Studying the Imageries the Supreme Court of India'): This Chapter summarizes my reflections on the imageries that I saw at the Supreme Court. I have felt that these express the collective consciousness of our Constitution. The images and the murals suggestively expressed, through their excellent synergy, the very Instrument of Instructions for the Judges, lawyers and the litigants. The metaphoric possibilities of the structure of the court building, its emblem, its murals, and of the bust of Mahatma Gandhi, have been explored.

Chapter 20 ('My Reflections on Krishna & the Galaxy of the Great'): This Chapter expresses some of my ideas which I developed over years whilst reflecting on Krishna, the Buddha, Christ, Mohammad, Marx and Gandhi. As their ideas substantially influenced, rather shaped, my worldview, I have considered it appropriate to summarize some of my reflections on them in my Memoir. They have one point in common: all of them were revolutionaries in their acts and ideas.

Chapter 21 ('Our Constitution at work'): This Chapter sets forth the summary of my replies to certain questions, which Dr. T.B. Smith, one of the greatest jurists of the modern Europe, had asked me. These questions were: (i) what constituted the most important features of India's polity as structured under the Constitution; (ii) what appeared to me be the prime mission of the Constitution of India; and (iii) what was, to my mind, the most worrisome aspect of India's constitutional regime. I have recorded in this Chapter a summary of my ideas on the Constitution's 'socialist mission'. I had occasion to reflect on our Constitution's mission most pointedly when I filed my Intervention Petition in the Supreme Court for rejecting the Writ Petition filed by *Good Governance India Foundation & Anr. v. Union of India & Anr* seeking a declaration that Section 2(a) of the Constitution (42nd Amendment Act, 1976) violated the basic structure of the Constitution of India. This Chapter contains my ideas for the removal of the 'Democratic deficit' in the exercise of our Government's Treaty-making power, and it deals with the judicial response thereon. This Chapter ends with the portrait of those decadent times when the ancient Roman Republic died; and I have drawn up the worrisome parallels that we see between such features and those we see bedeviling our own Republic.

Some of the salient points touched in this Chapter would be revisited in Postscripts V to VI.

Postscript V : The Destiny of our Nation: Advent of Shri Narendra Modi,

Postscript VI : Reflections on the Constitution of India: Ambit of the Constitutional Restraints on the Treaty-Making Power,

Chapter 22 ('Our Democratic Republic and its Great Institutions'): This Chapter examines how our democratic polity is at work. I have drawn on my experiences gained on witnessing our government at work from close quarters, and from my researches which I had done while writing my *Judicial Role in Globalised Economy* already published in 2005. I have reflected on the relevance of the political parties, and have suggested certain structural changes in our democratic polity. It was a great experience to witness Anna Hazare's fast at Jantar Mantar. I would tell you about the grammar of public protest, from criticism of the governmental actions or inactions to the revolutionary sparks, and revolution.

Chapter 23 ('The Profile of a PIL in Revenue Matters'): I have drawn on my experiences in conducting several Public Interest Litigations before the High Court and the Supreme Court over the decade just gone. The first one was the 'the Tax treaty abuse Case' wherein I raised issues which have become the issues of the greatest importance now when our Government is being constantly grilled for promoting an opaque system which helps the money-launderers, tax-evaders, and the fraudsters of all sorts. It is interesting to note that experts from different countries have shown interest in such issues.

Chapter 24 ('Our Worldview & the Trends of Our Times'): In this Chapter, I have reflected on certain events and ideas on which I had reflected over the preceding six decades. My reflections on some of these began assertively from 1958 when I wrote my paper on India's First War of Independence. I have discussed in this Chapter how the political realm has been subjugated to the economic realm. I have discussed what led to the World Wars I and II, and have reflected on the sinister circumstances conspiring again against humanity to drive the world to World War III. I have tried to identify some of the morbid features of our times, viz. the present-day syndrome of fast changing technology and stagnant, if not decadent, morality; the growing factor of Fear and GREED; the craze for armaments; and our medieval thought process in this profoundly scientific age. This Chapter ends with notes of 'tragic optimism' calling upon humanity in the words of. W.H. Auden:

If we really want to live, we'd better start at once to try;
If we don't, it doesn't matter, but we'd better start at once to die'

Chapter 25 ('Certain Stories as my 'Objective Correlatives'): In this Chapter I would tell you some interesting and suggestive short stories. The stories constitute what T.S. Eliot calls "objective correlative": these are metaphors suggesting great ideas of contemporary relevance. These stories are: (i) 'Story of Two Frogs'; (ii) '*Satranj Ke Khiladi*'; (iii) 'Our Taj Mahal Economy'; (iv) '*Sone ki Lanka*'; (v) 'The three Indias'; (vi) the 'Sparrow's Delight'; (vii) 'Extraordinary Popular Delusions and Madness'; (viii) 'Dance on the hood of the most venomous snake'; (ix) '*Kalaye tasme namah* (कालाये तस्मै नमः)'; (x) 'Bali questions Rama'; (xi) 'Bindumati'; and (xii) 'HOPE: Penelope's story'.

Chapter 26 ('The Realm of Darkness: the Triumph of Corporatocracy'): This Chapter draws up the profile of the Realm of Darkness, and refers to Conrad's *Heart of Darkness*, and the *Mahabharata*'s story of Raja Parikshit. It also presents my reflections on the factors which have altered the world's states system by rendering the Westphalian states system anachronistic because of new realities. It focuses on the emergence of the tax havens and secrecy jurisdictions through which the instruments of darkness operate for the benefit of the tax-evaders, money-launderers, fraudsters, thieves and robbers. It discusses the plight of 'Democracy', and the conditions which are working to establish 'Corporatocracy'. It examines certain neoliberal assumptions, and shows how the Market has kissed all our institutions in its pursuit to establish *Pax Mercatus*. During my lifetime, I have seen how fast our world is becoming a sort of Ludlow Castle of Milton's *Comus* where the fraudster presents his 'Mask' expressing love for 'Darkness' on a strange plea in its favour: "'T is only daylight that makes sin". In fact, the structures of deception and the instruments of darkness have helped the

crooks to loot our country, and to amass their ill-gotten wealth in such dark areas about which most of us know little. If my reflections help you to think and act, my labour would be amply rewarded.

Chapter 27 ('Veenapani (वीणापाणि): My wife'): I have felt that I must write a Chapter on my wife who so gladly suffered my ways over decades, and courted the slings of misfortune without ever grumbling. Her role in my life reminds me of that folklore in Mithila which we often heard. Vachaspati Mishra of Mithila wrote the famous commentary on Adi Shankara's *Brahmasutra Bhashya*. His wife, Bhamati, helped him in that pursuit all through the years he was at his work; and in the process she grew old. After completing his Commentary, he saw her grown old. He appreciated her contribution (and realised his folly): but nothing could be done to undo the time gone. So he named his Commentary itself *Bhamati*. If you keep this story in your mind, you can appreciate this Chapter better. You would read in this Chapter how she decided *A Rickshaw Puller vs. A Rickshaw Puller* that guided me to initiate the PIL in the tax-treaty abuse case before the Delhi High Court in 2000. I have discussed her verdict in this case, nowhere to be found in the law books, in my *Role in Globalised Economy** published in 2005 by the Wadhwa & Co. I have tried to portray her how she brought vernal breeze in my life, and sustained me through most trying moments.

Chapter 28 ('From Darkness to Light: My Reflections on the Black Money Case, & on the Anna Hazare Movement') : This Chapter presents a set of great constitutional ideas and principles, now judicially approved. The Hon'ble Court depreciates 'the greed is good' culture, and tells us about (i) the new States System, (ii) the Role of the State, (iii) the problems of unaccounted money, (iv) the serious lapses on the part of Government, (v) the modern constitutionalism prescribing the duties of government, (vi) the supremacy of our Constitution, (vii) the indifference to the State's resources, and its effects, (viii) the secrecy jurisdictions and tax havens, (ix) the role of the technostucture, (x) Corruption that rules, (xi) culture of permissibility and venality, (xii) Treaty-Making Power, (xiii) PIL and the Role of Judiciary, (xiv) Court monitoring. The Chapter presents a short critique of the Judgment. It also discusses our Government's grudge against the appointment the SIT by the Court. Our Government moved a Petition for Recall on the maintainability of which the Hon'ble Judges differed. Finally a larger Bench of the Supreme Court rejected the Petition for re-call, and the Narendra Modi Government decided to go ahead with the SIT, now working with verve. The facts have been updated : first in Section 'C' of this Chapter (pp. 477-479), and then again in the **Postscript IV (pp. 552-561)**.

I have retained my comments on the Anna Hazare Movement, and on the Grammar of Revolution in this Second Edition of my Memoir. These comments, read with my reflections in the **Postscript I**, would help the readers understand my changing attitudes towards the developments in this Anti-corruption Movement in our country.

Chapter 29 ('The Portrait of our Time') : This Chapter is divided in Segments 'A' to 'E'. **Segment 'A'** deals with the evolution of the Western political thought in modern times from Hobbes to the neoliberals, highlighting the factors leading to the enthronement of 'corporations' with which has began the most sinister phase of 'corruptions'; **Segment 'B'** deals with 'Capitalism, Corpo-

*The book's 2012 Web Edition is now freely available at www.shivakantjha.org.

rate *imperium*, & Corruption' as these go together; **Segment 'C'** portrays our plight, and reflects on the wheel of fire on which most of us are bound; and **Segment 'D'** is this Chapter's short 'Conclusion' that would grip you for long. The topics touched in this chapter are mentioned on the Synopsis given on the first page of the Chapter.

Chapter 30 ('A Miscellany of my Ideas from my *Personal Journal*') : This Chapter is the compilation, from my Personal Journal, of my comments on diverse topics of general interest. These are :

'Time debateth with Decay'; Grammar of Existence: DHARMA; The Rocks speak : Inscriptions in the Parliament House; Idea of Secularism and Dharma; Whether to be spiders, bees, or artists; Polity, Politics and people's Duty ; If our Parliament goes on *Shavashana*; Parliament's decline both in England and India; Prime Minister, the Sun or the Cipher ; All for the Holy Grail, FDI; FDI for whom? for what? ; Learning from the Treaty of Allahabad ; Parliament at work ; The Role of Parliament, topic revisited ; Political Parties revisited; Strategies of the Corporate *imperium* ; 'Reforms': the 'Mohan Raag' that deceives ; Setting up political trajectory in our villages ; Restructuring our polity ; Political Parties and Democracy ; Invocation to act; A Note on *Charitra* (Character)

Chapter 31 ('Reflections on my life's Sonnet: the Closing Chapter') : In this Chapter, I have tried to gather the diverse threads treading through my reflections of which this Memoir is a potpourri. This Chapter is a summing-up of my reflections. It states synoptically, but with utmost good faith, the subtext of the times I have seen. I have reflected on my life, with utmost brevity, just to discover conditions that can be best expressed in the words of Tagore:

The song that I came to sing remains unsung to this day.

I have spent my days in stringing and in unstringing my instrument.

The Chapter ends with a few lines from a poem which I heard from my father-in-law. These lines have deepened my understanding of my life in the cosmic context, and have helped me to understand the very grammar of existence.

POSTSCRIPTS :

I. Further Reflections on our Anti-corruption Movement : Challenge and Response

II. Some of my Recommendatory comments for our Government and Citizenry to consider

III. What I BELIEVE

IV. SIT on black money: the first decision of the Modi Government

V. The Destiny of our Nation: the advent of Shri Narendra Modi

VI. Reflections on the Constitution of India: Ambit of the Constitutional Restraints on the Treaty-Making Power

Appendix to Postscript VI : Global Economy : A Deal with the Devil

NOTES AND REFERENCES

1. A Judge of the Supreme Court of India,
2. Chief Justice of Patna High Court,
3. Vice Chancellor of the Jawaharlal Nehru University

BOOK I
THE FRAGRANT YEARS

BLANK

1

MY LAND, MY PEOPLE

Om namo bhagavate vasudevaya:

I was born in Mithila, and there I set out weaving the fabric of my life 'on the roaring loom of time'. When Sri Rama saw Ayodhya from his *vimaan* (spacecraft), whilst returning from Lanka after punishing Ravana, he asked Goddess Sita to pay a respectful salutation to that august region of land: 'अयोध्यां कुरु वैदेही प्रणामं पुनरागता' ('Pay respectful homage through salutation to Ayodhya where we have returned'). Before I begin writing something about myself, I must salute my land Mithila where Goddess Sita had been born, where *Rajarshi* Maharaja Janaka had ruled, where Sri Rama had come to marry Sita, where Sri Krishna had sojourned for the happiness of the people (उवास कुर्वन कल्याणं मिथिला नरयोषिताम)' accepting simultaneously the hospitality of the pious king Bahulaksha, and the devoted but poverty-stricken commoner, Shrutdeva.

Culture of Mithila is an integral part to our Indian culture. A complex and abiding relationship exists in our country's culture, between its parts and its whole. If India is an epic, Mithila is a lyric expressing therein all that is the dearest in our country's culture scintillating even in the present-day gloom. My delight, which I get from reflecting on Mithila, has never diminished. The great poet Vidyapati expressed the supreme feature of Beauty: it becomes supremely new every moment that passes: जनम जनम हम रूप निहारल नयन न तिरपित भेल (I have seen you constantly over several life-cycles, yet I long to keep seeing thee.).

Defining my observation-post

My father was my guru at my *Upanayana* (Sacred Thread ceremony) performed when I had just commenced my adolescence. I learnt from him how one should define oneself in the cosmic frame of reference. I wondered how a speck of dust could explore his relevance in the frame of reference in which countless galaxies come and go on the rhythm of cosmic flow. I could understand that when he explained to me the import of the *samkalpa mantra*, which we recite at the commencement of God's *saaradhna* (worship). It expresses our resolution to do an auspicious act. My destiny established the trajectory of my life in Mithila, and there, I feel, I was hurled into the cosmic rhythm of the divine creation ('*akhil vishwa pravaha*')...

My ancestors began their long story, of which I am an insignificant paragraph, in the first phase of this 28th Kaliyuga of the Vaivashwat Manwantara of Sri Sweta Varah Kalpa, occurring in the second phase of the Brahma's day. The spatial point from which my trajectory operates is in Mithila located in the Aryavarta region of Bharat. I am grateful to God to get an opportunity to build my castle of sand in Mithila. This joy of creativity is enhanced by the conviction that this life is an opportunity and freedom to work for my salvation or damnation, for evolution or regression.

But what one sees is always determined by one's state of mind, in fact, by one's personality. The observer melts into the things observed. There is a point in David Hume's view that 'beauty' is what a contemplating mind sees in it. No better example of how the mind of the observers work can be thought about than what we get in the Canto X of the *Srimad Bhagavata Mahapurana*. The poet describes how Krishna appeared to the persons assembled in the Court of King Kamsa. To the wrestlers he appeared diamond-hard, a *vajra*-like; to the ordinary people he appeared humanity at its best; to the women he was the very incarnation of Kama, the lord of love; to the people of Vraja (the Gopas) he was a friend most cordial; to the crooked kings he appeared an instrument of punitive justice; to the old people he was just a lovely child; to Kamsa he appeared as the Lord of Death; to the ignorant he appeared too big to be comprehended; to the Yogis he was the Reality Absolute; and to the devotees from the *Vrisni* dynasty he appeared one who was God Himself.

The great civilization of ancient Egypt revealed itself to the inquisitive souls through the statues, inscriptions, mummy portraits, pyramids and the things kept therein; the great civilization of Athens spoke through its arts and artifacts, literature and philosophy, lores and legends of the past, but the culture of Mithila speaks most eloquently through our people's customs and traditions, in their aesthetic sense and philosophical attitudes: to say in short, in their way of life. The savants have said: the *Shastras* reveal themselves in the idioms of Mithila's customs and traditions.

II

REFLECTIONS ON MITHILA

The constraints of this Memoir require me to be brief. I organize my thoughts under the following three heads: (i) the Mithila as I see her before my mind's eyes (*manasloka*); (ii) the glory that Mithila was; and (iii) the agony of the present-day Mithila.

The Mithila as I see her before my mind's eyes (in my *manasloka*)

In the 1950s, I came in contact with Acharya Ramalochan Sharan. He was a class mate of my eldest uncle, Ramachandra Jha. They had studied only up to the middle vernacular examination, but were remarkably learned. My father held the Acharya in high regards. He was a patron of great distinction for the poets and writers. He was a great devotee of God Rama, and had rendered in Maithili verse Tulsidas's *Ramacharitmanasa*. The learned society of distinguished persons of the region of Mithila conferred on him the distinction of being *Maithil Vibhuti*. He was a trader by his vocation, and had acquired a lot of wealth. This octogenarian savant

told his near ones that he wished to spend his last days in Mithila where Goddess Sita was born, and wished to be cremated at Ayodhya where Sri Rama was born. His wish was fulfilled. In his mind, Mithila was the most revered place. I heard on several occasions crowds of all sorts waxing in joy singing “ *Parama priya pawan Mithila Desha* ” (‘this loveliest and holiest Mithila’).

For me, Mithila is a land of my *manasloka*, a country in the universe of my mind. It recalls to mind the holy Vrindavana, Nikunja and the Yamuna, which, as the Vishnavas believe, exist in the Goloka too: Goloka where we all wish our souls to find repose from life’s drudgery. They believe that whilst in Vaikuntha god Vishnu is present, in Gokula Sri Krishna, the supreme personality of godhood, is Himself present. The great Vallabhacharya made an insightful classification of the humans in three categories: first, those who love Sri Krishna and attain Goloka; second, those who work in accordance with the *Shastras* to reach heaven by dint of their good work; and the third, those who remain immersed in the worldly concerns and keep rolling over the waves of time through their swirls and cycles. But, when all is said, one’s *karma* (action), and Krishna’s *karuna* (mercy), decide in which universe of existence one is to be cast.

**The Seeds of Revolution sprout from the soil: the
Greatest *Krantiveeja*: Janaki (Sita)**

The greatest event of most revolutionary character, that ever occurred, was the birth of Sita from the furrows of the famine-stricken soil (Yamunacharya aptly calls her मेदिनीनन्दाया). In our cultural consciousness there is a profound conviction that when exploitation and injustice become most horrendous, REVOLUTION springs up from our mother Earth. One may escape into the stellar universe, or choose residence secure in the plenitude of a floating city, or in a ‘swimming city’, the consequences of the crimes done on the Mother Earth can never be evaded. No Ravana or Kamsa can keep on playing truants with the instrument of God’s Justice. My mother told me two stories: one pertaining to the events of the Treta Yuga, and the other to the Dwapara Yuga.

First, a story from the tenth Canto of the *Bhagavata Mahapurana*. When the Earth’s sufferings grew unbearable, when crime against humanity crossed all limits, when none was available to rid the Earth of her suffering, the Mother Earth assumed the form of a cow, and went to the Creator of Universe, Lord Brahma, to bewail her sufferings. Tears were welling out and trickling down her face. She moaned most distressingly, and told the saga of her sufferings to the Lord. The exploitative and predatory systems, built by the greedy, had brought the Earth to a morbid plight. The Creator of the Universe felt sympathy for her. He took her to the bank of the Kshirsagar where He invoked Lord Vishnu to come to the succour of the Mother Earth. God was moved to come to this world to fulfil the fundamental norm under the divine promise: ‘Whenever *Dharma* declines, I appear to sustain it.’ Lord Krishna’s advent was on account of the entreaties of the suffering Mother Earth to liberate humanity from the negation of *Dharma*. It is said that in the remote ancient, times, which we call the Treta Age, Sri Rama was born in Ayodhya. He had come because He had to come under the imperatives of *Dharma*. He was bound to come to destroy the forces of evil which Ravana epitomized, and to provide the standards for Right Conduct to the people at large.

Tulsidas put, with remarkable clarity and precision, the reason for His coming to the world. He said in the *Ramacharitmanasa*: तेहि अवसर भंजन महिभारा, हरि रघुवंश लीन्ह अवतारा (The Lord came to save Mother Earth from her crushing distresses).

It is said about Lord Shiva that without His consort, Shakti, He is a mere dead body (*shava*). Sri Rama would have been just one of the illustrious kings in the Ikshaku dynasty, if he had not married Sita (also called Janaki as she was the daughter of Maharaja Janaka who ruled Mithila). Sita emerged from the furrow created on account of the strokes of plough struck by Maharaja Janaka himself on the soil of Mithila. The King himself turned a farmer to save his people from a famine; he presented a model of conduct to his people. He did his duty as the king. And the Mother Earth produced Sita. Metaphoric potentialities of this event are tremendous. Such was its impact on the Indian psyche that even Lord Krishna referred to Janaka in the *Bhagavad-Gita*² Janaka provided the supreme example of the Karma Yoga. Sri Krishna had said: It was through 'right actions' that King Janaka (of Mithila) had attained perfection.

Our *Shastra* and literature tell us that certain moments come in eons when our good Earth has no option but to seek divine succor to subjugate the forces of evil. Sita was an idea, a revolutionary thought to promote and sustain *Dharma* for the weal of all. Towards the end of the *Bhagavad-Gita*, Sanjaya describes what constitutes the very 'grammar of revolution'. A revolution is the function of the confluence of the lines of thought and action at a high ascent on the graph of creativity. The *Ramayana* had portrayed a great revolution; the *Mahabharata* portrayed another.

It is amazing that our Mother Earth gave birth to Sita. When the time came for Her to go, the Earth gave Her a resting abode. Sita is still resting in the inner embrace of the Mother Earth. We wish She comes out again because without Her there can be no Rama to deal with the present-day Ravana.

This daughter of Mithila is herself an epic for all times, for all to read and reflect over. They, Sri Rama and Sita, were complementary to each other. Tulsidas expressed this by referring to their eternal love for each other (प्रीति पुरातन लखए न कोई). If she wouldn't have gone to the forest with Her husband, sent by His father on exile for fourteen years, no *casus belli* could have emerged for Sri Rama to destroy Ravana whose people had looted all lands and had even eaten many good and peace-loving men. The *casus belli* was wrought when Ravana carried Sita off to his capital Lanka to imprison her in Ashokavatika. But Ravana couldn't have got this opportunity unless Rama would have gone to hunt the golden deer leaving Sita alone. One might think that it was Sita, who had cast her spell on Him, making Him believe that there could even be a deer of gold grazing in the forest. Rama was made to believe the existence of a golden deer, when even the ordinary mortals would reject the idea itself as most fanciful. Surely He was under Her spell which drove the course of events which the *Ramayana* narrates announcing the triumph of *Dharma* on the forces of Evil. It seems Sita was leading the cavalcade of events towards the destruction of Ravana's *Sone ki Lanka* (Ravana's golden Lanka). She crossed the *Lakshmanrekha* (line of fire drawn by Lakshman so that none could cross that to enter Sita's cottage) throwing off her protective shield. A step towards revolution is always a stride towards the unknown. She took that

step initiating the process of the revolution in which Ravana's floating world of wealth and power, high in the clouds wholly beyond the reach of ordinary mortals, got destroyed. Sita created a situation in which Ravana, before he was killed, saw with wrathful anguish how his cloud castle of wealth collapsed, how the heap of the looted wealth turned into ash, how his mighty ramaparts and the weapons of devastating destructive power could not save him from his ruin. I wish those of our times, busy in building up their golden Lanka in the remote islands of our Earth or in the space, should draw lessons from Ravana's plight. But Sita was most merciful: She provided Ravana an opportunity to work out even his salvation. By keeping Sita in Ashokavatika with utmost reverence and dignity, and creating situation in which he is killed by Rama Himself, Ravana created for himself situations in which he deservedly got *moksha* (salvation). Even when Sita was alone in Ravana's confinement in Lanka, She was the bravest, boldest, and most astute in Her responses to the mighty demonic King. When Ravana comes to the Ashokavatika to persuade Sita to accept his solicitations, he appears lackluster and crestfallen before that daughter of Mother Earth. Sita gave to the Mother Earth a sense of supreme achievement in witnessing the triumph of *Dharma*. Sita Herself practiced *karmayoga* as her father had done.

I feel: withdraw Sita from the life of Sri Rama, nothing remains which could provide stuff for the epic *Ramayana*. Sri Rama would just be a great king who carried on his *Rajdharma* well. But take Radha or Rukumini away from the life of Sri Krishna, He still continues to possess His epic dimensions as a teacher of humanity and the upholder of *Dharma*. Sita can be seen in our literature as a great role-model for revolution against any tyrant or exploitative system.

Nowhere in the world literature we notice in one personality the capacity to suffer and the capacity to create expressed so fully as in Sita, and also in Krishna. Sita suffered in her life the most excoriating distresses with tongue-tied patience, but never swerved from Her duty and mission, never ceased to provide the examples of the noblest conduct in life. She was, it seems, a devastating arrow shot off from the Earth's bow, which returned back after striking the target. Krishna too had his moments of great distresses: to be born in a prison, to part company from his parents, made to face the monsters out to destroy Him, to become the target of the demonic kings. He witnessed His failure in convincing Duryodhana not to tread on the path of impropriety, and, at the end, He experienced his failure in convincing his own men in the Prabhas Teerth not to tread on the road to their destruction. Sita sank into the Earth bidding adieu to the world of humans; Krishna went to the forest to breathe His last under the *peepal* tree away from even the dearest ones. Both reached the state of *parama vairagya* (perfect renunciation). The peaks of our sufferings are always lesser than theirs. Every broken spirit amongst us can draw strength to suffer, yet live, for higher cause as perceived through *karma-sannyasa*. Such feelings bring about revolutionary changes in one's spiritual make-up enabling one to face life as it comes without grudge or grumble. Sita and Krishna teach us the art of life at its best.

This context reminds me of a discussion I once had with my wife at my 'Veenapani Bhawan' at Laheriasarai. She said: "Do not tell me about Krishna's frustrations and problems He faced. He had Himself created all those problems. If He got caught into the gossamer web of the self-created problems, none else

could be blamed for all that befell Him. Like a spider, He built the net of problems, and allowed Himself to get caught in that. All that He faced was His own *prapanch* (craft): who else could be blamed for His plight? But a question survives. Why should Sita be made to prove Her innocence? Why was Draupadi dragged to be humiliated in the court of the Kauravas? Neither Sita got justice in the Treta Age from Sri Rama, nor did Draupadi get it in Dwapara Age in the Court of the Kauravas. How can the Sitas and Draupadis expect justice in this Kali Age considered degenerate and decadent? Where can they seek justice?" I did not know what to say in reply. Her questions still haunt me: I am yet thinking and thinking and thinking how to answer them.

I couldn't have begun my Memoir in a better way than by writing something about Goddess Sita. Her role in our culture, Her impact on our life-style, on our aesthetic sense and system of values, have been great. In Mithila, every daughter is considered a Sita, and most of the daughters of Mithila are often named using Her synonyms. My mother named my eldest daughter 'Janaki' (the daughter of Janaka: Sita), and my second daughter 'Kishori' (Sitaji is also called 'Kishori'). My third daughter, 'Anju', came to be named after 'Anjana' the mother of Hanuman who had at His heart 'Sita' and 'Rama' together.

I remember those halcyon days when on the earthen ridge in my sprawling mango grove on the outskirts of my village, we, the children, enacted the 'Sita Swayamvara' (the marriage of Sita and Rama in the courtyard of Janaka). My little sisters had made beautiful dolls representing Sita and Rama, and also a ferocious creature that we called Ravana, the King of Lanka. I played the difficult role of sage Vishwamitra in whom love and fury were harmoniously yoked together in mystical proportion. Years later when I read about Rama's visit to the Pushpavatika (Janaka's garden), where He saw Janaki (Maharaja Janaka's daughter, Sita) for the first time, and also about Her *Swayamvara*, I wondered with how much fidelity we had played those scenes in our mango grove! Our witnesses were the cows and the goats we had taken them there to graze the lush green grass, and the monkeys jumping from branches to branches displaying their symmetrical teeth and giggling while fighting tooth and nail amongst themselves to pluck, or snatch, the ripe mangoes. When I used to see my sisters and daughters plucking flowers for the worship of our family deity Kali in the garden adjacent my house, I always felt they were plucking flowers the way Sita had done in Janaka's *Pushpavatika*

The customary rituals, with which our marriage was performed in 1960, recalled the customary rituals with which, our tradition believes, Sita was married to Rama. I would say something about these when I write about my wife in Chapter 26 in the Book III of my Memoir. Here it is enough to say that when I had entered her father's inner courtyard on the day we were married, I heard the songs from an ensemble of ladies describing Sita's marriage to Rama. The songs were the same which my little sisters had sung when the dolls were getting married in the mango grove. I would try to recall some of those lines and to render them into English³. But I must say there could be no substitute for hearing them in the mellifluous voice of the Maithil ladies. No translation can transmit the effect of such songs. I never thought rhythm could be so throat-specific! When the medium becomes a message, it remains ever present in mind with its 'slow release action' generating joy that lasts for ever.

When my eldest daughter was named 'Janaki, one of my uncles told my mother to change her name because in Janakiji's life distresses, difficulties, and storms abounded. But she rejected his suggestion. She had her ideas about Sita. The world could not have stood so much of light as Sita had. One might even need eons and eons to evolve to appreciate Sita. But She remains in our consciousness as a star that invites us to move on the path of action through thorns and thistles unfazed. She is a flower that delights, a thought that stimulates, an objective towards which humanity must advance to evolve to the higher levels of consciousness. Her life is great poetry as rich as that we get in Krishna's. If the *Bhagavad-Gita* is seen amply illustrated in the actions of Krishna's life, it can also be seen at work in the events and thoughts associated with Sita. They reveal our cultural consciousness through sets of powerful and immensely fecund imageries. Age cannot wither such imageries, nor customs stale their infinite variety, and deep impact. Sita is the embodiment of what is the best in our culture. Whenever we think of Her, we bow before Her saying: 'गतिस्त्वं गतिस्त्वं त्वमेका भवानि' (Thou art my last resort, O Goddess Sita!).

When I think of Mithila, I think of Sita. I am convinced that if I can understand Sita, I can understand what is the best in the culture of Mithila. She guides us at all planes. I know I can go on reflecting on Sita till the end of eternity, but this Memoir requires me to move to other things of some relevance.

The glory of Mithila

It is said that the history of Mithila began with Maharaja Nimi, the son of Ikshaku. In accordance with the genealogy given in Canto 71 of the Baalkand of the *Valmiki Ramayana*, Janaka figured in the twenty second generation from Maharaja Nimi. I enjoyed reading Mahamopadhaya Parmeshwar Jha's *Mithila Tatva Vimarsha* which gives a concise account of the history of Mithila from ancient times to the period when Maharajadhiraja Kameshwar Singh became the last holder of the Raj Darbhanga.

Mithila passed through the vicissitudes of history. She was exposed to all the waves of the Indian history. It was governed over the centuries by orthodox Hindu kings, the atheists, the Buddhists, the Muslims and the British. But it is a remarkable fact that it has maintained its cultural integrity as the most competent inheritor of the Vedic culture. It assimilated new thoughts, and modified the inherited traditions to suit the challenges of the changing times. The social mores, which the region developed through *samskaras* and customs, provided the society of the region remarkable stability, and blessed it with richly evolved culture. It was amazing that the society in Mithila so evolved that a formal government, in its conventional sense, became optional. This amazing achievement was the outcome of our cultural restraints, family discipline, and enormous respect and obedience to our traditions. In such stable and satisfied society, even a figurehead king was enough to oversee the public affairs, and administer justice in accordance with our *Shastras* and the customs.

The ancient Mithila evolved a structure and ethos conditioned and controlled by *Dharma*. The principles of *Dharma* had been determined by the value system evolved in the *Vedas* and the *Upanishads*; and later glossed over by the learned to come to terms with the changing needs and the imperatives of times. Yagyavalkya,

who lived in Mithila during the time of Janaka, explained *Dharma* as one's Duty. It is a dynamic concept. One cannot perceive one's duty unless one has a right perception of things through *Jnana*: (knowledge). And one's duty changes from context to context. Its guiding principle is always improvement and ennoblement of self, and the welfare (*lokamanga*) of people (in fact, the weal of self is not possible without the weal of all others).

The generally shared worldview of Mithila never approved the life of withdrawal or renunciation. How can one cease to be at work when even a drop of blood in our body presents a pageant of incessant work: the countless cells at work, each within its own universe. The story of Shankaracharya's discussion, in Mithila, with Mandan Mishra and his wife Bharti, is an excellent story providing a powerful "objective correlative"⁴ to express this very profound insight. Mandan was a householder, and believed in ritualistic religion (*Karma Mimamsa*). Shankara was a *sannyasi* who had renounced the world in his childhood holding this world a mere illusion (*lila* or *maya*). But that great event brought about a revolution in Mandana and Shanker both. Mandan's *skarma* matured into *sannyasa*: he became Shankara's disciple, the well-known Sureshvaracharya. And Shankara, the *sannyasin*, realized that *kartavya-karma* too could lead one where *sannyasa* could lead, and that too under much less rigorous discipline. He must have realised that even *Jnana* has its ratchet effect only through *karma*. This is illustrated in the great work done by Shankara himself in achieving his mission. This dimension of his philosophy is exquisitely expressed in the following lines said to have been composed by Shankaracharya:

"O Sambhu! You are my Âtman, Girijâ is my mind, Your accompaniments are my life-forces, Your body is my residence. My various enjoyments and creations be Your prayers. My sleep be the state of thy meditation. My walking be Your circumambulation and my spoken words be Your eulogies. And whatever I do, that be Your adoration."⁵

Dharma was the guiding principle not only for the select few with exceptional attainments, but even for the ordinary folk carrying on mundane and pedestrian work. This point of seminal importance is expressed nowhere better than in the *Mahabharata* in the stories of 'a Brahmin and a *vyadha* (hunter)' narrated in the 'Vanaparva', and of 'Tuladhara and Jajali' occurring in the 'Shantiparva'. The first story tells about the coming of the great Brahmin sage Kaushik to Mithila to learn the basics of *Dharma*. He called on the hunter whom he had been instructed to meet. The hunter made his living by selling meat! The great Brahmin stood before him for light. The *Mahabharata* gives a comprehensive account of their conversation. The dealer in meat could tell the Brahmin what, in effect, were the fundamentals of *Dharma*. The quintessential statement on *Dharma* can be found in the well known *shlokas* like these⁶:

"O Brahmin: this work that you see me doing is my family business which I have inherited. I have adopted this calling as it has been found quite in order in the tradition of my family. I have just carried on the vocation only as my *dharma*. Hence, be not angry with me seeing what I do."

This trader in meat set for his commercial conduct a standard which provides a model for our world driven by market forces. What he said was stated in the story of Jajali and Tuladhara with still greater precision using the metaphor of

scales. I would tell that story later as these two stories complement each other. These stories would be summarized in the Chapter 19 on 'Understanding the imagery at the Supreme Court of India'.

The people of Mithila in ancient times were affluent and happy. Its worldview never kept society static, and its people poor. There is a graphic account of Mithila's affluence in the *Mahabharata* which tells us what a distinguished visitor had seen in Mithila:

"The city of Mithila had its embellishments in massive gates of entrance, magnificent palaces and the walls encircling fort. The beauty and worth of this captivating city were enhanced very much by aircrafts (or air-cars), and a lot of shops. Excellent thoroughfares and roads added to the beauty and comforts of the city. Mithila, was rich with countless horses, chariots, elephants and soldiers, and its people were able-bodied, healthy, and happy. Every day was the day of festivity, and of notable events. The Brahmin [the visitor] entered the city and surveyed its wealth that charmed him with its abundance."

MITHILA'S UNIQUE CONTRIBUTION TO THE WORLD

(a) Tradition and Individual talent

Mithila was never isolationist in pursuing its cultural traditions. External influences and internal innovations went together. In ancient times the Buddhist impact was powerfully felt, but it could not survive because it lacked relevance in Mithila. It got assimilated into the dominant drives of the Vedic culture. The Maithil culture could come on terms with Islam during the Medieval Period, and it evolved harmony between the communities which, unfortunately, we have disturbed only of late for sinister reasons. Mithila's creative vigour was at its best in responding to the challenges coming on the waves of times: the finest model how the present should interact with the past. Mithila illustrated how best the past should come to terms with the present. The art of the cross-enriching the new with what is valuable in the past is now being forgotten. Our family system is disintegrating. When the family disintegrates, or abandons its integrating values, the nation itself comes to an alarming precipice. A society which suffers from such a malaise runs the risk of committing, individually, suicide; and collectively, harakiri.

(b) The Worldview saves people from death wish; and helps us accept life as it comes

The Maithil worldview loves life as a great opportunity: hence suicide is rare. Life is a mere instrument to perform *kartavya karma* (duty) as it is merely *karma-samigri* (कर्मसामिग्री). We get life by way of trust. Life is wonderfully great. How can one throw away one's life, the most precious gift ('बड़े भाग मानुष तन पाया') which equips one for the highest achievements. In the worldview, that Mithila promoted, none could be wrenched by loneliness and isolation. How could one be alone when God is everywhere? Under this worldview one's life is not considered one's own property. How foolish is the statement we find being often made by our young boys and girls when they say: "This is my life, I have right to

do whatever I wish to do". The statement is factually wrong, conceptually idiotic, morally unsound, and obviously ungrateful. One is indebted to parents, to the members of one's family, to the society, the nation and to the whole of mankind besides being under debt to whole cosmic order of which our earth is just an obedient and insignificant speck. In Mithila we are told that one's life is the opportunity to discharge debts towards God the Creator, the parents the begetter, the teachers the enlighteners, and all others facilitators and well-wishers. Life must be preserved to repay the debts, and to render better accounts of talents with which one is endowed.

The number of suicides is growing in the western society at a pace which makes many apprehensive that the western consumerist civilization is on a sure and certain path to commit even collective suicide someday. We have seen how some of their ablest minds broke on the life's anvil. The vast bulk of persons, who matter most in the western society, suffer from loneliness, lack of purpose and meaning in life.

(c) Maithil culture does not promote consumerism

T. S. Eliot said: "Every nation, every race, has not only its own creative, but its own critical turn of mind." Another feature of the Maithil worldview got expression in the idea of the 'simple living and high thinking'. Needs are kept at the minimum, and desires under reasonable restraints. Foppish life-style was never appreciated. Life teaches us to shine through deeds: the deeds which advance the weal of all.

(d) Our agricultural way of life

Over centuries the agricultural pursuits shaped Mithila's worldview, which revealed itself in our people's religious convictions, artistic modes, socio-cultural values, and the standards and principles shaping the quality of life. It is interesting to note that, like the Greeks and the Romans of ancient times, they 'ascribed moral superiority to farming'. Galbraith points out that the idea of the moral superiority of agriculture survived in the French economic writers of the 18th century.

Mithila is a lush green region with luxuriant trees and saplings. The land is nourished by a rich tapestry of big and small rivers, and deep and shallow tanks. The land is so fertile that none ever dies of starvation in Mithila. A story goes that Goddess Sita, before going to her in-laws' place at Ayodhya, blessed the people of the region that none would ever die of starvation. Even the poorest of the poor live by this hope. The high fertility of land, the minimum needs of the people, and great socio-cultural values of interdependence and mutual help have proved this story substantially right. Like most others of my boyhood days, I spent my early years in my village enjoying the vast wealth that lay around me in paddy fields, mango groves, and in the labyrinth of the creepers coiling upwards on the mud and daub houses to spread wide on the thatched roof. The delight I got from observing the green buds and yellow flowers gyrating on the spread of the green is something beyond words (as is the beauty and grace of Krishna Himself). I, like most others, regularly visited paddy fields, and had observed how the uprooted saplings were planted again in mud, and how they grew through subtle stages to become ripe turning gold. We had seen with a sense of wonder how their colours

changed. We had seen how they appeared at the dawn, and at the dusk, how they appeared when the sky was star-lit, and also when the sky was overcast with dark clouds drooping down with drizzles, slow or fast. Cattle-rearing was a part of agriculture. Almost every household had a cow, or a buffalo, or a goat. We depended on them as they were virtually the earning members of our family. We saw in them our own *atman*, and often could share our emotions with them. Agriculture and cattle-rearing needed good knowledge of the climatological changes as they had great bearing on such pursuits. Aphoristic sayings and couplets, mostly attributed to Ghagh, abounded in our conversations. And they were exact to the point of our amazement. We looked to the sky: by day scanning the ascent of the Sun and its decline casting spell on the earth; and by night exploring the stars above creating patterns and images providing stimuli to our imagination. Atmosphere was free from pollutions. People believed that it was wrong and sinful to pollute soil or water. We lived in tune with the rhythm of seasons, and treated life a festivity.

In Mithila's worldview, the vocation of agriculture was universally considered great. It used to be said that 'agriculture' was the best vocation, next to that in social recognition was 'trade'. 'Service' was considered degenerate, and on the scale of social valuation, just a shade better than begging'. The view, generally shared, resembled what was held in France before the French Revolution. Describing the view held by the French savants of those days, J.K Galbraith says:

"Central was the role of agriculture as the source of all wealth. The merchants were accorded their appropriate subsidiary position; agriculture, its ancient eminence affirmed, emerged dominant and triumphant." ⁷

This attachment with land and agriculture bred a sense of patriotism for the Motherland. You cannot understand Bankim Chandra's 'Vande Maatarama' without appreciating what agricultural land meant to us. This attachment bred a sense of equality and fraternity as the sons and daughters of the soil. Now things are changing. People earn more money through virtual operations done through computers. But this wealth is mirage, as it is unreal. It does not add anything in real terms to meet the needs of our people. The Rogue Finance of this marketized world has established extractive economic system to operate through the Cloud-cuckoo-land of the virtual world. I would come to this aspect of the matter in the Book III of the Memoir.

Here I intend to emphasize how our agricultural society made a powerful patriotic response to the call for India's Freedom Struggle. Mahatma Gandhi got best response to his call in the north Bihar, especially Mithila and Champaran which were wholly agricultural. The world of trade and banking can produce a Rida Khan, an Amichand, or a Jagat Seth, but not such patriots without whom our country would have remained under servitude. Mithila had greatly contributed to our Struggle for Freedom. My father and one of his brothers had been active participants in the Struggle, and had gladly suffered for the national cause.

(e) Our religious syncretism

The Maithils (the people of Mithila), like most Indians, have been syncretic in their religious ideas. When I come to reflect on my ancestors, I would dwell on this topic a little more. The Vedantic idea of the oneness of the cosmos in Brahma

provided its philosophical justification. This helped us to recognize that Islam and the *Bhagavad-Gita* shared common ideas. This was reflected in the amity which I witnessed during my boyhood days between the Hindus and the Muslims. I cannot forget those Maithili songs which the Muslim brothers and sisters sang while reaping in the paddy fields. I heard them reclining on the bundles of hay in the sprawling fields. Their voice made my heart quiver with delight. I remember to have beaten breast in the *tazia* procession. Now things have much changed. It is not the appropriate place to examine reasons: only one I mention: now our social cordiality is muddled on account of 'vote bank' politics.

Whilst we accepted the universality of One Supreme God, we worshipped various deities often with elaborate rituals. The deities, widely worshipped in Mithila, are Shiva, Kali and Durga, Rama, and Krishna. Religious syncretism has been evident everywhere in Mithila. These temples were vibrant centres of worship and religious discourses on the *Srimad Bhagavata*, the *Ramacharitmanasa*, and the *Devi Bhagavat*. Villagers, young and old, used to assemble in good number to listen to these discourses. It was this tradition which helped even the illiterates to share the profound wisdom and supreme delight that came naturally from listening to these classics. Songs related mostly to Lord Shiva and His socialist life-style; and also to Lord Krishna's *lila*, and the life of Sita and Rama. The songs of Vidyapati are mostly about them. They could delight persons as dissimilar in taste and ideas as the greatest renunciant *Bhakta* Chaitanya Mahaprabhu, and such worldly people, as we, craving for most intensely romantic experiences. If you go to Krishnanagar or Nabadwip Nadia in Bengal you can hear many of Vidyapati's love songs being sung with ecstasy in the Radha-Krishna temples.

(f) Dome of many coloured glass

Enjoyment of life and spiritual perceptions of our people expressed themselves in the various festivals round the year so that the tedium of life could be got rid of, and social solidarity improved. Main festivals are Holi, Diwali, Durga puja, Chhath and Shivaratri. Holi is the festival of colours. This festivity of colours becomes, at times, symbolic, even metaphoric. Durga Puja lets us perceive the presence of the Supreme even in clay. Diwali illustrates our innate quest for Light: *tamso joytirgamaya*. In *Chhat* we worship not only the rising Sun but even the setting Sun; we see God not only in the East but also in the West. In Shivaratri, Lord Shiva is worshipped. It is said He was married that day. It is also said that He danced that night on the cosmic rhythm of creations and destruction. Most Maithils (The people of Mithila) go, or wish to go, to Baidyanath Dham where the image of Lord Shiva is one of the most sacred images. Besides these festivals, there were many other festivals, one of which is *bhratridutiya* when brothers go to the houses of their sisters for performing certain holy rituals. Besides, we had elaborate events pertaining to the various *samskaras* from birth to death. I must give credit to the womenfolk of Mithila who did most to preserve the Maithil culture. Without their efforts, the culture of the land would have been dead by now.

Reflections on the present-day Mithila

The earthquakes brought about big changes in the earth-crust, the climatic conditions, and the quality of life in the Mithila region. These have substantially

altered the worldview of the people. The memory of the great Mithila still lingers, but its present is saddening. When we think of the great city Pompeii destroyed and buried on account of the volcanic eruption of Mount Vesuvius in AD 79, or nearer home, the Ross Island, off Andaman & Nicobar, which was once a magnificent city and a centre of the British power before it was destroyed by the Japanese military actions during World War II, we get something to console ourselves in these lines from Bharatrihari's *Vairagya-Satakam*:

“That lovely city, that grand monarch, and that circle of feudatory kings at his side, that cabinet of shrewd counsellors of his and those beauties with moon-like faces, that group of wayward princes, those court minstrels and their songs of praise—under whose power all this fled away and became objects of memory, to that *Kala* (Time or the Principle of Change) salutation!”⁸

The buildings and castles and forts, which Kaushik had seen, must have collapsed in some earthquake, or on account of some devastating floods. The earthquakes must have brought about changes under the earth-crust making the region unfit for such constructions again. The people, in all probability, responded to the challenges posed, and concentrated wholly on agriculture.

The present-day Mithila is changing fast. Now we see a rampant craze to imitate the West. The impact of the present phase of the Economic Globalization is evident everywhere. Never in the past had our society faced a challenge of the sort that bedevils its cultural existence in our days. The young boys and girls are getting enticed to the neoliberal market culture of consumerism. The social segments, which are now emerging on economic affluence bred by marketization, are fast becoming monochromatic: all after money; and their gaudy life-style pampers and promotes limitless needs and boundless desires, and is flat to the point of obnoxious tedium. The society, which the present circumstances are evolving, is narcissistic. What is happening in Mithila is no different from what is seen elsewhere in our country. To this aspect of the matter I would come again in the Book III of this Memoir.

The plate on which the Mithila region exists is hyperactive and is constantly drifting north causing frequent earthquakes. A whimsical friend once told me with reference to Mithila: while the subjacent earth of the region is hyperactive the superjacent biomass (he meant human beings) is almost inert! He made a veiled reference to seismic activity under the Earth crust, and the indolence which had overtaken the people of Mithila. But the most devastating calamity that visits this land annually is Flood. We are told that the over-flooding is a punishment for playing imprudently with the ways of nature through rapacious deforestation, and our ‘foolish’ meddling with the courses of the rivers descending from the Himalayas in Nepal. Massive destruction of forest in Nepal has led to massive over-flooding in Bihar causing criminal soil degeneration, inundation, erosion and heavy siltation of the rivers raising every year the levels of the river-beds. It is high time to enter into an understanding with the Government of Nepal that the growing deforestation of the Himalayas and their foothills must end. The problem of annual devastating floods cannot be tackled unless there is a close co-operation between the two Governments as most of the rivers flow from the

Nepal Himalayas. It is hoped that Nepal would behave as a good neighbour obedient to the 'Standard of Economic Good Neighbourliness', now considered a norm of public policy under international law⁹.

NOTES AND REFERENCES

1. *Srimad Bhagavata Mahapurana*
2. Chap.3 shloka 20
3. किशोरी जी के अंगना बिलाकु बहिना (Let us go, dear sisters, to see what is happening in the courtyard of Kishoriji.) चली देखू भरी नयना नवल दुलहा, पंचमी के तिथि अगहन महिना (Let us go to see the new bridegroom with our eyes' full saturation on this Vivaha Panchami of Agrahanya (the wedding day of Rama and Sita).
4. "A situation or a sequence of events or objects that evokes a particular emotion in a reader or audience."
5. http://www.stutimandal.com/gif_adi/parapuja.htm
6. Translation from the original Sanskrit. by the author
7. John Kenneth Galbraith, *A History of Economics The Past as the Present* p. 48.
8. English translation by Swami Madhavanand (Advaita Ashrama, Calcutta)
9. G. Schwarzenberger, *Manual of International Law* p. 111

2

MY ANCESTORS

*Unrecorded, unrenown'd,
Men from whom my ways begin,
Here I know you by your ground
But I know you not within -
There is silence, there survives
Not a moment of your lives.*

Edmund Blunden, *'Forefathers'*

I

Sir W.S. Gilbert (1836-1911) said: "I can trace my ancestry back to a protoplasmal primordial atomic globule. Consequently, my family pride is something inconceivable". I trace my ancestry not out of desire to assert my family pride, but in order to discover my own identity. I had read the insightful comments by Daniel Webster:

'Next to the sense of religious duty and moral feeling, I hardly know what should bear with stronger obligation on a liberal and enlightened mind, than a consciousness of an alliance with excellence which is departed; and a consciousness, too that in its acts and conduct, and even in its sentiments and thoughts, it may be actively operating on the happiness of those that come after it.'

I knew that Sri Kirtinath Jha (popularly known as Kirtu Babu 'Panjikara') of Koilakh had a rich library of old records of the important families of Mithila. He was a genealogist of great eminence. He assisted me to draw up my detailed genealogy, an abstract wherefrom is appended at the end of this Chapter. I could gather from him detailed information pertaining to the system of *panjis* (registers) maintained so meticulously by the *panjikars* (the recorders of the family history). I must record my gratefulness for Maharaja Harisimhadeva who "ordered detailed genealogies to be scientifically recorded for the first time on *panjis* (registers) in c. 1310 so that marriages, within forbidden degrees of relationship, might not take place. Under this system it became obligatory for every person to get a certificate of non-relationship between the two contracting parties from the genealogists". Kirtu Babu told me that it was often customary for the *panjikars* to laconically describe with suggestive expressions and epithets the distinctions and achievements of the persons figuring in a genealogy. You would find such

epithets in my family-tree, as 'Dinbandhu' (a friend of the poor) and 'Tarkpanchanan' (a logician of great eminence)..

II

It is conventional to refer to the earliest ancestors in our traditional *samkalpa mantra* which is recited while resolving to undertake some sacred duty. This *mantra* requires the mentioning of one's *gotra*. *Myadi purasha* (the earliest person known) was Kashyapa. Kashyapa *gotra* is the most ancient and is the most comprehensive amongst all the *gotras*. The tradition tells us that he was greatly religious and learned. He figured even in the *Rigveda*. A lot of mysteries got associated with his personality. There is a strange story about him in the *Mahabharata* and the *Srimad Bhagvata Purana*. His father was Marichi, one of the six mental sons of Lord Bhrahma. What better example of the art of begetting a son through psychic primal power can there be than this! It is said that Kashyapa married seventeen daughters of Daksha Prajapati from whom were born gods, demons, monsters, horses, nymphs, trees, heavenly damsels, snakes, cows, buffaloes, dangerous animals, birds including vultures, marine creatures, butterflies and insects. Because of the comprehensiveness of his countless progenies it is generally believed that the entire animate world descended from Kashyapa. This *gotra* is so widely inclusive that whosoever is not sure about his *gotra* is taken to be of the Kashyapa *gotra*; be he a man, a bird, a beast, or a tree: in short, creatures of all sorts. It is also believed that persons having a common *gotra* were the students of the same Rishi or teacher. Under our tradition guru (teacher) has the same status which father has. From this ancient consanguinity or affinity, that existed between the descendants or the disciples (or the herdsmen) of Rishi Kashyapa, a practice in later times grew preventing marital relationship amongst the members of the same *gotra*. There was a time when marriage between persons of the same *gotra* was considered invalid. Now it is no longer so. Yet this sort of marriage is not appreciated in our society battered as it is now under the Western impact. What is more important is that his story makes me conscious of the umbilical bond that unites us not only with the humans of all colours and all lands, but even with birds and beasts, in fact, even with trees and flies. This sense of fraternity ensues from the consciousness of being just part of the whole :

The story of Kashyap clarifies certain basic issues pertaining to ontology. How could Evil originate in God's World ? The Holy Bible, and John Milton's *Paradise Lost* and *Paradise Regained* assert the triumph of the Good over Evil. Some forces exist, it seems, merely to wager on us! But Kashyapa's story is a metaphoric way of saying that all the forces for good and bad grow from God's Majesty, and they exist in His province and provenance, and, at the end, they become one with Him.

A lot of thinking has been done in the West on the interrelationship between the forces of Good and Evil. I recall my teacher Professor Mahendra Pratap's lectures on this topic. Concluding his lectures he told us that nowhere in the world literature the fundamental cosmic principles have been explained better than in the simple *chaupais* (a form of verse) of Tulsidas in his *Ramacharitmanasa*:

MY ANCESTORS

भलेउ पोच सब बिधि उपजाए, गनि गुन दोष बेद बिलगाए
कहहि बेद इतिहास पुराना, बिधि प्रपंच गुन अवगुन साना

[Good and Evil are God's husbandry, the *Shastras* have discriminated them as good or evil. All the Vedas and the Puranas are one in saying: It is God's craft (*maya*) to knead all the traits together.]

Our *Shastras* formulated prescriptive norms for conduct and maintenance of our individual and social interactions so that a society remains peaceful, co-operative and collaborative.

III

The genealogical tree of my family shows that we had our roots at Sakradih, now a small desolate village not very far off from my present village Kurson. I have not visited the place though I have heard a lot about it. But one becomes nostalgic when one thinks about one's roots. I wish some day to visit Sakradih wherefrom strides were made by my family in the recorded times. In fact, I wish some day to visit the valley of the river Omo in Ethiopia near Lake Rudolf where man is believed to have evolved first: from where odyssey of the humans might have begun to become a Sisyphus or a Prometheus, a Gandhi or a Hitler, or just a fragile beach-ball kicked hither and thither by the torrents of circumstances !

Reflections on my Family-tree (*Vamsavriksha*) take my mind to the Cosmic tree (*Samsara Vriksha*) about which the *Bhagavad-Gita* says in the first three *Slokas* in its Chapter 15. When we reflect over the roots of the *Sansarvriksha*, spreading with branches and leaves luxuriating down below, we are amazed at the sublime creativity of God. Mind goes to the stimulating idea of Prof. Gould who said: "Homo sapiens as a tiny, effectively accidental, late-arising twig on an enormously arborescent bush of life". Persons come, spend sometime in the *Sansarvriksha* and then leave for some unknown abode. The birds come, create their nests, and then they desert them, or see them wither, without qualms. The idea underlying the process is beautifully stated in the *Bhagavad-Gita* (II.28)

avyaktadini bhutani
vyaktamadhyani bharata
avyaktanidhanany eva
tatra ka paridev and

[Being are unmanifest in their beginnings, manifest in the middles and unmanifest again in their ends, O Bharata (Arjuna), What is there in this for lamentation?]

It is interesting to note that whilst writing his *Ecclesiastical History*, the Venerable Bede (672-735) expressed similar ideas thus:

" Such O king, seems to me the present life on earth, as if on a winter's night a sparrow should fly swiftly into the hall and, coming in one door, instantly fly out through another Somewhat like this appears the life of man. But of what follows or what went before we are utterly ignorant."

IV

My ancestor at the apex of my genealogy was Hardutta Jha, who, on all probability, lived during the time of Ala-ud-din Khalji (early 14th Century). In the eleventh generation after him came Rudra Jha whose daughter's son was Mahamahopadhyaya Mahesh Thakur of Kharore Bhour lineage. Akbar the Great appreciated his scholarship and wisdom; and granted him vast property with which began the history of the illustrious family of Raj Darbhanga, an impartible estate of which the last holder was the celebrated Maharajadhiraja Dr. Sir Kameshwar Singh. Akbar, who had a wide exposure to Sufism and Islam, was in search of the universal values which later on he epitomized in his *Din-e-Ilahi*. The Jesuit author Bartoli mentions how close he had come to Brahminic religion in evolving his norms of *Din-e-Ilahi*. This quest must have led him to hold himself under debt to the wisdom of that Maithil Pandit. What better evidence of the Emperor's catholicity and love for what was the best in our country's tradition could there be than that act of his gratefulness to that Maithil Pandit. The idea that I am distantly related to the person of that calibre is itself deeply delighting.

Many of my ancestors were great Pandits. Their writings, perhaps, do not survive. Possibly for two reasons. First, the frequent occurrence of fire in their houses, made of wattle and daub having thatched roof, might have burnt their old records. Leaking rain water and prolific colonies of white ants too must have destroyed their work. Secondly, it was unfortunate that the Maithil Pandits did not believe much in disseminating their ideas by circulating the copies of their writings. An illustration to drive my point home: Gangash Upadhyaya, a great Maithil Pandit of the 13th century, wrote the *Tattvachintamani*. It is said that the Pandit did not allow Pandit Pakshadhar of Nawadip of the West Bengal to copy it. But the work was so valuable that the great Pandit took it by heart on mere listening to the work when being recited! He taught this magnum opus of 'Navyanyaya' (an Indian system of epistemology and logic) to the scholars at Nawadip. The persons who were taught this included Jagadish Tarkalankar and Mathuranath Bhattacharji. They developed a synthetic logic by integrating ideas from the Vedic, Buddhist, and Jaina sources. Only a few years back Pandit N.S Ramanuja Tatacharya wrote a commentary on it which fetched him high appreciation and reward from the Government of India. I recall, when as the Director-General of Income-tax (Exemptions) at Kolkata exercising all India jurisdiction, I exempted the reward from the incidence of income-tax law. When I was signing the permission order at the 10 Middleton Row, adjacent to Kolkata's Park Street, I felt overjoyed remembering one of my forefathers, Tunni Jha, who, as the *tarkapanchanan*, must have done something for advancing the branch of knowledge one of whose fruit or flower, I felt, I found in the work of Pandit Tatacharya.

I cannot cast much focus beyond Deenbandhu Dukhni Jha. He was the great grandfather of my grandfather Grihinandan Jha. His adjective 'Deenbandhu' suggests that he must have been an acknowledged benefactor of the suffering souls of his locality. My deeper research brought out materials to support this inference. The *Pangikars* add some adjectives only in rare cases to reveal the life and work of persons whose records they keep. Dukhni Jha's financial resources

were meagre. If the family tradition is to be believed, he helped even the lowliest with whatever he had. In appreciation of his work he was called by people as 'Deenbandhu' Dukhni Jha (the friend of the poor). His son was Jayadutta. His mother was a great devotee of Kali. In the village Koilakh (in the district of Madhubani) there is an ancient temple of the Goddess; it is a *sidhapeatha*. *Jaya* is the name of the Goddess. She believed that her son was on account of the divine grace she had got from the Goddess.

Those days in Mithila, there was a social system under which certain Brahmins were accorded high social status because of their learning and purity of life style. No worldly pleasures or persuasions could make them depart from the sacred paths of life prescribed in the *Shastras*. Even amongst the select few further classifications were made keeping in view the steadfastness of the persons in such noble pursuits. The persons of the highest grade were called the Sotreyas. After them there was a segment of the distinguished persons (*Bhalmanush*) who in turn were further divided into sub-sets named after the most illustrious persons in their families (they were called *Panjibaddha*). Besides, there were some distinguished persons called the "Kulins". During the Sen Dynasty, Kaulinism was greatly prevalent in Bengal. But in Mithila this elitist system continued without degeneration which had set in Bengal to make Kaulinism a hateful social institution. As a mode of social climbing, rich people established marital relations with the high class Brahmins.

My great grandfather Bhaiyee Jha was a man of great social distinction in his village. He had an interesting personality. During his youth he was under the spell of the love songs of Vidyapati. He had a mellifluous voice and had an astute mastery over the rhythm of Maithili language. He had a rich repertoire of romantic anecdotes. In the closing years of his life he lived on a different wavelength. He continued his interest in Vidyapati but it was the Vidyapati dear to Chaitanya and Chandidas. Vidyapati's poetry is capable of being enjoyed at different levels even by persons who are temperamentally poles apart. This is quite a unique quality of Vidyapati's poetry that persons as dissimilar as Mahaprabhu Chaitanya and the rabid pleasure-seekers develop intense appreciation for the same poetic text. Towards end of his life, Bhaiyee Jha spent all his time reciting with rhythmic variations the names of God: "Hare Rama Hare Rama Rama Rama Hare Hare".

Their World

When I read novels by Jane Austen, I often wondered how she wrote wonderful novels without looking anything beyond her restricted circle. Even the French Revolution and the rise and fall of Napoleon did not matter for her. In her domestic world she was the supreme artist. My study of the events in the lives of my forefathers leads me to the view that they were not concerned with the great events taking place in the political realm of our country that time. They followed a distinct life-style which our Maithil culture fostered. They lived not as the calculators but as the ordinary humans taking life philosophically. They lived in the period when events of momentous importance were occurring in our country: like the emergence of Shivaji (1664), invasion of Nadir Shah (1739), the Battle of Plassey (1757), the Third Battle of Panipat (1761), the Treaty of Allahabad (1765), the Sepoy Mutiny (1857-1858), or the coronation of Queen Victoria as the

Empress of India. They did not feel disturbed even by the imperial march of Akbar (in 1574) to Bengal, via Patna, Hajipur and the other adjoining regions to subdue the rebellious rulers. On the five inches of ivory they wrought their life aesthetically delighting. They were devoted to learning and public welfare. Jane Austen's world was her domestic world of close relations; whereas the world of my forefathers was the world of learning, and efforts at the attainments of spiritual heights in the great Vedic tradition.

V

My grandfather was Grihinandan Jha, the youngest amongst his father's several sons. When he died in 1943, I was almost six. I have his vivid memory. He was tall and lanky. His bones were so prominent through ebony-coloured skin that as a student of physiology, in later years, I had no difficulty in understanding the bony system. Had he not been my dear grandfather I would have gone into trance just on observing him during such hours of day or night when we believed the ghosts trod in the groves assuming human shapes. The ugliness of his exterior was wholly offset by the richness of his heart which was by all standards of 24 carat gold. He was the best friend of children. With a remarkable sense of empathy he could get involved in our world of myriad delights and pretty pranks. He helped us in building castles out of mud and sand, and also manufacture from paper and cardboard tiny canoes about which I would tell you more in Chapter 6 'On my Childhood'. When I was of five, he inducted me into his school to train me in some useful arts. What I liked most was his managing of the bullocks geared to a common rope, and moving round and round a bamboo pole trampling down the stalks to separate paddy from hay. It was usual for us to start our work in early hours. Amidst the chiming of the bells of the bullocks, I had to recite the Sanskrit *Shlokas* which my grandfather had taught me. He would often show his toothy grin as a mark of appreciation; and that was a delight which I treasured as one of my greatest moments.

We looked up to him for guidance in all arts and in all crafts. But the fact of the matter was that by the present-day standards he was illiterate. Like Kabirdas, he had not even touched paper or ink. But like Kabir, my grandfather had practical prudence. Now I feel that he was just one of the so many of the humans who learn wisdom from traditional lores, and from healthy interactions in the village society. He could narrate the stories of the *Mahabharata* and of the *Ramayana* in charming style. For us he was a colossus of learning. When someone asked him whether he felt embarrassed on account of his illiteracy he said: "I am illiterate but not without wisdom."

As was the practice those days, my grandfather was married early. The only ostensible wealth that he had was his status as a high class Brahmin. He was sore that his father had caused a social comedown by marrying him into the family of persons somewhat lower on the social scale though Brahmin by *varna*. He was married early with a daughter of Govind Narayan Coudhary, a scion of a very distinguished feudal family of village Kurson. The Choudharys were very sophisticated people, had plenty of wealth, and commanded a vast aura of social prestige. My grandmother (Adya Devi) was one of the most beautiful women that God ever created. I can recall her when she was in her eighties. Her face was

exquisitely sculptured and immensely vivacious. She was tall and had a wheatish complexion. She had glossy silver hair making her seen as a white cloud in the autumn sky. Her facial wrinkles brought to mind the way the moon looked in the water with the wrinkles caused by tiny waves begotten by wind. Often I remembered her on seeing the images of Durga. In my assessment she was a masterpiece in God's oeuvre. She had a measured gait; and she spoke chaste Maithili in tone low and mellifluous. She was a past master in the art of storytelling. She used her words with extreme parsimony. Her majestic demeanour could outshine that of the ladies immortalized by the Renaissance artists. We flocked to her whenever it was possible to do so to hear the yarn of the never-never land. She brought up seven children, five sons and two daughters. She managed well her four daughters-in-laws. Really a remarkable feat! Everybody felt that the marriage of a beautiful damsel of blue blood with my grandfather was an act of extreme indiscretion on the part of her parents. But the way they spent six decades and odd years of their wedded life convinced everyone around that they were really made for each other. The economic management of a poor man's household is always difficult. With very scarce resources of the family she discharged her obligations with a finesse which amazed all who knew us and our plight.

I have already mentioned that those days the rich Brahmins had strong desires to give their daughters in marriage into the families of high distinction amongst the Brahmins. This led to, as an inevitable consequence, the operation of the Laws of Demand and Supply. As such bridegrooms were in short supply; many of them had several wives. In Bengal there were persons having more than hundred wives. In our society persons were perhaps not so enterprising. The line was drawn generally at twelve so that one could spend a month in each of the families of the in-laws. My grandfather's brother showed moderation by having only four wives. The Choudharies wanted to go up on the social scale but did not wish to allow their son-in-law to roam about as a gentleman at large. In order to ward off this risk, they persuaded my grandfather to establish his household in the village to which his in-laws belonged, called Kurson.

But the *causa proxima* (the proximate cause) of my grandfather's migration from Koilakh to Kurson was something grotesque. My father, who was his third son, wetted the soil in the family courtyard in village Koilakh. This non-event was blown out of proportion. Many elderly ladies had a bee in their bonnet. They raised an uncouth wordy warfare which was painful to my grandmother with refined taste and sophisticated sensibility. With her dominant feudal mentality, she could not put up with things of that sort. She knew the enormous love that her brother had for her. She sent him a massage. And Krishna Narayan Choudhary, her brother, came on an elephant to take her and her children to Kurson. She went to Kurson never to return to Koilakh to which her husband belonged.

My grandfather remained in close touch with members of his father's family in Koilakh where he had a petty share in the heriditament which to my grandfather's shock was sold by my third uncle. As my grandfather's family grew, the Choudharies provided them with a permanent habitation in the garden of Karmalli in the eastern side of the village Kurson surrounded by lush green trees quite adjacent to a water pond, one of the loveliest spots I have ever seen. But a story went around that once upon a time the area was a crematorium, and never

ceased to be the rendezvous of the ghosts! Yet for us it was almost Eden. My grandfather did not escape the fate of those who abandon their roots for better pastures. When self-confidence is lost, creativity is always at a discount. This is a constant in human affairs as much as in the affairs of nations. My grandfather simply existed for six decades and odd. He never had to bother for his creature comforts. My grandmother managed the household with wisdom. In the waning years of his life he was often gnawed by the idea that his life was not well spent. The anguish of his innermost heart tinged his devotional songs, mostly by Vidyapati. But he was always at his natural ease. He accepted things as they came to him. I felt that he was always ready to accept divine dispensation without grudge and grumble. He had attained a state of mind of *sarvaswaswikar* (a frame of mind that accepts everything that happens) with gratitude towards God (*ahobhava*).

My grandfather had two prime pursuits: (i) singing *Kirtans* and (ii) enjoying *bhang*. The *Kirtans* were quite popular those days in our villages. The illustrious ancestors of the Choudharies had built the temples of Sri Rama, Sri Krishna, Goddess Durga and Mahadeva. The worship of the different deities gave a variety to the content and style of the *Kirtans*. For the *Kirtans* at the Sri Rama temple, I felt, Tulsidas was the guiding force whereas the *Kirtans* in the Radha Krishan temple were under the impact of Vidyapati and Chaitanya. The *Kirtans* in the Durga Mandir illustrated the best in the Sakta traditions. And the *Bhajans* of Mahadeva had a wide variety; from supplications for wealth to the heart-felt solicitations for mercy to grant *mukti* (salvation) in *Shivadhaam*. My grandfather had a rich stock of *Kirtans* of all types which he sang to everyone's delight. The rhythm of his body indicated the intensity of his feeling. He belonged to the Chaitanya tradition. Even now, in some blessed moments, I can hear him singing inside my mind: his rhythm delights though I seldom catch his words. It is strange to think that at times sound itself becomes meaning!

My grandfather's second pursuit was not his secondary pursuit. In fact, he lived on the co-ordinates of *bhakti* and *bhang*. During my adolescence I had only once taken *bhang*, the herb said to be so dear to God Mahadeva. It was a strange experience which left an indelible mark on my mind. One ball of *bhang* transported me to swim through the waves of all colours for two days. I swam through various patterns of pure colours in their horizontal and vertical rectangles in their strange interplay. My grandfather was a connoisseur par excellence of *bhang*. He took almost two hours every day to prepare it. In a bowl of stone, he put a fistful of the leaves to soak in water for softening. Much skill preceded in selecting the appropriate leaves and in subjecting them to a delicate process of drying under the sun and shade. With the stroke of a thick guava-stick, he would carefully crush the *bhang* leaves. He often sang songs while crushing the leaves to turn them into fine paste. Everybody in the village felt that his *bhang* had acquired some special properties on account of the music that he strove to mix with it. He would gulp the big ball in one go. And then he drank plenty of water from his shining copper pot. After some time he was a blessed soul with a valid permit to move from the world of ordinary existence to the world of shifting colours and limitless joys.

His end came after a long and lingering illness. All his sons were around except my father who was in the Darbhanga jail undergoing rigorous imprisonment for his participation in the Quit India Movement. My grandfather called

my mother and asked her that she should send me to the cremation ground to represent my father. It was the first time that I saw a man dying. I was the youngest among the participants in the funeral procession. I saw how the funeral-pyre was made, how my grand-father was placed thereon under sandalwood logs, how it was set on fire. Besides, I had seen how he was bidden goodbye: the ladies of the family only at the door-steps, friends and relations in the cremation ground, his sons when his pyre was set to flame, I was sure he went away with "Harinam" (God's name) resonating inside him. We planted a *peepal* sapling to mark the place where he was cremated. It was our custom to plant a *peepal* sapling on the grave. In the *Bhagavad-Gita* (X.26), Krishna says that amongst trees He is manifest in the *peepal* (*asvatthah sarvavrksanam*). For days such saplings were watered to grow into trees. We believed that the *peepal* tree carried the elements of the dead up and up to sing through the rustle of the leaves prayers to God Vishnu. Whenever in later years I went near the *peepal* tree, I heard its leaves singing 'Harinam'! This experience deepened in my mind the pathos of those lines which Shah Jahan had written to Aurangzeb when the ungrateful son had imprisoned him and stopped supply of water from the Yamuna:

*" Praised be the Hindus in all cases,
As they ever offer water to their dead
And thou, my son, art a marvellous Mussalman,
As thou causest me in life to lament for (lack of) water. "*

My uncle, Ramakant, had many things in common with a Shakespearean tragic hero. He had infinite potentialities but had some tragic traits too. He fought for the freedom of the country, and went to jail but never made politics his vocation. He was an excellent teacher who could bring to track even those students who had been written off even by their parents. He earned the name of being the Vishnu Sharma, the famous author of the *Panchtantra*, who had taught the king's wayward sons. When he sang patriotic songs he could set aflame even sunken souls. One could hear the resonance of the *Panchjanya* (the conch that Krishna blew in the battle-field of the Mahabharata) in his voice. Such persons are not seen now. My wife aptly said that God has now permanently retired the mould and frame in which such patriotic persons were once made by Him.

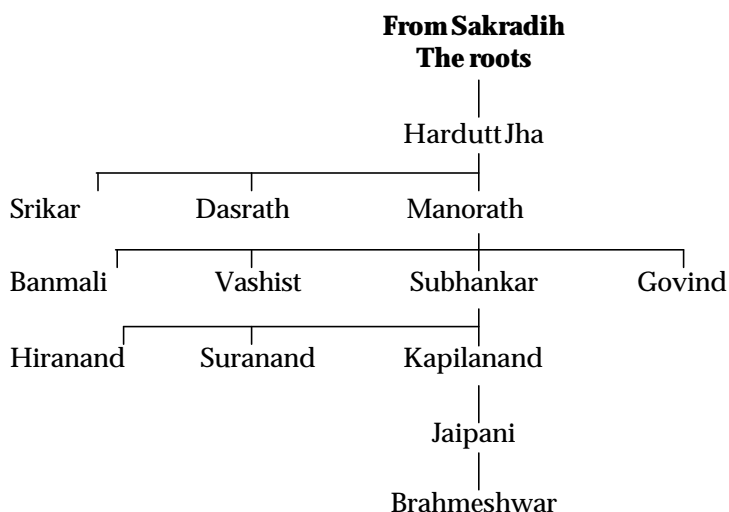
My third uncle, Laxmikant Jha, was an expert in agrarian matters. He looked after his maternal uncle's property and acquired, in the process, a good understanding of the complex agrarian laws. His sense of justice was so perfect that persons of all social strata used to come to him for solving their disputes. He had acquired a wonderful skill for proper hearing (*samyaka shravana*). He divided listeners into three categories (i) those who could catch suggestions as did Janaka when communicating with Ashtavakra (because both were most enlightened); (ii) those who could learn after waging a battle of wits as Arjuna did in the *Bhagvadgita*, and (iii) those who could never learn even if Lord Brahma descended to teach them. He himself was surely in the top class.

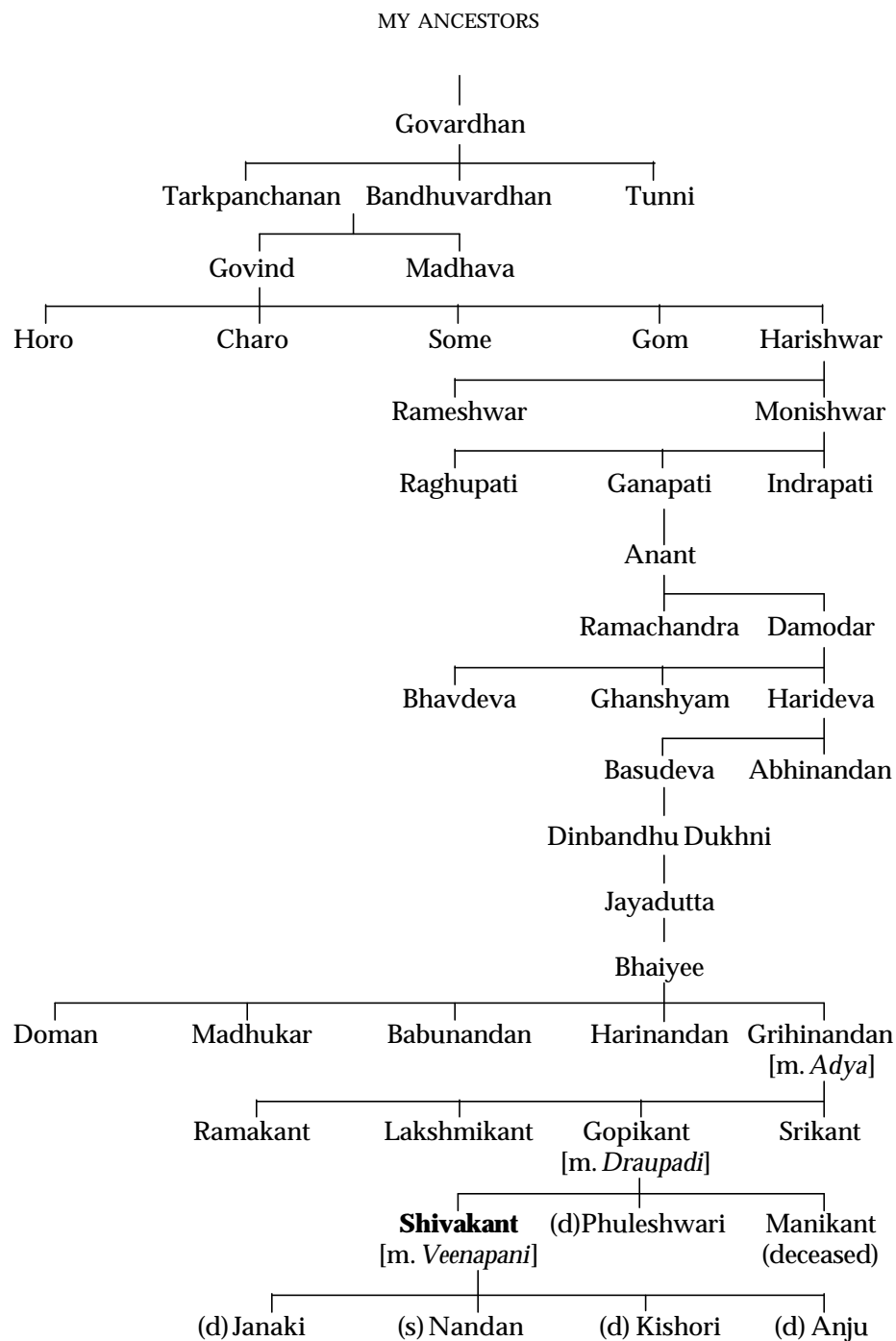
My youngest uncle, Shrikant, lived a life in its many colours. He had an affluent boyhood in the family of his maternal uncle. He had a comfortable manhood but a difficult old age. He was named Shrikant but Shri (wealth) never smiled on him. I held him in high admiration, and am indebted to him in more than one ways. Without him birds would have been mere birds, and flowers mere

flowers. He knew their names and had observed their notes and habits. Dan Lehrman worked on the behaviour of the mating of the ring dove. If my uncle would have recorded his observations on how the birds behaved in moments of distress, or of elation, or of romance, he would have got a magnum opus to his credit.

My father's maternal uncle was Krishna Narayan Chaudhary, the eldest grandson of Mohan Singh Chaudhary. He had a colourful personality and varied interests in arts, especially music. He was a patron for artists. He allowed his mundane matters to slip out of his control. He became an easy victim to the chicanery of his courtiers who multiplied in his declining years to siphon off his wealth. During his life he travelled from affluence to abject poverty! As he lived beyond his means, he soon ran short of his resources. His courtiers arranged finance for their spendthrift master. Off and on the creditors came ostensibly to pay homage to him, but, in fact to procure some written evidence for the money advanced to him by way of loan. My father's uncle had no time for such mundane and pedestrian matters. He spent days worshipping in the temples and listening to the devotional songs, or playing chess with his select courtiers; or feeding the fishes in the three big ponds his ancestors had got dug up. Whenever his Chief Courtier requested him to sign papers, he signed them without reading them because he knew no English. The crooks and the knaves had the best of times. So a day came when he had to sell his immovable property. He used to sign whatever documents were placed before him, almost the way the Mughal Emperors signed treaties and documents presented to them by the East India Company Bahadur. The situation then and now is no different. It is said that in 1681, an official dispatch went to Aurangzeb telling him: "Every one who eats salt destroys the salt cellar" My father used to say that the creditors used to come to his maternal uncle almost that way: to practice honeyed deception to ruin him with the skill at stealth with which Hawkins and Sir Thomas Roe had gone to the Court of Emperor Jahangir to procure concessions for the East India Company.

GENEALOGICAL TREE OF MY FAMILY*





[‘m’ = married to; ‘d’ = daughter; ‘s’ = son]

NOTES AND REFERENCES

* Abstracted from the comprehensive family tree drawn up by Pandit Kritinath Jha Panjkar of Koilakh (District: Madhubani) after conducting research in the ancient records of the Panjis system maintained for over about seven centuries. For detailed genealogical tree see at :
<http://shivakantjha.org/>; <http://shivakantjha.wordpress.com/2011/07/07/my-family-tree/>)

3

PROFILE OF MY FATHER

*Within the surface of Times fleeting river
Its wrinkled image lies, as then it lay
Immovably unquiet, and for ever
It trembles, but it cannot pass away!*

P.B. Shelley, 'Ode to Liberty'

Introduction

J.I. Blackburn, the Sessions Judge at Darbhanga, set aside the conviction of my father by his judgment on August 4, 1943. My father had been undergoing rigorous imprisonment for two years; and he bore a fine of Rs. 250, if not paid then six more months in jail. But he was released from jail after 9 months of his rigorous imprisonment. The story that led to his arrest, trial, and conviction would be described, in brief, in Part I of this Chapter; and the story pertaining his performance in other spheres would be touched in Part II of this Chapter.

Father had made history himself. He participated in our country's Struggle for Independence, when it was in its most crucial phase. After release from jail, he found that he had lost his job at the Rosera High School where he had functioned as the Headmaster for about two decades. Our family resources had already run out. But his spirit was unbroken. He found out some persons with patriotic bent of mind, and established the Mukundi Choudhary High School, for the benefit of the poor and backward students, in the most backward area at Darbhanga. Somehow he spent a few years rowing his boat in the tumultuous and tempestuous ocean of life. It was 1947, when the Indian Independence Act was passed, and our country became independent. He went to Barari (in Bhagalpur) to meet Keshava Mohan Thakur of Sri Bhawan. He was a close relation of my father, and also a good friend. Keshava Babu was one of the big landlords of Bihar, and had good contacts with persons in power both at Patna and in Delhi. Keshava Babu told my father to meet some of his old acquaintances who had become politically important, a few amongst them even held powerful posts. He advised my father to meet them to find some better vocation for his livelihood. But my father disliked the idea to get favour merely to live better. In 1976, I was posted as the Appellate Assistant Commissioner at Bhagalpur. I called on Keshava Babu at his residence. He had lost his Zamindari by that time, and his palace 'Sri Bhawan' had already been sold. His house had lost its glamour which I had seen once upon a time. He had lost his eyesight too, that eyesight which could so impeccably



My Father: Gopi Kant Jha



My Mother: Draupadi Devi



Tamrapatra presented by Smt. Indira Gandhi, the then Prime Minister of India, to Gopi Kant Jha, my father, in recognition of his memorable contribution to India's Struggle for Freedom.

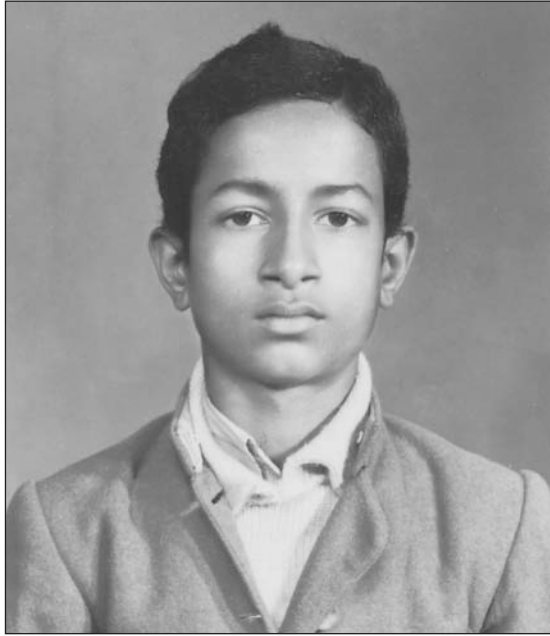


Veenapani Jha and Shiva Kant Jha visit the cell in the Cellular Jail, at Andaman, where V. D. Savarkar had undergone imprisonment.



Politics without principles
 Wealth without work
 Commerce without morality
 Education without character
 Pleasure without conscience
 Science without humanity
 Worship without sacrifice.

The Gandhian Edict at the Wardha Ashram,
 near Nagpur, mentioning the Seven Social Sins.



Shiva Kant Jha, a student at
M. L. Academy, Laheriasarai



Shiva Kant Jha, a student at
C. M. College, Darbhanga

judge even an uncut diamond. But he maintained serenity in his face, and cordiality in his manners. He told me the story how he had tried to persuade my father in 1947 to do what he had advised him to do, and also how softly he had declined his request. He told me that his friend, my father, had quoted Bhartrihari, the great ancient Sanskrit poet from a royal family:

“Who are we to go to see a king —not dancers, court-jesters, or singers, nor experts in (learned) disputes with others in a court, nor youthful court mistresses!”¹

My father believed that none who had fought for the nation’s independence should ever accept someone’s patronage, or seek any favour in return for the services rendered to the nation in the struggle for freedom. Service to the nation was a sacrifice. He did not appreciate even the idea of joining politics. He chose to spend his years as a contented teacher. He was surprised when Shrimati Indira Gandhi, the then Prime Minister of our country, offered him a *tamrapatra* (a copper plate) on August 15, 1972, with an inscription appreciating his service to the nation in her Struggle for Freedom. She presented this *tamrapatra* on behalf of our nation on the occasion of the Twenty-fifth year of India’s Independence. For me it is the most valuable heirloom. Our nation granted him a pension of Rupees 200/- a month from August 15, 1972. He never needed anybody’s financial help till his death in 1982.

PART I

(i) As a Freedom Fighter

My father, Gopikant Jha (March 1, 1898 to June 21, 1982), had patriotic fervour from his early years. In his life-time, the Non-Co-operation Movement (1917-1934) was a great political event. It was commenced on the adoption of the resolution by the Congress at its special session in Calcutta 1920 recommending “the renunciation of Government titles and the boycotting of the Legislatures, law-courts and Government educational institutions leading up at a later date to the non-payment of taxes.”² In his *Diary*, my father wrote the following about his participation in that agitation:

“After passing the Matric Examination in 1920 I went to Bhagalpur for admission in T.N. Jubilee College. In 1920 Mahatma Gandhi started the Non-Co-operation Movement and I went on strike at his advice, but again after a few days went back to the college.”

Father was arrested under the Defence of India Rules on September 5, 1942 and was produced before the Sub-Divisional Officer, Samastipur “to take his trials”. He was admitted to the Central Jail, Patna on 13 Oct. 1942. In the chronological Register of Convicts he was allotted number 2086. Father was tried under Rule 56(1) of the Defence of India Rules. The study of the court papers has convinced me that the trials, to which the freedom fighters were subjected in 1942, were not fair. Such trials resembled the trial in *Alice in Wonderland* about which Lewis Carroll writes:

“No, no!” said the Queen. “Sentence first - verdict afterwards.”

“Stuff and nonsense!” said Alice loudly. “The idea of having the sentence first!”

“Hold your tongue!” said the Queen, turning purple.

Charges were framed that my father had contravened the order of the District Magistrate under rule 56(1) of the Defence of India Rules by holding meetings, and by taking part in processions: thus he committed an offence punishable under rule 56(4) of the Defence of India Rules. The judgment of the Special Magistrate of Samastipur, in *King Emperor v. Gopikant Jha*, dated 7 Oct. 1942, deserves to be quoted *in extenso* as this shows the nature of the charges framed against my father, and the quality of judicial administration then. The judgment of the Special Magistrate at Samastipur states the material facts thus:

“The prosecution story is that the accused who was the Head Master of Rosera H.E. School convened Congress meetings in his school on 13th, 14th and 15th of August 1942 in contravention of the District Magistrate’s order under rule 56(1) of the Defence of India Rules. He also took active part in Congress processions in Rosera and used and shouted “Enquilab Zindabad” “Sarkari Raj Nash Ho” Hindustan Azad” etc. The order of the District Magistrate prohibiting all processions and meetings under rule 56(1) of the Defence of India Rules was duly promulgated in Rosera previously. The accused version is that he has been all along peaceful citizen and has been discharging the duties of Head Master to the entire satisfaction of immediate authorities and that he could not assign any reason as to why he has been prosecuted. In support of this version, the accused has examined Babu Harbans Narain Sinha a Zamindar of Thathia P.S Rosera and Vice President of Rosera H.E. School. Babu Harban Narain Sinha says “To my knowledge the accused did not take part in any meeting or procession in the school premises”. The school was closed on 17-8-42 for indefinite period under the advice of the Local members of the Managing Committee”. This is the statement in his evidence in-chief. In cross examination, he says, “My house is about two miles from Rosera. I always remained at my house during the movement. I did not even come to Rosera”. From his statement this witness does not appear to be quite competent to say whether the accused took part in meetings or processions in Rosera or not, since he never went to Rosera during this movement.”

No appeal was provided against the summary conviction under the Defence of India Rules. Everything was tilted against the liberty of people. During World War II the British Empire was passing through hard days. Those were the locust-eaten years. Even the House of Lords, Great Britain’s Supreme Tribunal, had become, in *Liversidge vs. Anderson* (1942) A.C. 206, more executive minded than the Executive. But the Calcutta High Court declared that the rule not granting the right to appeal, was *ultra vires* the powers of Governor General. Because of this decision of the Calcutta High Court, father got a right to appeal. Father exercised his right to appeal. The appeal was heard by J.I. Blackburn ICS, who was the Sessions Judge at Darbhanga. As a number of appeals were preferred by so many convicts, this Judge distributed the appeal cases to different subordinate appellate courts for speedy adjudication. When he saw my father’s Memorandum of Appeal, he marked it out for hearing before himself. Father’s advocate Babu Chaturvuj N Chaudhary was worried as he expected something

sinister to come. He felt, the British judge would even enhance the punishment already given. He wished the appeal to come up in the court of some Indian judge. But his apprehension was not well founded. The Indian Magistrates were often more loyal to the British Raj than some of the British judges who had in their consciousness the great tradition of the British judicial administration. Shri Chaudhary was a distant relation of my father, and a resident of the same village to which my father belonged. His apprehension that my father's sentence could even be enhanced, reached our village with frills and fringes of distortions. Everyone in the village felt that my father's sentence would be enhanced, and he ran the risk of being sent to the gallows. My mother heard this bad news with stoic indifference. What else could be done?

J.I. Blackburn had known my father when he was the Sub-Divisional Officer at Samastipur. He had granted a Certificate of Appreciation to him on December 19, 1937 for rendering "valuable assistance in making the coronation celebration of Their Majesties a success ..."³ While working as the S.D.O. at Samastipur, he inspected the Rosera School when my Father was the headmaster. He had also issued a letter of appreciation which was wholly endorsed on April 4, 1939 by his successor-in-office, M.Z. Khan ICS. He appreciated Father's patriotic sentiments in the open court. He asked, in the court, for production of the certificate that he had given to my father. He rejected the objection that Baroda Charan, the Public Prosecutor, raised against the admissibility of the said Certificate at the appellate stage. J.I. Blackburn was pleased to set aside the conviction and sentence imposed by the Lower Court by his judgment of August 4, 1943. This was done on the ground that the order of the Sub-Divisional Magistrate suffered from a patent error going to his jurisdiction itself. As this appeal was decided on a threshold point, the material facts recorded by the S.D.O. remained undisturbed. J.I. Blackburn, allowing the appeal, said in the penultimate paragraph of his judgment :

"It appears unnecessary to enter into the merits of the case as there is a legal defect in the trial, in as much as the general order of the District Magistrate constituting Courts of Special Magistrate for the trial of particular offences was not issued until 4.10.42, whereas the learned Magistrate in this case took up the hearing on 28.9.42 and tried the case as a Special Magistrate and passed his orders in that capacity. The conviction and sentence are therefore liable to be set aside. The only question however is as to whether the case should be remanded for retrial. The accused has already suffered R.I. for about 9 months, and in my opinion this sentence is in any case sufficient to meet the ends of justice, especially in consideration of the previous good character held by him."

This episode reminds me of the famous *Alipore Bomb Case* in which Sri Aurobindo was one of the accused persons. Aurobindo was represented in the court by the famous C.R. Das. The judge was C.B. Beechcroft who had been a student at Cambridge when Aurobindo was a student there. He knew the accused well. He must have enjoyed when C.R. Das told the court about Aurobindo's great patriotic fervour and literary attainments. Das concluded his submission telling the court: "Therefore, I say that the man in his position is not only standing before

the bar of this Court, but before the bar of the High Court of History." Aurobindo was acquitted. My father's conviction was set aside because he had already suffered rigorous imprisonment for nine months.

Father held the Calcutta High Court in his highest esteem as the High Court had quashed the rule framed by the Governor General denying the right to appeal to the convicts under the Defence of India Rules. It was a great act by the High Court that it kept the balance of justice even when the British Empire was passing through grave crisis both in India, and at the international plane. He was thrilled with joy when I was enrolled as an Advocate by the West Bengal Bar Council in 1977. He visited the High Court of Calcutta, and met the Chief Justice of the High Court. He was well received by the Chief who asked someone to help us see the Court Building, and witness the judicial proceedings going on. Dame Justice, the goddess holding balance of scales, and a sword, must have been overjoyed on receiving an ordinary Indian's extraordinary appreciation for that great seat of justice. I still believe that Goddess Justice must have smiled with joy on witnessing how grateful an unknown freedom-fighter of this Republic was to the Court: She must have counted that a great moment.

(ii) The Trial

From the tenor and reasoning in the judgment of the Special Magistrate of Samastipur, one N. Hoda, convicting my father to jail, it is clear that the trial was not fair. He disbelieved the statement of the defence witness Harbans Narain Singh of Tathia on the ground that he found some contradictions which he conveniently invented. Harbans Narain resided so close to the theatre of operation at Rosera that he was obviously a competent witness. He was at that time the Chairman of the Rosera Municipality, and Vice-President of the Rosera High School of which my father was the Headmaster. The Magistrate disbelieved another defence witness Jatashanker Choudhary of the Pokhrauni who resided near the Rosera School. The Magistrate accepted wholly the case presented by the Officer-in-charge of the Police Station, one Najmul Hoda. It seems that the Special Magistrate, perhaps, felt annoyed as he had not been consulted by the Headmaster of the School before closing it on account of the political movements turning serious. He wrote in his judgment: "I happen to be the President and Secretary of the School and I am sure that I was not consulted even regarding the closing of School for any period (definite or indefinite) in consequence of the student's movement". The trial conducted by a judge, with no judicial sensibility, resembled, on all material points, the trial that Franz Kafka portrays in his famous novel, *The Trial*.

(iii) The period of imprisonment

I felt that all our great revolutionaries looked at life and cosmos in similar ways. Whilst in the jail they had time to evolve spiritually. Father studied Tilak's *Gita Rahashya* over all the years. Like Aurobindo, Tilak, Khudiram Bose and Gandhi, he drew light and inspiration from the *Bhagavad-Gita*. Aurobindo evolved in spirituality, even whilst in his confinement, seeing all around him the presence of Lord Krishna in His various manifestations. He could see Him in trees, and leaves, and all the creatures around. Tilak enjoyed, while in jail, reflecting over the *Bhagavad-Gita*. His commentary on this text, called the *Gita-*

Rahashya, is a work of greatest importance. My father appreciated Vinayak Damodar Savarkar's famous book *The Indian War of Independence*. I would tell you later how I drew on Savarkar's views in writing my paper to commemorate the '1857 Event' which we considered the 'First War of Independence'. For his revolutionary activities, Savarkar was arrested in 1910, and sent to jail for 50 years, but was released earlier, in 1921. I visited his cell in the Cellular Jail at Andaman, where he had spent years whilst in jail. I felt he must have sustained himself seeing Shri Krishna manifest in the big peepal and banyan trees luxuriating in the full view from the cell. In the *Bhagavad-Gita* Krishna tells Arjuna: "of trees I am the Ashwattha tree" (*The Gita* X.26). But a man, like Tilak, Savarkar or my father, could never get crushed under loneliness. The great Ghalib had said:

न था कुछ तो खुदा था, कुछ न होता तो खुदा होता
डुबोया मुझको होने ने, न होता मैं तो क्या होता

My father never felt depressed in the jail. It would not have mattered if the sentence had been for a decade, or for 50 years. He was sustained by his study of Tilak's *Gita-Rahashya*. He kept that copy of the book till he lived. I often felt he lived in the world, but the chariot of his life, like Yudhisthir's in the *Mahabharata*, moved above the earth. It was the consciousness of the *Bhagavad-Gita* that saved him from claustrophobic depression on account of the experience of 'No Exit'. I felt that these lines from Richard Lovelace's *To Althea, From Prison* might have sustained our freedom-fighters:

Stone walls do not a prison make,
Nor iron bars a cage;
Minds innocent and quiet take
That for an hermitage

Lovelace (1618-1658) composed these lines while undergoing a sentence in the Gatehouse Prison in London for promoting a patriotic cause.

(iv) How the Movement Began at Rosera

At the Rosera High School, my father taught mainly English, Mathematics, and Geography. On August 8, 1942, the All India Congress Committee, in its Bombay session, gave a clarion call for a mass movement against the British Raj. Father's exposition, in the Matriculation class, of a poem by Sir Walter Scott's 'The Lay of the Last Minstrel' had an electrifying effect on the young mind of the students who were already surcharged with patriotic fervour. The lines, which he turned into metaphors of intense patriotism, were these:

Breathes there the man, with soul so dead,
Who never to himself hath said?
This is my own, my native land.

His exposition inspired his students. They could discover with extraordinary verve their patriotic duties. They lived in great creative moments of our history. Our struggle for freedom was fast reaching a decisive moment. Gandhi's ideas had struck a chord with the common Indian masses. The lines of action and thought in our national life had come to meet at a high point creating conditions

for a great revolution. What Macaulay had said in the course of his speech in the House of Commons on July 10, 1833, was coming true : he said -

“The destinies of our Indian Empire are covered with thick darkness....It may be that the public mind of India may expand under our system till it has outgrown that system; that by good government we may educate our subjects into a capacity for better government; that having become instructed in European knowledge they may, in some future age, demand European institutions. Whether such a day will ever come. I know not. But never will I attempt to avert or retard it. Whenever it comes, it will be the proudest day in English history”.

The students resorted to direct actions. They left their classes, and assembled in the campus of the school. They sang in chorus, *Bharatmata ki jai* and *Vande Matarama*. As each was acting under an inner urge, it was impossible to say who led the inspired crowd. They showed unity and empathy seldom seen in the era after Independence. India, for them, was Bharatmata. Bankimchandra had written an immortal novel *Anandmath* in which Bharatmata was portrayed as Mother (Goddess Durga). He had composed a poem ‘Vande Mataram’ (‘Hail to the Mother’), which resounded everywhere as if Lord Krishna blew it from His *Panchjanya* conch! The students had an inner urge, and an indomitable will to do all that could be done to free their land from foreign servitude. How could they forget that their teachers had often quoted from classical poetry that one’s ‘motherland is greater than heaven’? That day they assembled in the vast campus of the School, sang ‘Vande Mataram’ in chorus, and then spread out in different directions to work against the British Empire. Their teachers, who had seen them with thrill from the precincts of the School, must have felt that their efforts in training them had not gone in vain. In the morning of August 9, the main leaders of the Congress were arrested. The Congress organization was declared illegal. Never in the history of any nation had an Idea itself taken over leadership of a national struggle for liberation. The great ideas, developed and popularized by Swami Vivekanand, Lokmanya Tilak, Maharshi Aurobindo, Mahatma Gandhi, Muhammad Iqbal, Kazi Nazrul Islam.....came flowering in their patriotic feats of action. The patriotic Indians felt that the British Empire in India was now indulging in its swansong.

Some of them, by their spontaneous actions, sent tremors disturbing the *Pax Britannica*. Their sporadic acts of disorder included damaging the railway-tracks and stations, and cutting of the telegraph and telephone lines. But father felt that what shocked the British Government most was the aggressive mood of the young India. ‘Vande Matarama’ had acquired the status of the *Veda mantra*. For certain days, it appeared that even the birds and the beasts, trees and flowers were humming this song in the *Bhairavi raag*. Everyone displayed sturdiness of purpose, and the dedication to the cause of the nation. They, of course, were not oblivious to the possibilities of horrendous brutal retaliation by the savage imperial power. Yet they embarked on their venture believing that life had been given on the condition that the *kartavya karma* (Duties) must be done, whatever be the cost.

Father recorded a graphic account of his involvement in the Quit India Movement, and all that followed as its sequel. He had scribbled it in his Diary,

perhaps, to write someday his memoir, but that day never came. As this account comes from this Freedom Fighter's own pen, it has a special sanctity: hence I quote just a fragment from his diary that I still preserve:

"August 9, 1942 was a great day. The news that the leaders of the Congress Party were arrested by the then British Government en bloc alarmed the Indians. On the proclamation of "Quit India Movement" there was a massive agitation throughout the country. My students at Rosera H.E. School, whom I had ever taught the lesson of patriotism while teaching patriotic songs in Matriculation Classes, could not check their patriotic impulse. They went on strike and marched in a procession shouting "Inqulab Jindabad" and "Angrejon Bharat Chhoro." They were joined by the Bazar and village people. They all marched to the Government offices to paralyse Government work. They held meetings where slogans were shouted and speeches were made. The school had to be closed. Government work everywhere got paralysed. There was wide-spread repression. Many persons were arrested and some even shot at. Houses were burnt; properties were confiscated; and many kinds of unheard-of tortures were inflicted on people. Such repressive measures had never been imagined in civilised countries. Four teachers - namely Ramakant Jha, Kuldeep Mishra, Janardhan Jha and Ramaeshwar Prasad - were arrested on 2nd September, 1942 and were sent to the Police Station and thence to Samastipur Jail. Nazamul Hoda was the S.I. of Police Rosera. He arrested many innocent persons and made huge amount of money as illegal gratification. It was not the time of thinking how to save oneself from the police clutches. I was also arrested on 5th September, 1942 at the Rosera Station by the Inspector and the S.I. of Police. I could not be freed even for a moment. Fortunately my wife and my son, who was a child then, were at Kurson, my village. On arrest I was sent to the Samastipur lock-up in Jail to stand a trial in future on the submission of the police report"

(v) The Agitation at Rosera

The British Government inflicted a most morbid repression on our patriotic society. Nothing is disliked by the imperialists more than the sense of patriotism on the part of those under servitude. Patriotism is an impregnable rampart of liberty. It is a most potent creative force in an independent society. The Government registered its presence everywhere by putting the police patrolling squad at work, with bayonets directed towards everyone in sight. Thousands were arrested without any cause. Lakhs of people suffered tribulations, but now no longer with tongue-tied at work, patience. They were not unaware of the fact that the cruel government could enact again the Jalianwalla Bagh massacre where the troops had fired 1,600 rounds of ammunition into the unarmed crowd of our people at an enclosed place where they had assembled to voice their feelings against the Rowlatt Acts of 1919. But even such apprehensions could not dim their ardour, or diminish their resolve.

The revolutionaries had succeeded in disturbing the *Pax Britannica*. The Sub-Divisional Officer of Samastipur was R. N. Lines ICS. He was tough and had planned to strike a terror into the heart of the people. The school was closed “for indefinite period” from Monday the August 17, 1942. Father came to know that the authorities had decided to inflict a cruel tyranny on our people even in the remote villages to unnerve the common folk to drive into their mind the dread of the British power. Father left for our village, Kurson. We travelled about 50 kilometres in a bullock-cart. While travelling to our village we ran an obvious risk of being arrested, even frayed with bullets, by the government forces.

It was too much for the British Administration that in the mighty British Raj an academic institution stood closed on account of the activities of the young nationalists. The District Magistrate ordered the school to reopen with effect from August 19. Shri Ramaeshwar Prasad, an assistant teacher of the School, sent a messenger to my village with a letter informing father that the School had been reopened on the 19th in obedience to District Magistrate’s peremptory order. Father received this letter at 9.30 a.m on August 29. He immediately started for Rosera. What worried him most was the news that the authorities had decided to get the ring leaders amongst the students identified so that they could be shot dead to teach the natives lessons never to be forgotten by them. On reaching Rosera, he found the tyranny of the British Raj at its worst. On September 5, 1942 he was summoned at the Rosera Railway station by Najmul Huda who had been the Sub-Inspector of Police. After droning on sundries in abominable voice, the Police Officer shouted in his discourteous voice:

“Specify the ring leaders amongst the students”.

Father told him: “Everyone was leading himself. It is impossible to specify anybody by name.”

Father had no temptation for a reward. He could have suggested some names to please the British Administration in order to curry favour with the British government. He could have easily obtained the title of Rai Saheb or Rai Bahadur. But at that time the cause of the nation was supreme. Father stood firm. No persuasion or allurements could break him, or persuade him to say what the Sub-Inspector wanted him to say. The Police Officer croaked:

“So Sir, you won’t come out with their names. The Gandhians come out only under the lash of distress”

My Father asked him; “Am I under arrest?”

The Sub-Inspector shouted, “Yes, you are. You have earned it”.

Listening to this, Father shouted ‘*Vande Matarama*’. And the Sub-Inspector handcuffed him. The crowd that had gathered at the Rosera railway station shouted in vibrant and uproarious chorus ‘*Vande Matarama*’. It seemed Krishna was playing *Bhairavi* raag on his flute.

(vi) What sustained my Father in the period of crisis

I often wondered how father could sustain himself through his trials and tribulations which could have wrenched the heart even of the bravest amongst the humans. He must have experienced the agony that he had left his wife, and his infant ailing son at God’s mercy. But he was always unruffled. He, like other revolutionaries, never calculated gains and losses. Like them, he lived in mo-

ments, and devoted himself to achieve his mission, his duty, his *kartavy-karma*. The *Gita* was his guide. What he and other freedom-fighters felt about the *Gita*, was aptly stated by Vinobaji in course of his exposition of the *Gita* in the Dhulia jail in 1932:

“...My relationship with *Shrimadbhagavad Gita* is beyond logic. Its milk has enriched my heart and mind far more than what mother’s milk had done to my body. Reason has no play where the relationship is from the heart. The *Gita* is the fundamental element of my life.”⁴

Father felt that in our society, some carried in mind the erroneous notion that the *Gita* taught *Sanyasa*, and whosoever read it, would become good for nothing in this world. Only great faith in himself, and in Lord Krishna’s dictum - *Na me bhaktah pranasyati my devotee never perishes*— had saved the freedom-fighters from withering away in darkness. Father told me that the right perspective on the *Gita* could be had from what Tilak himself wrote in the preface to his *Gita-Rahasya*:

“Without acting nothing happens. You have just to go on doing your duties with detachment and without desires. *The Gita* had not been said for those fatigued by running their affairs with crash selfishness. *The Gita* was not said for those preparing to retire from the World.”

Father remained Gandhian throughout his life, in his ideas and work. But I seldom saw him announcing his intellectual and emotional commitments to any ism. But all through he believed in certain principles which were precisely the same as those written on the board in the campus of Gandhi’s Wardha Aashram, that I had read when I visited that Aashram several times during 1986-1992. I was then the Commissioner of Income-tax for the Vidarbha region. A photograph of the text of the Gandhian edict at Wardha goes with this book, Our politicians must reflect on the text of the edict.

(vii) *En passant*: When I see the present in the light of the past

When father narrated what had happened on that fateful day, August, 9, 1942, he exuded cheerful serenity. But while writing something about what happened then, I feel anguished on seeing things as they are happening these days. Now money alone matters. Higher values are at their vanishing point. Consumerism has already taken its toll. Our cultural tradition, and the achievements, which distinguished our land from others, are being forgotten. Now everything has a price tag. Even values have become mere trading wares. There is a trend towards a repulsive commoditization of human beings. It is shocking to see the ‘slave’s syndrome’ manifesting itself so grossly in most spheres. A slave, even on acquiring freedom, loves putting fetters on himself because he has forgotten to live in freedom, and has not learnt how to live the life as a free citizen. I write with an iron in my soul that this overweening lust for material comforts at the cost of all other values has made the rich of our society a spiritual wasteland. Swami Vivekanand was right in saying that India could expect only from the common people.

When I compare and contrast the trends of the times during our Freedom Struggle with those we see around us everywhere, I get dismayed. Right now we have no cause which deserves to be pursued with steadfast resolution; we have no leader who can be trusted, and who can lead our nation with utmost good

faith. There is none to set standards of conduct for our people to emulate; there is none who can inspire us to tread on the right path responding to the challenges of our times. Corruption and degradation are fast turning our Republic into Milo's Rome when greed was the only guiding force, deception the only strategy, and the 'moral deficit' was evident in socio-political spheres. Where greed prevails, morality decays; the *entente cordiale* between fraud and deception grows, democracy suffers from a terminal illness; Constitution gets etherized and anesthetized except the power structure that it presents for some to ascend to power to promote the agenda of economically dominant people.

I was amazed the other day when a young man going to the U.S.A. to study Business Management told me with nauseating bravado: "Our Struggle for Freedom was unnecessary. Direct transition from the British imperialism to the corporate imperialism under the American domination would have been better. We even love fetters if they are made of gold. What matters is money for us, and the GDP for the nation." I was struck dumb. But I need not reflect on this seamy side of our GDP-measured society. I do so in deference to the instruction given to us by Tulsidas: 'अनिमल आखर अरथ न जापू' (it is no good to reflect on what is morbid and mean). But I would touch these points in the Book III of my Memoir.

PART II

(a) As an Educationist

Father was essentially an educationist. He began his career as a substitute teacher in December 1924 at C.M.S. High School, Bhagalpur. Immediately thereafter he went to Rosera to establish a High School at the request of the people of that place. But after a short period there, he shifted to Barh to become an Assistant Teacher at Bailey School, and later its Assistant Headmaster till 1929. He again went back to Rosera where he worked as Headmaster of the High English School from 1929 to his arrest in 1942. After his release from jail on June 22, 1943, he joined the post of the Headmaster of M.C.H.School, Kadirabad at Darbhanga where he worked till May 31, 1965 when he retired. In the post-retirement phase he remained associated with the Darbhanga Public School till my mother's death on December 9, 1973 on which date he entered the phase of *Sannyasa*.

As he was essentially an academician, it is worthwhile to focus on his ideas which conditioned his teaching over more than fifty years. He had a coherent and integrated philosophy of education. The scope of this chapter does not permit its discussion in detail. But I would highlight some of his ideas. He often quoted Lin Yutang who said in *The Importance of Living*:

'To know what to love and what to hate is to have taste in knowledge. Nothing is more exasperating than to meet a person at a party whose mind is crammed full with historical dates and figures and who is extremely well posted in current affairs in Russia or *Czechoslovakia*, but whose attitude to point of view is all wrong.'

He was worried by the growing indifference of the students towards the finer creations of mind. Education is meant to develop the students' courage, and their faculty of imagination as without these, good character cannot evolve. The worst problem which humanity is facing now is what is known as 'the Wallace paradox'

(stressed by the great Alfred Russel Warren) which refers to our present plight : the exponential growth of technology going with stagnant morality. There are good reasons to believe that 'without moral imagination man and his civilization, with all its science, arts and commerce are bound to perish'. He would often refer to what Herbert Spencer said about education; 'Education has for its objects the formation of character'. Someone has rightly said: History shows itself more and more a race between education and catastrophe. This is what Gandhiji meant when he insisted on character-building in his essay 'What the Students can do' which was a prescribed piece for us when we studied in Class IX. The consequences of ignoring the Gandhian message are manifest in the limitless egocentricity and rabid corruption about which, as Alan Beattie says: "everbody talks but nobody does anything about it."⁵

He derived his technique of imparting education from the *Bhagavad-Gita* itself. He suggested to the students that a difficult subject is studied best when it is studied with concentration, again and again. This is the *abhyasayoga* of the *Gita*. His technique was participative; the students felt at home to put questions to grasp the issues better. He could distil out what was the best in his students. Didn't Shakespeare say: 'There is some soul of goodness in things evil, Would men ever succeed in distilling it out'. He was wholly at peace with himself by imparting education to the young children of the poor. Michelangelo sculpted the *Pieta* for St Peter's from marble: he drew out from the stone the sublime beauty which lay in the stone. A teacher's job resembles the sculptor's craft as he too discovers things of value in his students, and helps them to manifest their inner worth. For a good teacher his students form his *vidyavamsa* (the members of the teacher's family).

He was a perfectionist. He would never condone linguistic lapses. Like H.W. Fowler, whose *Dictionary of Modern English Usage* he frequently consulted, he was an instinctive grammatical moralizer. He had purchased a battery set of Phillips radio in 1954 so that I could regularly hear the BBC broadcast for acquiring a better sense of English language. He had a special liking for the *Times Literary Supplement* which he was getting direct from the United Kingdom. The editorial note of August 2, 1957 issue of the magazine had commented on Fowler: "A moralizer no doubt he was; but he has no categorical imperatives. His morality is purely teleological, and the end to which it is directed can be reduced to a single idea : lucidity." The same could be said of my father's approach.

His educational philosophy was wholly Gandhian. He emphasised on moral instruction, and stressed on the vocational training as the essential ingredients of education. Once he had explained the symbolic relevance of the Spinning Wheel on which we worked every day. Gandhi felt that the Spinning Wheel would create centres of creativity in every household. This would enable our society to develop creativity and discipline in every household. A Spinning Wheel would have become a symbol of creative growth. By working on the spinning wheel, people could develop power of concentration, and get moments to tranquillise their mind so that nobler values could be fostered, and pursued. If the model of Gandhian education would have been implemented, every household would have become a centre of creativity. Of course, if this would have happened, our degenerate politicians wouldn't have obtained the herds of the slogan shouting hoodlums to promote their unworthy interests. Father shared the concern which

had been voiced by the great scientist Alfred Russel Wallace in *Bad Times* published as far back as 1885:

“Whenever we depart from the great principles of truth and honesty, of equal freedom and justice to all men whether in our relations with other states, or in our dealings with our fellow-men, the evil that we do surely comes back to us, and the suffering and poverty and crime of which we are the direct or indirect causes, help to impoverish ourselves. It is, then, by applying the teachings of a higher morality to our commerce and manufactures, to our laws and customs, and to our dealings with all other nationalities, that we shall find the only effective and permanent remedy for Depression of Trade.”

He believed that the greatest hazard to our technology-led society is its stagnant morality and overweening hubris. Father shared Russell’s worry on account of this syndrome. I would revisit this point in the Chapter on ‘My Reflections on Krishna & the Galaxy of the Great’ in the Book III of this Memoir.

He always believed that the culture of *Guru Shishaya paramapara* should be cultivated in our educational system. As a teacher he maintained very close contact with students. He took a lot of interest in the welfare of his students. His students could come to him for learning, and for receiving good counselling whenever they needed that. He was a loving teacher. No barrier of formality separated him from his students. His approaches in educational matters would clearly come out from the following two extracts from his Diary:

The sanctity and fairness of the examination

“I recall sanctity and fairness of the examination and the personality and character of the teachers of those days, I cannot but express my indignation and contempt at the deterioration in every sphere of educational activities of the present days..”

Reformation vs. Punishment

“I remember an event which I think worth mentioning. It was 1932. I had gone to attend the Divisional Headmasters’ Conference at the Bettiah Raj School. At the conference one headmaster proposed that a provision be inserted in the Bihar Education Code conferring full power to the headmaster to remove from the Roll of the School register any student whose character appeared suspicious to him. I was the youngest Headmaster present there. I could not appreciate the proposal. I rose from my seat and said “Sir, credit lies in the reformation and not in deformation. A boy turned out of the school is ruined as prospect of reformation is lost. If he is retained and efforts are made to reform him, he may have the chance to be reformed.” Rai Bahadur Tulsi Prasad, the President of the conference, thumped the table and said “Here is our youngest Headmaster!” The suggestion was greeted well, and the proposal was quashed. Since then, I had the pleasure to find Rai Bahadur Tulsi Prasad always well disposed towards me. His ‘appreciation remark’ in the Inspection Note, drawn up during his visit to the School, made this quite evident. In those days, the Inspecting Officers were very capable workers with very good educational background. They paid surprise visits to see how the institutions

worked. Such visits were sufficient check on the activities of persons idling away their time. I had to be very alert in the discharge of my duties. And I tried to win the confidence of all.”

(b) He was an *astik*

Like most of the Indians my father was *astik* (a believer in God and values). He believed in the *Vedas*, and reposed faith in God. One who believes in positive values of existence is an *astik*. The etymology of the word (from *Asti*) is suggestive: it refers to ‘existence’ itself. He did not consider Bertrand Russell an atheist as Lord Russell had made an indomitable quest for knowledge, and had profound interest in improving the conditions of human beings. Russell rightly assessed himself when he said:

“Three passions, simple but overwhelmingly strong, have governed my life: the longing for love, the search for knowledge, and unbearable pity for the suffering of mankind.”⁶

One who is governed by such three passions must be a believer in values. So Father considered Russell an *astik*.

Father was syncretic in his religious ideas. He bore on his forehead a bright vermilion mark. Over it three flourishing lines of the holy paste of ash were drawn. These subdued grey coloured lines, so exquisitely drawn with the finger-waves, indicated faith in Shiva. The vermilion mark expressed faith in Shakti. The lines flanking closely the red mark and moving upwards vertically on the forehead expressed his faith in Vishnu. Father strictly followed the norms of the *ashramas*. His infinite trust in God helped him to get over life’s ennui; and enabled him to receive death as his final prostration on Lord Krishna’s lotus-feet. Life, he believed, is just a sparrow’s flight from the unknown to the unknown with a temporary perching on the wooden beam of a room with windows open, and the doors ajar.

Those days most students had *adharmic* (religious) bent of mind. This helped them improve their power of concentration, and made them more focused. It was customary to register a reverential bow to the book or the pen when picked up from the ground if it ever fell down. When our feet unwittingly touched a book we considered it a sacrilege. Every year, Saraswati was worshipped at most schools. She is the goddess of learning. The worship of Saraswati is celebrated even now, perhaps more, but the bent of mind in doing so is no longer so serene and sublime as it was then. It has become more of a fun, an enjoyment of some sort of carnival.

(c) Simple living and high thinking

Father practised the precept of ‘simple living and high thinking’ all through his life. He was all against the consumerist culture under which the vested interests generate even non-essential needs. If one wants to maintain dignity, the best way is to control one’s needs. He provided us a *talisman* which could stand in good stead when we pass through the markets. This *talisman* is most essential in our present-day consumerist society. Whenever a desire springs up for things, it is prudent to ask oneself: ‘Are these essential for me? Can’t I do without them?’ He believed that our resources are limited, and, hence, they must be used without

profligacy. He always stressed on the quality of life. When I think about this talisman, I recall that precious talisman that Gandhi had given to our decision-makers (See Chapter 19, 'Notes & References' 16). Joys didn't elate him. He bore sufferings with tongue-tied patience. He was always happy with whatever his life brought to him as his share in this existence. He never fretted about unborn to-morrow or the dead yesterday. He followed Gandhiji's instructions in the matter of food habits. When I visited Gandhi's Wardha Ashrama, I found them written on the board on display in the campus. I would render into English the Gandhian instructions on the art of eating in Chapter 4 ('Portrait of my Mother').

(d) The Declaration of Emergency: my father's response

Father had very high opinion about Mrs. Indira Gandhi. He considered her a great patriot who had brought laurels to our country. But he was disturbed by the 'Declaration of Emergency' made by her on June 26, 1975. He was shocked to find that the Emergency was declared on flimsy grounds; and the Constitution, which our people had given to themselves, was subverted purely for personal reasons. He agreed with many who considered the ignominious Emergency the darkest chapter in the democratic history of India. He expressed himself against the Emergency though his failing health did not permit him to take up an active role in opposing it. He was certain that her dictatorship was bound to end as the grain of our society did not permit any tyranny. The greatest assurance against a tyranny is our worldview itself. He was amazed that she missed the wisdom born of history. Her father had done so much to tell her about history, both of India and the World, but, perhaps, it went all in vain. My father was glad when the phase of the Emergency came to an end. He was an optimist; he felt that every dark hour was destined to go. But he always felt that the Emergency was a noxious product of the circumstances which prevailed on account of unfortunate causes. To a large extent, Mrs. Gandhi had herself created the circumstances that had led to the Emergency. But she did not cease to be great even when storms overtook her, and she fell from power. Father appreciated the way she conducted herself when she was under brutal retaliations by her political adversaries. She was great, and like many great persons, she committed great mistakes. Her history deserves to be read by each generation to learn lessons how to act, and how not to act. Like every great tragic hero, her tragic trait was great.

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Reflections on an ideal teacher by one of his students: "Remembering Gopi Babu" by Prof. (Dr) Bishwanath Prasad, M.A., M.D.P.A., Ph. D, M.P.A. (USA), etc, the former Vice-Chancellor of Magadh University

"Late Sri Gopi Kant Jha embodied the qualities of an ideal teacher and of a successful administrator of a higher secondary school in a backward district of North Bihar in the forties of the twentieth century. He ranked high amongst good teachers of English literature. He was endowed with competence of elevating the level of discourse from one of information to that of knowledge, to that of wisdom as and when occasion so demanded. Equipped with soft power of his noble ideas and values, he could forge a lasting relationship with some of his acquaintances through working for a shared purpose and goal. In exercising self-discipline of

PROFILE OF MY FATHER

an authentic and compassionate guide, he made values become consistent actions. Excellence in education was not an act for him but a habit. He succeeded in galvanizing a generation of youth during the freedom movement period enjoying the reward of satisfaction of a job well done striking a balance between the demands of career development and character building. His discernible contributions to the consolidation of secondary educational system will surely endure, and so also his memory.”

NOTES AND REFERENCES

- 1 Translated by Swami Madhavananda, *The Varagya-Satkam shloka* 56
- 2 Dr. R.C. Majumdar in Majumdar, Raychouduri and Datta, *Advanced History of India* p. 971
- 3 D.O. No 7928 of June 1937 from the District Magistrate, Darbhanga.
- 4 Vinoba, *The Gita-Pravachan*, First Lecture on Feb. 11, 1932
- 5 Alan Beattie, *False Economy* p.227
- 6 Bertrand Russell, *Autobiography* p. 9

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PORTRAIT OF MY MOTHER

‘यह मन्दिर का दीप इसे नीरव जलने दो’

Down the memory line: My Mother

My memory goes back to 1942, when I was about five. We lived in a small cottage built in the Rosera school campus itself. It was well fenced. The bamboo fence was richly covered with green leaves exquisitely inlaid with flowers and fruits. In the north-east corner of the courtyard stood a massive Seesam tree turning the corner into an enthralling secret bower of boughs some of which were caught in the tight embrace of luxuriant bougainvilleas. The tree had not been pruned for years. On some of its drooping branches, tiny birds had built their nests. Underneath the tree, I had my world to my heart's delight. None else had time ever to enter the bower which had quite a few honeycombs with venomous bees frequently on wings. Most often I was myself a busy bee building pyramids and castles under the shade of the tree. I had underneath it my own Swiss bank for concealing my coins in certain holes I had dug up there.

Once I found my mother conversing with my father under the tree. Their voice was not audible. I wondered at their trespass on my domain where I loved playing the monarch, or the fool, or both in varying proportions in turns. Their conversation must have got as its subject something extraordinary. But it became clear to me soon after their meeting ended. We boarded a bullock-cart on way to our village, Kurson, at a distance of about 80 kilometers. Later I could know that the journey by road was to evade the vigilant eyes of the authorities of the British Raj, who kept a close watch on the activities of the nationalists considered dangerous to the Angreji Raj (the British Government). For me the journey on the bullock-cart was a wonderful experience. The journey through villages, groves, and paddy and sugarcane fields was extremely delighting. The cart moved on the cart-track in its slow and languid rhythm. We munched, when we felt hungry, the mixture of Chura-gur (flattened rice with jaggery), and the green grams that we plucked from the fields by the side of the mud-road. The clouds kept us under their canopy till we reached our village. As I felt strong thrill in driving the bullock-cart, I remained overbusy all through the way. Of the two bullocks, Shelebi was sharp and stallion-like, and needed just a touch on its back to respond well and to move fast, whereas Kaila was fat, but dull-witted, whom even strong goading failed in providing a spur to move forward at the speed matching that

of its other partner. My dog accompanied us, almost the way the dog had accompanied Yudhisthira to heaven. It loved concealing its movement by confining itself within the shade of the chassis of the moving cart. Whenever we passed through villages, young boys and girls formed a beeline behind the moving cart enjoying dust-bath till they felt tired and returned yielding place to other batches of children who found a lot of fun running that way. For the first time I experienced the pleasant smell of the clods of soil recently upturned in the field.

It took me several years to know what had been discussed in the conclave under the Shesham tree. My eureka. I have already written in the earlier Chapter how by 1942 the Struggle for Freedom had reached its crescendo. Father, a true Gandhian, thought of making his own contribution to the nation's struggle for freedom. He had his natural apprehensions of brutal retaliations. He needed my mother's consent to dedicate himself to that national cause. He needed her counselling, also as our tradition contemplates that the best counselling comes always from one's wife. If Ravana could have heeded to his wife, Mandodari, he would have escaped his tragic end. If Bali would not have spurned the advice given to him by his wife, Tara, he wouldn't have courted his ruin. My mother, like most ladies, took, in crucial moments, decisions only in her intuitive flashes. The voice of the soul never fails. Lord Krishna said in the *Bhagavad-Gita* (Ch. III.42) :

*indriyaniparanyahur
indriyebhyah parama manah
manasas tu para buddhir
yo buddheh paratas tu sah*

[The senses are greater than the flesh; greater than the senses is the mind; greater than the mind is the intellect; and greater than the intellect is the Soul.]

My mother endorsed my Father's ideas without a moment's hesitation. In moments of taking decisions she never bothered to calculate their outcome. It seemed to me that she lived in moments, the moments which could measure eternity. She told him the story of Vidula which the *Mahabharata* narrates. Vidula advised her son Sanjay: '*Muhurtam jvalitan sreyah, na tu dhumayitam cirama*' (Better to blaze for a moment than to smoke continuously for long). She asked him to embark on his duty unconcerned with the distractions of life, and the calculations at the consequences. The way they discussed illustrated how their chemistry worked. I never saw them at loggerheads with each other: they could sort out their problems with ease and decency. The *Mahabharata* tells us that a man's best advisor is always his wife. When Maharaja Janaka decided to become a *Sannyasi*, giving up his duty as the King, and also as the householder, it was his wife who successfully persuaded him not to withdraw himself into *Sannyasa* abandoning his duties to work for the weal of people. It is said that Gautam Buddha, after his *sannyasa* and attainment of Buddhahood, chanced to meet Yasodhara, his wife. She asked him: "What did you get after leaving the family and taking *sannyasa* that you could not have got in the family itself?" The Buddha kept silence as he couldn't answer her. In 1942 my mother was of 35 years, and I was barely 5. Her parents were in deep troubles on account of a fratricidal conflict going on

amongst the members of closely related families. My maternal grandfather and my eldest maternal uncle had been killed. She must have known how the freedom fighters were treated by the British power: if fortunate then only R.I. in prison, if not then transportation for life, or even death sentence. She did not allow her imaginings to weaken her by painting desperate straits which could await her and her child. When I write these words, I see my words on my computer through the film of tears in my eyes. If there is anything in my life which makes me feel proud, it is to get them as my parents from whom I learnt something about the art of life otherwise I too would have been just, to say in the words of Will Durant, one of "the insects on the earth"¹

Her birth; Her name

She knew that she had come to visit this planet for about 66 years, and would die of some blood-related disease. Balkrishna Thakur of her parents' village had predicted it about three decades before her death, in December 1973. Thakur was a great astrologer and Sanskrit scholar from whom I learnt something of that language. My mother believed in his prediction. When she was diagnosed developing glaucoma I grew worried but she remained unruffled. I grew worried thinking of one who could see through atoms would not be able to see even the stars! She said that none need get worried because she was not born to go beyond her sixties. The predictions came true: she died in her sixties, and of blood-related disease, cardiac arrest on account of convulsion in her blood vessels.

I believe she was born in 1907 in village Shernia, then under the Munghyr district of the North Bihar. Her father, the celebrated Pichitlal Mishra, named her 'Draupadi'. In our society, it is conventional to name daughters after the goddesses like Gauri, Tara, Sita or Radha. But to call his daughter 'Draupadi' must have been his conscious choice. He was himself a firebrand, and he seems to have wished his daughter to be fiery. None else in our classics had a personality with so much of fire and light as 'Draupadi' of the great *Mahabharata*. He could not have named her after 'Draupadi' without seeing in his vision what she was to become in her life. Osho, reflecting over 'Draupadi', wrote:

"The fact remains that in the history of world there is none comparable to Draupadi. It sounds strange. One remembers Sita, one remembers Savitri. There are many others in our memory. Yet I say Draupadi is incomparable. Draupadi is extraordinary; she possessed the sweetness and grace of Sita, and salt of Cleopatra. She did have beauty of Cleopatra but she was endowed with logic of Gargi. In fact the whole of the *Mahabharata* moves round her as the axis. The whole war was fought with she at the central point..... This Draupadi is really a paragon. After the war Bhishma was lying on the bed of arrows. Krishna asked the Pandavs to seek the secrets of *Dharma* from the great man on the bed of arrows. And then Draupadi laughed. Her laughter resonates over whole of the *Mahabharata*. She laughed at the instruction to know the secret of *Dharma* from Bhishma, who sat drooping his head low when she was being unrobed in the Court of Duryodhana by Dushyashan. She is an extraordinary lady."²

My maternal grandfather must have discovered something extraordinary in his eldest daughter. And her life proved her name most appropriate.

On the basis of what I saw, and heard, she did resemble the 'Draupadi' portrayed in the great epic, the *Mahabharata*. When a short while before her death, I asked her: "How could you spend those days of anguish and deprivation in a remote village when my father was undergoing sentence under the worst risks, and no silver lining could be seen in the densely cloud-cast sky of your life?" In her muted voice, and with subdued smile, she quoted the Draupadi of the *Mahabharata*. When she had lost all hope to save herself from discomfiture in the court of Duryodhana in the ample presence of her husbands and the eminent elders, Draupadi prayed in her silence to Lord Krishna for succour. The great Vyasa expressed her silent prayer thus:

*Naiva me patayas santi, na putra, na ca bandhvah
Na bhrataro, na ca pita, naiva tvam madhusudana.*³

When the Lord helps, no distress can sweep one off one's ground, or can crush one to dust.

Without Draupadi, the *Mahabharata* could not have been conceived. It was her laughter, on seeing how Duryodhana mistook marble for water when he had visited her husbands' place, that had sown the seed of wrath in the mind of that mighty man. She inspired her husbands' by invigorating them and inspiring them to embark on their duty which the circumstances demanded for the promotion of *Dharma*. She could corner even Lord Krishna in order to make Him function as the instrument of unfaltering justice. Yet she played her role as a wife with excellence. She had explained *Stridharma* (the duties of a wife towards her husband and others) to Satybhama, one of Lord Krishna's wives. This great event is narrated in the 'Draupadi-Satybhama Parva' of the *Mahabharata*. I always felt my mother's life proved her name right. She could suffer yet act with joy. Her silence spoke, her speech silenced.

Art of suffering with tongue-tied patience

She bore for quite some time her claustrophobic sufferings when our nation was fighting for her freedom. In our village we had no trustworthy channel to know things happening outside. No newspaper reached our village. Once in a while, someone returning from Patna or Darbhanga brought some information, distorted by every tongue and ear that carried it forward. None in the village had a radio. My cousin's HMV Gramophone was a magic-box for the village folks to wonder at. The postman in his fortnightly visits brought some words which passed for news. Words of mouth went round in our small world. Hearsay held the sway. Rumours, rather than information, multiplied, and circulated the way Pope described the way rumours circulate:

The flying rumours gather'd as they roll'd
Scarce any tale was sooner heard than told
And all who told it added something new
And all who heard it made enlargement too.

Rumours passed for truth. Rumours became more palatable and believable when they get embroidered with skill. Men used to assemble on the green grass of the Shri Rama Temple, or under the massive Banyan tree, to hear about the happenings in the British Raj. For months, my mother did not know whether her husband was alive, or dead. Perched on the Banyan's long fat roots, crooking into the water of the Rani Pokhar, I enjoyed angling, watching how the bite-indicator was dragged and released by the fishes. I watched how the hook worked inside water, and also heard what my elders talked amongst themselves. They often talked about the events pertaining to the Freedom Movement. They enjoyed embroidering on them, and adding their own gloss. When great leaders, like Nehru or Gandhi, were in prison, even minute details of the events about them were reported in the media. When it was some ordinary person, none bothered about him. That is the way how this world works. In our village we lived in total darkness. In that hallucinatory ethos, we heard the lurid tales how so many persons were hanged, so many were tortured, so many whisked off to some unknown destinations, so many killed..... Our village became the target of the British wrath because it had produced a band of freedom-fighters. I carried whatever I heard from them to my mother. She used to hear what I had to say, but she never reacted; She maintained her mental poise believing in what Krishna had said the *Bhagavad-Gita*: 'My devotees never perish' (*name bhaktah pranasyati*).

Her Education

My mother had no formal education. What astonished me was her sharp intelligence, practical insight, capacity to take difficult decisions, and fortitude in facing consequences. My mother belonged to a traditional rural family which believed that the women's job was merely to run the household. In her days, girls were not permitted to go to schools. Elementary knowledge of three R's, acquired at home, was considered enough. Mother learnt these from her youngest brother Jageshwar Mishra whom she loved intensely. Whenever she could steal some time from the domestic chores, she would conceal herself in a bush behind the massive barn to learn from the books which her youngest brother had preserved for her.

Her remarkable creative plasticity expressed herself in the making of the clay images, and also in the exquisite and expressive patterns she drew with the white paste of rice on the floor and the walls on auspicious occasions. On the occasion of the *pooja* of goddess Durga, she used to draw images on the doors, the images which had profound aesthetic richness. The images of the palms, she painted, lingered in mind to become for me, in later times metaphors suggesting *karmayoga*. Years after, I read Bronowski's comment on the picture of hand in El Castillo, Stantander in Spain: "All over these caves the print of the hand says: 'This is my mark. That is man.'⁴ And this also brought to mind what Bronowski aptly considered a tribute to human creativity: to quote—

"There are many gifts that are unique in man; but at the centre of them all, the root from which all knowledge grows, lies the ability to draw conclusions from what we see to what we do not see, to move our minds through space and time, and to recognise ourselves in the past on the steps to the present. All over these caves the print of the hand says: 'This is my mark. This is man.'"

She acquired knowledge, and wisdom from the lores of our classics. Those days almost everyone read, or heard, the *Ramayana* of Valmiki, the *Ramacharitmanasa* by Tulsidas, the *Mahabharata* and the *Bhagavad-Gita*, and the great *Srimad Bhagavad Mahapurana*. Afternoons of most persons were devoted to such pursuits. They learnt the art of life from these great books; they developed their strength how to pass through the twists and turns of their lives in the light of the wisdom they gathered from the classics. The great classics provided them with a source of wisdom and inspiration to face the challenges of life. What is said about the *Srimads Bhagavad Mahapurana*, in the following lines, applies to the *Mahabharata* and the *Ramayana* also.

That destroys the lust for the pleasures of the senses,
That develops detachment, wisdom and purity,
That enlightens the realities of the cosmic order,
That supreme light of the science of the Absolute

My mother developed her interest in the *Ramacharitmanas* by Tulsidas. It helped her solve the problems of life whenever she found them too difficult.

She was extremely fond of what is popularly known as the 'Rama Gita' which consists of a few *chaupais* in the Lankakand of the *Ramacharitmanas*. In these *chaupais* Sri Rama tells Vivishan what constitutes the real chariot which ensures victory, called the 'Dharmaratha'. This contains all the fundamental principles for guidance to achieve success. It teaches us how to get on the life's chariot of action, and also when and how to get down of it. Vibhishan was worried seeing Sri Rama in the battle-field bare feet, whereas His adversary, the mighty Ravana, was on a chariot. Sri Rama assuaged Vivishan by telling him that the chariot which leads one to victory is of another kind. Whether it is the life of individual, or of a nation, the qualities which Sri Rama mentions are of the greatest value. They deserve to be remembered whatever be the sphere of one's actions: science, art, or commerce. My mother loved these lines from the *Ramacharitmanas*. She made me recite those lines several times. With film of tears in my eyes, I recited these lines for the last time to her when she was lying dead near the holy bush of Tulsi. It would be good if we deeply reflect on what Sri Rama had told Vivishan (I quote the lines as rendered into English by Dr R.C. Prasad):

“ 'the chariot which leads one to victory is of another kind.

Valour and fortitude are the wheels of that chariot, while truthfulness and virtuous conduct are its enduring flags and pennants; strength, discretion, self-control and benevolence are its four horses, harnessed with the cords of forgiveness, compassion and evenness of mind.

The worship of God is its skilled charioteer, dispassion his shield and contentment his scimitar; charity is his axe and reason his fierce lance and the highest wisdom his relentless bow.

A pure and steady mind is his quiver, filled with the arrows of quietude, restraint and religious observances. Homage to the Brahmins and to one's own preceptor is his impenetrable buckler; there is no other way to ensure victory than this.

He, my friend, who rides upon such a chariot of righteousness, has no enemy to conquer anywhere.

Listen, my resolute friend; he who owns so powerful a chariot as this is a hero who can vanquish even that mighty and invincible foe, birth and death."

My Diksha

I couldn't have thought of anybody else to provide me with the *diksha mantra*. The great Sankaracharya had received the *sannyas diksha* from his mother. Manu had observed: "An Acharya or a Vedic teacher excels ten *upadhyayas* or teachers, a father excels a hundred *acharyas* but a mother excels a thousand fathers." On the Vijyadasmi day of 1970, I received my *mantra* from my mother. This spiritual experience I got in terms of the Tantric tradition of Mithila. Under our received tradition, *tantra* and *yoga* lead to the same end. With passage of time I felt that the Mahavidhya Tara, my deity, whose mantra I recite, acquired a living presence in my life. Whenever I was in crisis, I sought Her help which She never denied, She never delayed. When I am alone. She is within me, with me, and for me. I pray She comes to my mind when I am near my death, and I can tell Her in my silence:

मत्समः पातकी नास्ति पापघ्नी त्वत्समा न हि
एवं ज्ञात्वा महादेवी यथा योग्यं तथा कुरु

The craze for a son, & her distress

My mother was the eldest daughter of a rich land-owner. She was married to a poor man's son. My mother adjusted herself with her circumstances without ever grumbling. But she had her worry of the most agonizing kind. Elders of the family eagerly awaited her to be blessed with a child. Years passed. At that time a barren womb was considered the worst crime. If no child was born within 2 to 3 years of marriage, it had become customary to pierce the young lady with frowning look and caustic comments. They believed that as a barren piece of land was worthless for husbandry so was a barren wife of no use to a family. Till her thirty-first year my mother had no issue. She faced, with remarkable resignation, the slings of her misfortune. Her in-laws were very considerate but there were limits beyond which their considerations could not go. They wanted my father to marry again, but he declined.

The members of her in-laws' family had their reasons. They believed that a son is needed most as a support in old age, as the protector and maintainer of the family tradition, and, the most important, as the saviour from the hell to which one might be destined to be dumped after death. When after my mother's death I heard the *Gadurpurana*, I was aghast at the ghastly imagination of those who composed it. It paints blood-curdling picture of hell. It tells us how a son alone could save his dead father or mother from the infernal agony by performing certain elaborate rituals in which it was customary to give cows, jewellery, elephants, and other valuables as gifts to the Brahmins. On hearing the most macabre description of the hell, no good son would allow his father or mother to

suffer hellfire. One did everything possible to raise resources to perform these rituals. Often one had to sell land and incur heavy debts. I too heard this *Garudpurana* twice, one after my Mother's death in 1973, and the other in 1982, when my father died. Most of my young readers may find it difficult to understand all this. That worldview has changed. But such wishes had bred an inveterate longing for a son in most Hindu families. The idea lingers in most minds even now. But all these are fast becoming the stories of the past. The present-day sons do not believe in hell or heaven: they are neither bothered about their parents' plight whilst they are alive, nor when they are dead and gone. It is quite understandable. Now most of them refuse to look after their aging parents needing help. My mother suffered on account of the stupid desires of the elders to have a son to enhance the family tree with a new branch. I wish they could have known that in this world there is only one tree: we call it the *Samsarvrichha* on the twigs of which we have our short sojourn.

Mother was advised to perform all sorts of religious and tantric rituals to propitiate gods for a son. She ate all sorts of herbal preparations made by the Vaidyas and the Sadhus. She heard the *Harivamsh Puranas* as it was believed that on listening to it a son was sure to be born. She spent months at Baidyanatha Dham worshipping Lord Shiva, and hearing, on the temple's back veranda, that *Purana* everyday. Several days she lived on *bael* leaves alone. She gave away all her jewellery to the poor in her mood of total surrender to God. Then I came 'squalling, into the world.' I wonder what a tragic waste it was to add to the world's population.

The Mahabharta in her family

She lived with natural ease. She could tread on molten lava with trust in God. She faced life with such boldness which could come only when a person who suffers, and the person who thinks and acts, are not the same. In 1942-45 she experienced a series of shocks enough to unnerve the strongest souls. Her father was the patriarch of a great family; and her four brothers, two elder and two younger, were the four sturdy pillars of that family. My maternal grandfather resembled the sage Vishwamitra who was born *akshtriya* but through his *tapasya* had acquired the *Brahmanic* traits. My maternal grandfather was a Brahmin who made himself temperamentally a *kshtriya*. It seemed that in his village, and the places adjoining that, he ruled while the government simply complied with his wishes! My mother's eldest brother, Baldeva Mishra, was strong enough to have once smothered a wild boar in his embrace. He had saved Dr. Rajendra Prasad from a brutal attack by the imperial police while he was passing through Parbatta during the Freedom Movement. Her second brother, Bateshwara Mishra, was learned at law, and was an advocate of eminence at Monghyer. He had his rich library of law books. But the wrath of Destiny visited that family with ruthlessness. My maternal grandfather got embroiled into some land dispute which turned into a fratricidal war amongst the two important families, closely related and belonging to the same village. My mother's father was ambushed, and killed while going somewhere on his horse. Shortly after that, her first and second brothers were killed by their adversaries in bold encounters while on their way.

My mother's third brother, Kaleshwar Mishra, was preventively detained in jail as a measure to provide him security, and also to prevent him from participating in our nation's Freedom Struggle going on in full swing at that time. My mother's youngest brother Jageshwara Mishra was, at that time, a minor. Mother bore the waves of tragedy with fortitude. She had, at intervals, to go to Shernia to console and support her relations in the household rent with the sobs and lamentations of the three young widows. My mother guided their affairs with wisdom when there was none else to supervise things turning continuously difficult. My mother soon acquired remarkable knowledge of the agrarian problems, and became proficient in solving them. Her experiences gave her life a depth which I could never measure. I saw her never unhappy, never happy. She was always aesthetically delighting and sweet mannered, but I could see how her happiness and tragedy had melted into her serenity. I never saw her laughing; I never saw her weeping; I always saw on her face expressions which could come only if one transcends both by just accepting life as Destiny choreographs it.

My Mother and Father: their excellent chemistry

The *Mundaka Upanishad* says:

“Two birds, beautiful of wing, close companions, cling to one common tree: of the two one eats the sweet fruit of the tree, the other eats not but watches his fellow.”⁵

Whilst one is at work, the other is the observing agent: he is often called the *karmadhyksha* (the supreme observer of things being done). The two birds, to whom the *Upanishad* refers, were perched on a tree of creation (*Samsarvrichha*). The leaves of this tree adopt two tracks for their growth and evolution. I cannot think of an imagery more expressive of my parents' life-style than the imagery of the two birds on a tree, one busy at work, and the other just a detached onlooker, perhaps advising and inspiring the other whilst continuously evaluating what was being done. My mother and father, in their wedded life, constituted one creative agency. The leaves evolve in their inner universe acquiring gradual ascent to the Supreme; and also on the track of social growth and evolution achieving better social solidarity, inter-dependence, and public good. This inner evolution leads one to feel, what Swami Satyananda Saraswati expresses in his kirtan⁶ I would translate two stanzas of that :

That which is the Supreme Soul of the entire Universe
That is the Soul of all the Creatures
That Immortal Soul Sachhidanand, I am

Eternal is the Soul and perishable is the body
The Soul which pervades through the selves of all
That Eternal Soul Sachhidanand, I am

Hereconomic management

I remember how after a rough journey we reached our village in 1942. That was the time when World War II was going on, and our nation was astir with patriotic passions which our Struggle for Freedom had generated. After my

father's arrest, we had no option but to leave Rosera to live in poverty and deprivation. We were the members of a large Hindu undivided family of which my grandfather, Grihinandan Jha, was the *karta*, wielding vast unquestioned authority. But he was ruling over a bankrupt empire. The family was managed with the trickle of finance which my father and my eldest uncle used to provide out of their earnings as school teachers.

Our house had mud walls and thatched roofs with creaking doors not strong enough to withstand even a child's push. Those days people bothered more about the vagaries of nature than about the knaveries of men. We had to live on the principles of peaceful co-existence with a lot of snakes which roamed freely in the house and its courtyard. Once I saw one big snake coiling on the top of our mosquito-net. We had a full view of its soft belly and the rhythm with which it moved. The shine of the black cobra was infinitely beautiful and mesmerizing. I loved observing its agility and shine which made this most poisonous snake a thing of beauty. But the snakes never troubled us, never even frightened us. When we clapped, they simply rattled their body with their hood erect, reminding us of the Seshnaag (the king of all serpents) on whose coil Lord Vishnu is said to relax. They came and went; and we watched and clapped. My mother planted a lot of creepers both on the fences all around the inner courtyard and on the roof made of bamboo lattice with a heavy layer of superjacent hay. Their leaves and fruits stood us in good stead as they helped us to keep the wolf from the door. Boiled rice and green *poro* leaves became for months our staple food. The green stains of the boiled *poro* leaves on the boiled rice on our plate created patterns as if they were emerald particles scattered on the white marble.

We owned a small farm which was cultivated by sharecroppers. Those days the Brahmins never ploughed fields. Once I asked the reason for this taboo. My hilarious cousin said that if they ploughed the land there was the risk of more Sitas emerging from the furrows. He told me how Sita had come out from the furrow when Maharaja Janaka had tilled the soil.

We were in difficult financial straits. Her worst problem was to finance litigation which followed my father's arrest. As it happens most often, her helpers in the matter were most often blood-suckers. Those who looked after the litigations needed a lot of money for conducting them. She could obtain money only by pawning her jewellery, the final resource of a Hindu lady before being reduced to complete penury. The moneylenders and the pawnbrokers are everywhere alike, callous and blood-thirsty. They adopted heinous stratagems to extract super profits. They would do everything to gulp the pawned jewellery by forging some pretexts, the most common being the delay beyond the contracted time for repayment. Often I developed the wish which had led Roskolnikov, in Dostoyevsky's *Crime and Punishment*, to finish the cruel pawnbroker in a fit of frenzy. Besides, she had to raise money on high rate of interest. Quite often gold jewellery of 22 carat were pronounced by the crooks as only of 14 or 18 carats, even 9 carat. Our men, who took the jewellery to the shop, found the marks of gold on the touchstone beyond their comprehension. They believed that the touchstone, which looked like God Shaligrama, would never speak a lie. Where ignorance prevails, Deception rules.

Herspiritualpursuits

She had come from a *Karmakandi* Brahmin family to another *Karmakandi* family, but she evolved to become *vedantic*. When she performed the ritual of the *pooja* as a part of our family tradition, she performed rituals as if they were performed by some *Upanishadic rishi*. My mother could not read the *Upanishads* as she did not know Sanskrit. But she got her ideas from the *Ramacharitmanasa*. On seeing her attainments, I felt Tulsidas was wholly correct in claiming that in his epic he had expressed all that is the best in the *Upanishads* and other *Shatras*. What was remarkable was her experiments in life with those ideas she acquired from her study and reflections. Her art of life and her personal philosophy made her accept the challenges of life without demur. That human life could be lived so beautifully, and with such intense joy, is an idea that I still treasure in my mind after nearly 40 years of her death. Only a little I have been able to tread on her line. But her ideas have helped me to swim through my life's tumults.

Attitudes towards food: and the art of proper eating

Those days the preparation of food, and the way one ate food, had a clear *dharmic* dimension. Cooking in every household was done in the room wherein the family deity was worshipped. One could cook only after taking bath. Onions and garlic were never used in food preparation. Chicken preparation was wholly prohibited, in fact, inconceivable. Purity of mind was considered an essential ingredient in cooking. Cooking was a sacred function. The common practice was to dine on the mud-built veranda washed with cow dung mixed with water. Those who went for food had to remove their shoes in the courtyard itself. None could squat on the wooden plank for food without washing one's feet. It was obligatory to offer silently the food to god Govind by chanting *amantra*, humming in a low voice. None ever grumbled against the food provided. I never heard my parents grumbling against the quality of food. They felt, to find fault with what had become the *prasada* of Govind could be a sacrilege. One ate with concentration, mostly in silence. This attitude was maintained because food was considered divine (*annam brahmah*: food is God Himself). My mother was a strict taskmaster so that none of us deviated from the norms she prescribed for us.

We lived on food frugal by all standards. While at school I read about the concept of 'the balanced diet' containing appropriate proportion of carbohydrates, proteins, fat, vitamins and other minerals. The concept of 'balanced diet' did not accord well with the food I found many of my relations eating. Most of them never got balanced diet over years. There were many persons who lived on mere boiled rice with salt sprinkled. I saw many who lived full life without ever getting a balanced diet. Many did not get even bellyful of bare carbohydrates. Once I asked Dr. S.M. Nawab, FRCS, who was close to us, to clarify how they lived long without a balanced diet ever available to them. Dr Nawab was not only a distinguished doctor; he was also a thinker with deep insight. Before answering my question he asked me a question to know how they ate, and what their attitudes towards food were. I told him what I have just narrated. He found in what I said sufficient material to find out an answer to my problem. He explained to me Einstein's theory of Relativity, and his famous equation $E = mc^2$. If the

Universe is dramatized with speed twice the velocity of light the whole Universe would melt into Energy obliterating all formal distinctions. In the ultimate analysis, the formal differences simply do not exist. It was possible to draw from carbohydrates alone all that body needed. It depends on one's conversion mechanism. It is largely a psychic affair. It is the outlook towards food, and the state of mind of the person who eats, that matter. We have heard stories that many Rishis lived without food. Scientifically it is possible to live without food. Air could provide them with requisite energy as in the ultimate analysis air and food are the manifestations of the same energy. It is said that Villavmangalacharya, who sang the famous "Govind Damodar Stotam", lived on *bael* leaves for twelve years! My mother, who was listening to our conversation, to our amazement, came out with an excellent illustration. Meera had been given poison as *prasada*, so that she could die. She took that. It is said that the poison became *amrita* (heavenly nectar of immortality) the moment she gulped it. Two decades later I learned from Swami Satyanand Saraswati about the *Chakras* (the spiritual centres in one's body). I felt that the *Visudhi Chakra* must have transmuted the poison into *amrita*. Mind controls and conditions the chemistry of food we eat. Dr Nawab said that the concept of the 'balanced diet' is based on the law of average. As most persons have not been able to develop highly effective conversion mechanism, they are advised to take 'balanced diet'. It refers to what an average man can achieve at grosser levels. At subtler levels, things become different. The western medical science contemplates what is possible amongst the average men, at grosser levels. Dr. Nawab stressed that state of mind, at the time of eating, had a powerful role in the functioning of our body chemistry.

My parents were very particular about the taking of food. My father never forgot Gandhi's instructions on the right food, and the right way of eating. In such matters, my mother always shared my father's views. I found those instructions written on the wooden board that I found displayed in the Wardha Ashrama at Wardha which I visited it in 1986-1992 several times. Those instructions were thus stated by Mahatma Gandhi:

"Every one must follow certain norms in the matter of taking meals. There should be in one's food a proper proportion of gur, ghee, and vegetables. For one meal it is enough to have eight ounces of vegetables. It is improper to grumble about food. This sort of act is *himsa*. One should inform the manager about the deficiency. If something is raw, that should be left out. If desire for something more still remains, it is good. But one must not be angry. Every work should be done carefully. We belong to the same family; We must work with this sort of feeling. Even salt be taken only as much as is needed. One must not waste even water. I hope that everyone in the Ashrama would treat the things of the Ashrama as his, and also as the things held in trust for the poor. One should eat for health; and health is needed for rendering service to others. One should eat less, and with moderation. One should not create sound while eating. One should eat slowly and cleanly, considering food God's gift. Everyone should wash his utensils after taking meals; and should keep them properly."

I saw her phantom presence before she died

It was the late evening of December 8, 1973. I was at Patna, and my parents were at Laheriasarai. My wife was cooking food on a gas burner. I was studying W.W.Buckland's *A Textbook of Roman Law from Augustus to Justinian*, a very difficult and absorbing book. In a flash, I saw my mother standing before me, dressed in white, her face beaming with mystical smile. On her vivacious face mystical smile quivered, seemingly moving towards a subdued laughter. I was bewildered. I didn't know whether I stood on my head or on my heels. I told my wife my this strange experience. She was amazed. Throughout that night I remained awake trying to understand the mystery that I had experienced, but I failed to make out that. The first thing I did on November 9, 1973 was to ring up my son living with his grandparents at Laheriasarai. He told me that my mother was well. She asked him to convey her blessings to me. It was about 9.50 a.m. I came back to my residence. At 10.30 a.m, a friend of mine came running to my house. He advised me that I should immediately proceed to Laheriasarai where my father needed me 'at once'. In fact, my mother had expired shortly after my phone call. After listening to her grandson about my welfare, she ate rice and milk (as she used to do every Sunday), and sat on the wooden plank reciting Harinam (God's name) on her beads. She died. Perhaps she had a cardiac arrest. The great Sri Billvamanglacharaya in his 'Sri Govind Damodar Stotram' had wistfully prayed to his own tongue:

I seek, O Tongue, only one benefaction.
When the Lord of Death catches me in His jaws
You sing with great devotion and deep delight
'Hey Govind, hey Damodar, hey Madhava.

[Translation mine.]

Life flowers in death. The day she died was the *puṇnima* (full moon night) of Agraḥanya. Death, the Great Reaper, could not have come at a better time. The harvest was ripe. Keats in his sonnet, 'Why did I laugh to-night', had said:

Verse, Fame and Beauty are intense indeed
But Death intenser - Death is Life's high meed.

She was cremated on the bank of the holy Ganges at Semariaghat. Lakhs of devotees were taking holy bath in the river. I felt : they had assembled to pay homage to her departed soul.

This daughter of Mother India lived thus, and died thus. Her life had become, during the short period she visited this earth, a piece of poetry. I experienced its meaning at different planes. If I would not have seen her closely, I could not have believed that a daughter of Mother India could be so impeccable in the art of life. That flower has gone but its fragrance remains.

PORTRAIT OF MY MOTHER

NOTES AND REFERENCES

- 1 Bertrand Russell, *Autobiography* p. 444
- 2 Translated into Hindi by the author.
- 3 "I have no husband, no sons, no kinsmen, no brothers, no father, not even you, O Krsna."
(Translated by Dr S. Radhakrishnan in his *The Bhagavad-Gita* p. 97.)
- 4 J. Bronowski writes in *The Ascent of Man* p. 56
- 5 Translated by Aurobindo in his *The Upanishads* p. 205
- 6 Which you can hear at my website www.shivakantjha.org

5

MY BIRTH : MY ODYSSEY THUS BEGAN

जलते खिलते बढ़ते जग में घुलमिल एकाकी प्राण चला

— Mahadevi Verma

My Birth: reflections on this idea

James M. Barrie said that “the life of every man is a diary in which he means to write one story, and writes another, and his humblest hour is when he compares the volume as it is with what he hoped to make it”. Now I have reached a point when I should compare “as it is with what [I] hoped to make it”. But I am at my wits’ end: I do not remember what sort of story I intended to write when its prologue began at my nativity. Yet I must reflect on my birth as I intend to see my life in the round.

In this Chapter, I would reflect on what I believe I had been endowed with by Creator at the point of my birth. But recalling the past, when one is in the December of one’s life, is to enjoy bitter-sweet cocktail of pleasures and pangs: pleasure for my great luck, pain for my misfortune much of my own making. This is also an opportunity to reflect on how my Fate has made me a mere pawn in the game of chess that Time has played with Decay. In this Chapter I would record about the moments when I was caught in this cycle of life and death; thus commencing my journey about which Sankaracharya says:

Punarapi jananam punrapi maranam punarapi janani jathare sayanam;

[Again a birth, again a death, again an existence in mother’s womb.]

Those who see the Civil List of the Indian Revenue Service would find the date of my birth recorded as March 9, 1940. My own researches, and the discovery of my horoscope, drawn up immediately after my birth, have led me to believe that my correct date of birth is July 19, 1937. But I cannot testify its veracity as I couldn’t be a witness to my birth! Besides, one cannot exclude hearsay evidence when one intends exploring things pertaining to that sort of event. We know that in our traditional society, the day of birth was not considered very important, because at that point *jiva* (the being) comes under the bondage of this world’s existential tedium. Our society, by and large, did not attach much importance to the correctness of the date of one’s birth. Thus began my odyssey in the world: it matters not whether on this or that date. What matters (does it matter at all?) is that I began. Nobody could know then whether that was going to be just ‘a tale told by an idiot full of sound and fury signifying nothing’, or a grand ascent on

the life's chariot with Lord Krishna as the *sarathi* to guide life from *vishad* (a phase of sufferings) to *vasant* (a phase of joyous peace). But I have never forgotten in my life what George Santayana said: "there is no cure for birth and death save to enjoy the interval".¹ But the concept of enjoyment is not the same for all. To tell you in good faith, I haven't discovered one for me, and for me alone.

I

(a) Defining my observation-post

I never realized that writing about one's birth can be so difficult. My perception of that event evokes my divergent responses. I have discerned four dominant observation-posts from which to reflect on my birth: first, what my birth meant for my parents; second, what it has meant for me; third, what it meant for the world; and fourth, what it means in the cosmic flux.

(b) What my birth meant for my parents

My birth was a great event for my mother. When Krishna was born in Kamsa's jail, it is believed, the fetters of his parents, Devaki and Vasudeva, fell down bringing delight to the terribly wrenched souls whose six children had already been killed by the cruel King Kamsa, and the seventh, Balarama, had survived only because he had been moved to Rohini's womb. I have told you in Chapter 4 (Portrait of my Mother) about the sufferings that my mother underwent under the social indictment for carrying a barren womb. This petty reason for her great delight might amaze you because our attitudes towards sons, and our expectations from them, have now substantially changed. Then, it was customary to expect a lot from sons. They not only carried forward the family traditions, they even brought about a measure of immortality for their parents. They could become the great support for the parents in their old age. But the parents had a constant worry that Markandeya described in a well-known *shloka* in the 'Vanaparva' of the *Mahabharata*: he said:

"O Mighty King, thus after facing a lot of difficulties one gets a son, an achievement rare and great, yet one becomes worried as one doesn't know what sort of person his son would become later."

Now we see how attitudes towards, and expectations from, children have changed. Respect for family tradition has almost gone; belief in family values stands much shattered. Expectations have melted away. But I must not reflect from my present observation-post. I must go back to those days of my parents' agony which ended with my birth. When I look back over the years spent, and get down to brass tacks, I feel that they were lucky to live with some great illusion. But life has taught me that it is often much comforting to live with illusions. We need some illusions to survive.

If I am ever asked by a bird in the bush to single out one core reason for which I should value my birth, I would say: "I could save my mother from her agony". I know in this world of calculators, this reason would be trashed for being sentimental bullshit. My mother once told me: "Only two things I expect from you: one that you would recite the *Ramcharitmanasa* when I am gone; and second, you would lit my funeral pyre." I could do both, and became supremely satisfied.

She expected nothing else: she got what she expected. When she died, I scanned my memory to discover her two subsidiary expectations from me: one to cremate her at Semariaghat on the bank of the Ganges, and the other, to provide her an eternal repose by performing certain rituals on the sand of the river Falgu in the sacred city of Gaya. I could fulfil even these two wishes of my parents. To my mind, my relevance was established.

(c) The Starry Messenger

In our Indian society, people generally believe that the configuration of the stars and other spatial and temporal aspects at the precise point of time of one's birth do have vital bearings on a person's life. I must confess that I haven't been able to evolve any coherent and self-convincing view on these issues, mainly because of my deficient knowledge in this field that explores the relationship between the humans and the heavens. But I have gone by what my mother and other elders believed, and what I got from them. I had known about Galileo's *Sidereus Nuncius* (The Starry Messenger) recording his telescopic astronomical observations of high heavens. But the idea that the stars at the time of my birth had brought some message for me was my amazing discovery. It was high poetry to reflect on this speck of dust to discover something that established this bond with the stellar universe! My parents strongly believed that the stars do influence the course of one's actions. My modern mind was reluctant to accept such ideas, but I had seen so many mysteries in God's good world that it was not possible for me to deny them.

I was born in the month of *Asaadha* when the sky is most luminous with streaky clouds floating in the sky at random. I recall that winter evening when we sat around fire in the outer courtyard of my sprawling house. I was a boy barely of 10, and waited there for my sweet potato to undergo a 'fire ordeal' under burning charcoal. I heard my grandfather tell one of his friends accustomed to assemble there every evening. He said: "For me the month of *Asaadha* is important only for two things: one, because this Shiboo (myself) was born, and the other because *Yaksha* (a demigod), who had been banished from Alkapuri leaving there his beloved, invoked the clouds to carry his amorous message to her, and to testify to her about his plight". At that time his words meant nothing for me, but decades later they yielded their meaning which made me laugh, and laugh, and laugh. I came to know that the great Kalidas composed his *Meghdootam* narrating the story Yaksha who had implored the clouds to carry his amorous message to his beloved. He had seen the clouds from the hilltop of Ramgiri. That was the first day of *Asaadha* (*Aasadhasya prathamadivase megham*). When I was posted as the Commissioner of Income-tax at Nagpur (during 1986-'92), I went to Ramagiri to see how the sky might have appeared to *Yaksha* then. I sat on the stone railing of the Kalidas memorial at the hill, and my mind went back to my grandfather who had made such whimsical comments more than three decades back!

I was born at 7.39 AM on 19 July 1937 being the *Asaadha Shulke Ekadasi* popularly known as the *Harishyani*, the eleventh lunar day of the *Shukla paksha* (bright fortnight) of *Asaadha*. The *Padma Purana* tells us that on that day God Vishnu goes to rest on the sprawling coil of the Sheshanaga (the cosmic serpent) in the Ksheersagar (cosmic ocean of milk) where the Nag spreads its hood to provide a canopy under which the Lord rests for four months. Once I felt greatly

amused by my mother's explanation of my birth. She believed that when the Lord went to take rest, He sent this frail self to the world to take care of the universe. My mother's comment brought to my mind a poem by Rabindranath Tagore in which he says that once the setting Sun asked: "Who is there to take over my duties whilst I would go to sleep?" An earthen lamp, with a flickering flame, said with hesitation: "I shall do what I can, my Master". Of what worth this earthen lamp has been in playing his role in the world, is for God alone to judge. I fear, if judged, I would surely be found wanting. Hence my prayer would just be: "Judge me not Mother. Just be merciful: करोमि दुर्गे करुनार्ण वेशि (be merciful, Durga)."

My detailed horoscope told us that the specific star, under the spell of which I was born, was alluringly bright. It was *Anuradha* which means 'good luck' (सत्कीर्ति कान्तिश्च सदोत्सवः स्यात्.). Our family followed the ancient tradition of the *Sukla Yajurveda* (the White *Yajurveda*) as construed in the *Vajasaneyi Samhita*. All these together, I felt, amounted to an invocation to Light! It was the sacred day of *soomvaar* (the day of the Moon) named after *Chandrama*. I could gather that on that day the ladies of our family were busy performing *pooja*. Its detailed rituals were prescribed in the *Skanda Purana*. I was born under the *Singh Lagna* (Simha Lagna: Leo Ascendant) with the Sun in the first house, and the *Brischick rasi*. It is said that the *Lagna* controls the environment in which one lives and works. *Therasi* reflects one's state of mind in all its variations.

In my detailed horoscope, the astrologer had expressed certain grosser features manifest from certain indicators he mentioned therein. These features were believed to determine one's dominant traits. I was charmed by the comprehensiveness of the description, and the beauty of the Sanskrit verse. It is possible to draw up, on reading the horoscope, a summary of the main features of the divine endowment that the Starry Messengers were supposed to have brought for me at my birth. If I display them on a scattergraph, their density and the directions would carry some sense. All these features and qualities indicated traits pertaining to the Realm of Light. The import of a *kirtan* that my wife often sings is a prayer to Light: उजाले अपनी यादों को हमारे साथ रहने दो, न जाने किस गली में जिंदगी की शाम आ जाये "O Light! Never depart from my consciousness. Who knows when the evening of my life comes commanding me to bid a goodbye to the world we live in."

When I reflect on my endowment, as indicated in my horoscope, I feel crushed under the feelings of dismay. I do feel that I have wasted my opportunities. It is easier to suffer when the sufferings are inflicted by others; it is most excoriating when they are wrought by one's own actions and inactions. In the *Bhagavad-Gita*, after telling Arjuna the message and the instructions of the *Gita*, the Lord told him to exercise his liberty to make his right decisions in performing his duties. He tells him: "now reflect on the wisdom imparted to you, and then do as you please". I have believed that one's life, like our earth's, has two movements. With birth, one begins one's journey towards death, but with it also begins the process of one's spiritual evolution towards higher and higher cultural attainments. But I must not pursue this point further because, I feel, I must allow it to remain a thing between me and my God. I have realized that in one's life moments come when it becomes imprudent to be wholly candid.

(d) What has it meant for me

Once I read out to my father what a character said in Shakespeare's *As You Like It* said:

‘All the world’s a stage,
And all the men and women merely players;
They have their exits and their entrances;
And one man in his time plays many parts...’

My father, after a short pause, said: “Yes, the ‘world’s a stage’. It is a part of the cosmic *kriya*, the players are out to perform their *karma*, and the Great Regulator of the whole Creation is the presiding observer and the supreme Judge, infallible and sovereign.” My mother, who sat close sorting fruits, intoned the words of the great Tulsidas: “*Bade bhag manusa tana payo*” (It is great fortune to be born a man). These ideas have remained alive in my mind helping me to shape my life’s course.

I had many moments when I had reflected on what my ‘birth’ meant for me. I would mention two contexts: one when I read T.S. Eliot’s *Sweeney Agonistes*, and the second, when I read Mahadevi Verma’s assessment of her life. T.S. Eliot said in *Sweeney Agonistes*:

Birth, and copulation, and death
That’s all the facts when you come to brass tacks

Mahadevi Verma: portrayed the course of her life in extremely touching lines:

विस्तृत नभ का कोई कोना मेरा न कभी अपना होना,
परिचय इतना इतिहास यही, उमड़ी कल थी मिट आज चली

(No portion of this wide firmament be ever for me a corner of repose. My profile and history come to this: I flourished yesterday, and am gone to-day.).

But my deeper reflections, led me to believe that Eliot’s ideas were only context-specific in the tragedy of *Sweeney Agonistes*, and Mahadevi’s just a way of describing herself as one caught in the cosmic process of creations portrayed in Chapter 11 of the *Bhagavad-Gita*. My reflections have led me to accept, without reservation, what my mother said quoting Tulsidas: “*Bade bhag manusa tana payo*” (It is great fortune to be born a man).

Whenever I think of my birth to discover its meaning and purpose, I get terribly confused, and my mind gets befogged. Whilst I am convinced that life is surely much more than ‘birth, and copulation, and death’, I am not clear what precisely Tulsidas’s paeon to human life means. Surely he was not thinking of the process of evolution at the biological plane about which Charles Darwin had said so much. The biological process is beyond human endeavour. Lamarck thought of cultural evolution to which human endeavour can surely contribute. But ‘cultural evolution’ might take place without spiritual attainments. I admit I am confused. It would be great if before I end my journey I succeed knowing the meaning and purpose of my life. I cannot persuade myself to summarise the course of my life with that measure of clarity and confidence with which Harivansh Rai Bachchan did in his verdict on own self saying: ‘*Mitti ka tan, masti*

ka man, kshan-bhar jivan, mera parichay’ (a body of clay, a mind satisfied in joy, and life just a span of an ephemeral moment - that is what I am). How exact was he in assessing himself! I had not only read his poetry, I had some access to his vast learning in course of the interactions I had with him when I was a lecturer in the Department of English at L.S College, Muzaffarpur. There were occasions when Bachchanji spent a few days with Prof. Mahendra Pratap. They were good friends, and had studied at Cambridge. Bachchanji helped me in understanding the impact of Vedanta on Emerson, W. B. Yeats, Somerset Maugham, Aldous Huxley and Christopher Isherwood. He had obtained his doctoral research degree from Cambridge for his great work on W.B. Yeats, especially his idea of the occult finding expression in Yeats’s *A Vision*.

(e) What does it mean to the world

I do not think my birth had any significance for the world. But I have realized that life is not ‘management by objective’ (MBO) with which the B-school students learn to live. One is born to die, and life is an interlude, at best an interregnum. George Santayana has a point when he said: “there is no cure for birth and death save to enjoy the interval”. But the problem is : how to enjoy the interval? Krishna has told us the art of life in the *Bhagavad-Gita*:

I have seen in life a process and pattern that takes my mind to those six months which I spent at Mussoorie in 1964 while undergoing my Foundational Course training. Most often I found, while treading on the roads, my visibility lost because of dense fog. But as we advanced ahead on the road, more and more patches of the road became clearer and clearer. I could recall the night when I left my village to reach the railway station at the distance of 8 miles. Usually, we travelled the distance on a bullock cart which had a lantern hung under its chassis shedding poor light dispelling darkness not beyond a few meters. But it was miraculous to see how that light went on conquering darkness with every move forward by the bullocks.

In our society, the highest respect is paid to the *guru* which helps us acquire wisdom. Mother is the greatest guru, Father is the great guru, and the formal teachers are the gurus deserving respect no less; but Krishna is the *Jagatguru* (teacher for all the humans of all the times). For my mother, the supreme objective in life was to become part of the process of cosmic creativity of which procreation itself is an essential part. My father taught me many things. He told me to see *Parmatma* (God) in everyone, everywhere. He often emphasized that one must not be dismayed if efforts to do good go in vain. He narrated events from the *Mahabharata*, and quoted, with full approval, the instructions given by Vyasa: to quote what the great poet said (rendered into English by me):

Sorrow which we share in common,
It is unwise to shed tears thereon;
It is prudent to find and forge some ways
To diagnose the cause to get rid of what is wrong.

I was so impressed by these lines that I quoted them on the home page of my website www.shivakantjha.org. In my life, I have sincerely tried to follow the great poet’s instructions. I have tried to tread, with utmost sincerity, the path of

Karmayoga. This has been greatly satisfying; and this has sustained me in the worst crisis I have experienced. A step taken in a good cause is enough in itself. Krishna has emphasized this when he told Arjuna (the *Bhagavad-Gita* VI. 40): “Doers of good never come to grief”.

But, what is good for the world depends on the motive with which one works, or earns, and on the attitude one maintains towards human beings, and our environment. In the present-day neocapitalist worldview, it is considered good for humanity to increase wealth, with no holds barred, in the hands of a few so that the trickle-down effects, from the wealth, so accumulated in the hands of a few, can do good for all others. I would request you to read the lines I have quoted from Dostoyevsky’s *The Brothers Karamazov* in Chapter 6 of my Memoir. It tells us about a man who had 100 hounds, each looked after by an exclusive attendant. One super-rich creature might need 500 human beings, or even more, for his own creature comforts. They can provide employment to a lot of human vermin. They can think themselves super-human benefactors of others. I would revisit this point in Chapter 24 of the Book III of the Memoir.

(f) What it means in the cosmic flux.

I wonder whenever I think about what it means to be born in the cosmic flux. All the events of life fade into insignificance if one compares them with the happenings in the mother’s womb. Mind boggles when we are told (i) “that there are 250,000,000 red cells in one small drop of blood, and inside every red cell there are the same number — about 250,000,000 — of hemoglobin molecules”, and (ii) that all “the information which specifies *us*, the information which specifies a human being, is laid down in 46 chromosomes, which together contain a length of DNA of about 1 meter. This one meter contains about 3 billion bases, the equivalent of a library of about 5,000 volumes, all packed together into a single cell.” The DNA is of atomic dimensions, and information is packed so tightly that it can fit into a single sperm or a single egg.”² When we think of a galaxy or an amoeba, of the stars or the cells, we become silent with a sense of wonder. When I think of my birth and the process of creativity that commenced with that event, I wonder in silence.

When I think of life in the cosmic flux, the ideas of birth and death become meaningless. We have seen clouds in the sky forming patterns which keep on changing from forms to forms. We see how electronic advertisements show shifting shapes, sounds and colours where nothing is born, and nothing is dead, and nothing is ever alive. Illusion goes on. When I read Chapter 11 of the *Bhagavad-Gita*, ‘BIRTH’ and ‘DEATH’ cease to have any significance. When we think of birth and death in the cosmic context, we have no option but to become silent. A black bee buzzes only till it has not tasted the pollen of a lotus: once it does that, it becomes silent.

II

(a) The First Faces

I was born in village Shernia, a village now under Khagaria district of Bihar. The event of the birth of a child was not generally allowed to take place in the family’s main house. For this, it was customary those days to construct a tiny hut

in one of the neglected corners of the inner courtyard. This one room in which I was born had a thatched roof supported on a frail bamboo frame. I was born on the bed of straw and hay spread on the mud-floor. My mother told me how one day a snake was seen creeping inside the hut. It entered unseen and went out unseen. Fire was continuously set ablaze day-and-night over all the days till the *Chhatthi*, a *pooja* that is performed under our custom in the sixth night after one's birth. It is interesting that I was born in the presence of blazing fire into which my dead body is destined to be consigned someday. This tiny hut was called the *Saurighar*. It resounded, when I was born, with the mellifluous songs called *Sohar*. Most of the songs had as their central themes the joy at the birth of Rama and Krishna. The overwhelming joy deepened my mother's sorrow on seeing this rickety skeleton panting and gasping with not much chance for survival. This delicate rickety mouse was put on a banana leaf believed to have cooling and medicinal properties. To my mother the whole show might have appeared grossly ironical as she could see *Kritya* (the Goddess of Death) round the corner to snatch her baby away. Yet some 'Hope' sustained her. She even distributed a lot of silver and gold amongst those present there.

It is interesting to note that both words '*Sohar*' and '*Saur*' come from the same Sanskrit root from which is formed *Sukagriah* meaning 'the house for a bird'. How profoundly suggestive this expression is. What else is our life if not a mere house for a bird: ? Our existence resembles that of a bird. We come from the unknown, and fly to places not known; and spend time after the first and before the second, in some prison which our existence, when all is said, is. .

The first human face that I saw was of a woman of the lowest caste in our society, called *Chamaina*. She was trained under the prevailing customs to help women in delivering babies. It was she who declared first to which gender I belonged, or also, whether I was born alive or dead. It is strange that the advancing years made us ungrateful to such humble benefactors.

(b) The Goddess: the Chhatthi Mata

It is said that the storms in life begin the moment one is born. It is believed that one comes under the magical spell of some demonic being soon after one's birth. To exorcise the baby from that sinister spell, and to wish the newcomer a long life, a *pooja* is performed at the midnight. This practice had been recommended even in some ancient scripture, like the *Grihisutra*. This *pooja* was performed in the *Tantric* tradition of Mithila. With the white paste of rice various images, mostly of hands, were drawn on the wall and on the floor, with vermilion and petals strewn thereon. These geometrical patterns were images and metaphors expressing ideas, and aspirations for a happy life. Vermilion marks and flowers of different colours suggested the life's many coloured dome. *Alpana* becomes an excellent example of sensuous shining forth of ideas. In accordance with the prevailing custom, an elderly lady (in my case, it was my mother) wrote, in the course of the *pooja*, my fate on a Tal leaf. It was secretly done as it scripted the baby's destiny. It was commonly believed that God scripted one's destiny in course of that *pooja*. The function of *Chhatthi* is symbolic. The book of life is written the moment a child is conceived. Through the imagery of the imprint of palms, the role of *Karma* and *Kartvaya* in human life is suggested. Such imageries are

drawn up on many sacred occasions. I cannot forget their lusty shine and beauty when done on walls near the main doors, done every year during the *Durgapooja*. They symbolize *karmayoga* which conceives the universe as *kriya* (action). Speaking about the mark of the man's hand in El Castello in Spain, J. Bronowski says³ : "All over these caves the print of the hand says: This is my mark. This is man." Human civilization bears the mark of man's hand: it reveals the glory of *karma* that man does. So the panegyric to *Karma* was made earliest in life through imageries.

On the day next to this *Chhati*, I was taken to the family temple in our courtyard. Our family deity is Kalika. No auspicious function in the family ever took place without the loving worship of this deity. Whenever any one of us left home to remain away, even for a night, or returned from other places, it was customary to bow before the deity seeking her blessings. Every evening an earthen lamp was lit on her altar, and *kirtans* were sung by all the members of the family assembled together.

Thus began my relationship with my parents, all others of the family and with the world, and also with all the galaxies in the cosmos. Thus I began the game of my life. Omar Khaiyyam said:

*"But helpless pieces in the game He plays
Upon this chequer-board of Nights and Days
He hither and thither moves, and checks... and slays
Then one by one, back in the Closet lays."*

(Fitzgerald's translation)

Thus I was put on the chequer-board.

NOTES AND REFERENCES

1 *Soliloquies in England 'War Shrines'*

2 Both the quotations are from 'Molecular Biology by M. F. Perutz in *Cambridge Minds* ed Richard Mason

3 *The Ascent of Man* p. 56

6

MY CHILDHOOD DAYS : THE HALCYON YEARS

*I have had playmates. I have had companions,
In my days of childhood, in my joyful school-days,
All, all are gone, the old familiar faces.*

Charles Lamb, *The Old Familiar Faces*

Nadine Gordimer has announced a story entitled "Some are born to Sweet Delight" with these two lines from Blake's *Auguries of Innocence*.

Some are born to Sweet Delight
Some are born to Endless Night.

I was really born to Sweet Delight. My maternal grandfather Pichitlall Mishra was a rich man well respected far and wide in his locality for his wealth and wisdom. His family was rich and brave, and spent a lot on religious functions and charity.

The Naming Ceremony (the Naamkaran)

In accordance with the prevailing custom going back to the days of Ramachandraji, after 11 days of my birth I was named 'Deep', which means "an earthen lamp". It is highly poetic to be called 'Deep': its body is of earth bound to return to the earth: but its flame moves upwards, as if it were the *aarti* to the Lord. In our Hindu society naming of a child is a solemn occasion. It is one of the *samskaras* (the sacred ceremonies). For my mother, I was just a flickering flame supported merely by her hope. My maternal uncle blessed me: "Be like an earthen light to dispel darkness". The Buddha had blessed someone counselling: "*Appa Dipobhabha*" (be thou thy own lamp). They called me 'Deep' (an earthen lamp). But I was formally named 'Shivakant' on a formal occasion after a good deal of deliberations by the elders and the family pundit. Brahaspati had said: "Name is the primary means of social intercourse, it brings about merits and it is the root of fortune. From name man attains fame. Therefore, naming ceremony is very praiseworthy." But my parents, and other elders, kept calling me 'Deep'. I feel sad as by now they all have gone who so lovingly addressed me by this short lovely name.

My Parents' attitudes towards children: they saw the Archer's hand

Coleridge made a touching point when he crisply said: 'I have often thought what a melancholy world this would be without children; and what an inhuman world, without the aged'. What always struck me extraordinary was my parent's 'carefreeness' about me. While they were never deficient in their parental duty, they held attitudes towards children resembling Khalil Gibran's. Children are the sons and daughters of Life's longing for itself." Gibran said:

"They come through you but not from you,
And though they are with you, yet they belong not to you. "

The children resembled the arrows which the Great Archer sends off from the bow, which the parents constitute, towards targets which the Archer alone knows. Whether the arrows, shot off the bow, reach their targets, or are lost on the way, the bow must not bother about. Once my father had shown me Marc Chagall's painting 'The Wedding' where a baby cherub, with wings unfolded, clasps heads of their parents giving the impression that it was on its take-off towards a destination unknown.

Down the memory lane

Childhood is generally a period between infancy and adolescence. "I understand", writes Lord Hailsham in his memoir, *A Sparrow's Flight*, "that people do not remember events which take place before they turn of five years." On racking my brain to go down my memory lane, I can see how I clung on the back of my maternal grandfather when he squatted on a wooden plank on his outer veranda. I was not even four when my maternal grandfather was killed. He was killed the way the great Dronacharya had been killed in the battle field of the Mahabharata. I have written something about him in the Chapter on 'The Portrait of my Mother'. He was tall and sturdy, and so fat that on his back I felt I was on an Arabian stallion. When I heard about his death, I couldn't believe it. How could the Olympus ever crumble even if the tempest of Death was most furious. I can also bring back to mind my father swinging me up and down on the rhythm of a song which he intoned in his characteristic rich voice. But I couldn't make out the song, but I enjoyed his voice and his style of singing. When he raised me up, I felt I was moving up into the space; when he brought me down I descended down on the earth with a thud. The words which he intoned meant: 'Let a new house be raised: let the old one be brought down.'

**I hold myself under an infinite gratitude towards my Mother
whose fragrance is ever fresh, ever sweet for me**

Those days it was a general practice to massage the child with mustard oil and then to place the baby under the Sun. Often a lot of oil was put on the sternum of the baby. They believed that the Sun-rays and the mustard oil did well to the baby's health. It was felt essential that someone must remain near about the baby otherwise some ominous whirlwind could carry a baby aloft to the world unknown. Such morbid event had already taken place in the life of Krishna when Trinavarta carried off Krishna in his horrendous whirls. True, Krishna killed the demon, but such a feat could never be effected by ordinary mortals. So deep was

faith in the supernatural that my mother was most often busy in her multifarious efforts to ward off any evil that might overtake me. My village had certain *tantriks* well known in all the adjoining villages. Their power of the occult was never doubted. It was believed that some of them could even drive trees to shift with their roots, trunks and branches from their places to the places where the wizards wished them to go. My mother did not believe in such yarns, yet she was not ready to take any risk. She sat near me on the straw-mat most of the times. Like all other mothers, she sat gazing at her baby observing the 'sleep that flits on baby's eyes', 'the smile that flickers on baby's lips when he sleeps', the sweet, soft freshness that blooms on baby's limbs'¹ I wonder how my mother would have seen such things in her son, almost a gasping and panting skeleton. But she sat softly gazing, often cornering tears in her eyes, trying laboriously to discover some hope and meaning in that new visitor to the planet. After seven decades, when I reflect on how she cared for me, I am sure her meditative glance subjected me to a spiritual engineering to make me what I have become now; even this that vexes you with the words you are reading .

The Canoes adrift in the streams

My mind takes me back to those early years of my life when I enjoyed putting paper-canoes into the languid rainy streams, or into the gurgling floodwater. Rainworms or ants were forced to become a motley crew in my tiny Titanic. The ups and downs of the canoes in swirling rain stream provided some fine moments of the thrills of macabre delight. The worms and the tiny insects would creep over the brim of the canoes to crook down into the stream on which the canoes drifted. If on account of heavy rain, or the flow of the flood, the water gushed strongly, most of my canoes turned turtle. It was joy to see how the black ants frolicked even whilst they panicked, and then tried to swim to survive. But in this struggle for existence only those survived which could luckily climb over the tiny green bushes if they could find them floating down and down. But all these made me writhe with pain. I developed a craze for fishing. I made my own fishing-rod with which I tied long sturdy thin nylon thread at whose extreme tip I clipped a hook. I used the earthworm, which I picked up from my garden by upturning soil with a borrowed spade. I used it as the bait on the barbed hook for catching fish. When my mother came to know how ruthlessly I excavated the tiny creatures with a spade, which cut many of them into pieces, she was furious at my heartless adventures. I gave up this cruel act not out of benevolence but out of fear of my mother. I was shocked at my propensity for inflicting cruelty on other creatures. Childhood has been greatly romanticized in poetry. My mind captured the imageries of the capsizing canoes, and suffering worms. Their tragic lot lingered in my mind, and deepened my distress which I shared with Thomas Hardy when I read, years later, his poem 'Nature's Questioning' in which "Field, flock and tree" wonder:

Has some Vast Imbecility,
Mighty to build and blend,
But impotent to tend,
Framed us in jest, and left us now to hazardry?

The Stories which amazed & enchanted, taught & delighted

Those days all the houses in the village were of mud and daub. The house in which my parents lived was massive, and majestic. Its outer veranda was meant for men, and was the hub of all sorts of activities. The verandas facing the inner courtyard were meant for the ladies. As a child, I enjoyed my moments on these verandas. My second aunt held her conclave on the northern veranda. We children called her 'Manai'. She had great skill in story-telling. She had a prodigious memory and a wonderful capacity to invent situations and characters. Her language of gesture made her stories come alive. She believed that she could understand what the birds communicated through their warbles, and could catch what the leaves told through their rustling, what the thunders told through their ferocious and deafening noise and what the lightening suggested through its flashes of bright and piercing light, through the varied patterns of luminosity. Hers was the last word on everything she told us. Whenever we had grievances against anybody, we went to her. She was our highest appeal court. Everyone accepted her jurisdiction to decide, and we had total faith in her administration of justice.

Winter afternoons, and summer evenings witnessed multifocal activities going on in the inner courtyard. The elderly ladies had their own conclaves in which Manai was often the presiding deity. Her tone was generally censorious, and she could not stand aberrations. Her subjects ranged from the mosquito menace to the ways of the daughters-in-law which invited deserved frowns from their mothers-in-law. The most attentive listeners could embroider on her comments to carry tales, most often to raise a storm in the tea-cup, and also to provide a cause for the wordy fireworks.

Manai was short in stature but very fair complexioned; and had white flowing locks adding grace to her sharp features. She spoke in heavy tone, and her eyes had hypnotic piercing effects on the children who sat silently before her to listen to the stories of yore. She could tell all the stories of the *Panchtantra* in her characteristic style keeping the listeners spellbound. Her veranda on the northern side of the courtyard was, throughout the afternoons round the year, the hub of activities. It was also a laboratory for experiments in culinary arts and sciences. The children were the food-tasters. The veranda was wide enough to provide space for the games of *choupar* with cowries. Small cowries were used to provide eyes to the clay images of the monsters. The elders of the family loved to predict future using cowries, mango-seeds, and twigs by arranging them in certain ways. Postal communications were irregular, and telecommunication was non-existent. Manai predicted shape of things to come by working on the *Ramasalakaprasnavali* appended to that edition of the *Ramacharitmanas* which she read every afternoon. She taught me how the predictions could be made by moving fingers on the letters cast in an intricate latticelike chart in *Ramasalakaprasnavali*. The letters, selected at random after closing eyes, could become a line suggesting what was destined to come about. Till I joined my postgraduate course in the Bihar University in 1958, I frequently drew on the said chart. I seldom thought that it was a mere art of passing time.

Two beautiful photographs, one of Devi Durga on Her ferocious lion, and the other of Lord Krishna tending His cows, had been hung up on the mud-wall on

the northern side of Manai's veranda. She lighted incense every day. On the same wall was pasted a long photograph of a beautiful lady whom we did not know. Her son, my cousin, was a most beautiful man I ever saw. He looked so debonair that any Venus would have eloped with him. In some moments of passion, he had set his heart on a beautiful lascivious lady of the celluloid world of Bombay. Once he substituted Durga's photograph with that of his sweetheart. But Manai believed her to be a new version of Durga Devi. When someone told her who she really was, my Manai was not disturbed. She uttered in low voice: "For me she is Durga" She never stopped putting some petals of flowers on that photograph. But those who did not like this continuing fraud, removed, through stealth, that photograph, and substituted that with Durga's. But it was too much for my cousin to withstand: one fine morning he left home in search of the lady but came back, totally broken, after 15 years, just to die at his place. He could well express himself in Vittoria's last words in John Webster's *The White Devil*:

My soul, like to a ship in a black storm,
Is driven, I know not whither.

On Manai's veranda, I heard the story of the owl and the crow. Arimardan, the King of the Owls fell foul with Maghvarna, the King of the Crows. Arimardan killed a lot of crows. The crows could not match the owls in number and skill. So the King of the Crow resorted to a diplomatic move. His minister went incognito to the King of Owls, and wanted a refuge on the plea that he had been driven out. The King of the Owls, Arimandan, could not see through the game. He granted him asylum in his Kingdom. Later the King of the Crows attacked the King of Owls. The Owls were defeated, and were destroyed. While my aunt was telling the stories, the crows on the trees were crowing almost without break, perhaps out of joy on listening to the heroics of their ancestors! Crows for us used to matter a lot. Their style of crowing could suggest if someone dear was likely to come soon. We believed that through crowing they could portend things yet in the womb of time. My aunt claimed to know the language of all birds. We never considered the crows abominable creatures. Decades later, when I read the poem "Crow" by Ted Hughes, I became aghast at the poet's vision of their meanness. In the 'Uttarkaand' of the *Ramacharitmansa* there is an account of a great religious soul named Bhushudi. He was a crow. The dialogue between Bhushindi and Garuda is celebrated for its philosophic depth and spiritual insight. I heard his story with rapt attention.

Of all the photographs nailed onto her mud wall, two drew our attention most. One presented a fantasy world of hell rich in macabre symbolism. It portrayed hell. It showed the sufferings that men have to go through for devoting their years to the worldly pleasures. Men were deep-fried in oil. Men were put asunder with a saw. Some cried with searing pain; and others were half-burnt in the hellfire which consumed but bore no light. Cruel, strange creatures of terrific size and shape caught them, and they writhed and withered in endless agony. The photograph was far more shocking than the portraits of hell that I saw later. Hieronymus Bosch created a fantasy of hell. Nardo Di Cione, in his 'Hell', drew up the images drawing on Dante's 'Inferno' in the *Divine Comedy*. But the impact that my nascent mind had received on observing the photographs at Manai's veranda was deep. I could liberate myself of its depressing impact only by

assimilating in my life the ideas of the *Bhagavad-Gita*. Fear vanishes the moment one knows that fear has no existence. Darkness goes the moment a lamp is lit. Later I realized that the images of sufferings in the hell had been gaudily drawn up merely to impart lessons to their observers. The other photograph was of a cow in whose every limb gods manifested themselves in their various incarnations, versions and manifestations. This photograph was designed to show how the worship of a cow is a religious command for the Hindus. There were years in my life when my beautiful cow had been my best companion. She smiled when I was happy, she wept when I become seriously unwell. Throughout winter I massaged her parts with mustard oil. When the mosquitoes harassed her, I saw to it that fire was lit near her so that the smoke could ward off the onrushing mosquitoes. During winter I draped her with a blanket. My finest moments were when she communicated to me a lot of joyous feelings through her pregnant silence. I remember how beautiful she looked with circles in different colours put on her body, shining *sindoor* paste on horns, and the sweet and soft bell ringing on her elongated neck glittering with multicoloured glass beads of different size, and diverse hues.

At the centre of the courtyard there was a beautiful structure on a mud-built platform, open on all sides, having roof made of straw and wood suspended majestically on bamboo-frame. It had been constructed to perform some ceremony in the family. It was designed to last for a year or two; but because of its utility, it continued for decades by making timely repairs and replacements. In the course of the day, especially after lunch, it used to become a sort of seminary for learning arts and crafts. Wind could come, and words could float thereon. Everyone under the structure was ready to believe whatever struck his or her eardrum: everyone was ready to let noble thoughts come from all the sides. But what thrilled us most was the tiny bird which came in from nowhere, and flew into the unknown worlds after enjoying a stay for a short while on the flat wooden beam which upheld the thatch above it. For me the whole scene was an amalgam of wonder and beauty, almost *adbhutam romaharsanam* (wondrous experience of joy).

The hyperactive inner courtyard

My mother, when she was not looking after me, was busy in creating some artifacts from clay, straw, or old tattered cloth. She kneaded black clay, dug from a nearby pond, to make idols. Her idols of Sama, Chakeva, Satbhaiya and Chugla had excellent expressiveness. The clay images pertained to a beautiful story coming from ancient times. This delightful festival, involving mainly the ladies, begins on Kartik Sukla Dutiya, and ends with a great festivity on the Kartika Sukla Purnima. The story which this festival portrays runs thus: a canard was spread by the devilish maid servant called Dehuli, that Krishna's daughter Sama was having an affair with certain Rishis in Vrindavan. In his anger, Krishna cursed his daughter to become a bird Sama. On her metamorphosis, she flew away on its wings. Her husband, Chakravak (Chakva) became a bird of his own accord to become his wife's companion in the forest. Even many Rishis became birds. When Krishna's son Samba returned home, he was shocked to hear what had happened to his sister. He propitiated Krishna and obtained from Him blessings which brought them back to human forms. As Sama's brother rescued

them from their feathered existence, the festival is celebrated for the welfare of brothers. Dhuli is the target of the choicest abuses; and Chugla, who carried tales and indulged in backbiting, is subjected to public censure, then is burnt by setting his long moustache ablaze. It is a public indictment of all Chuglas, the backbiters, who are accustomed to spread false canard and mischievous rumours against others.

Game of cards and chess were very popular among ladies. Afternoons were devoted either playing these games, or reading the *Ramacharitmanas*. My mother found more delight in reading this epic than in indulging in other popular pastimes. She could recall the apt aphoristic statements from it wherever and whenever appropriate contexts arose. I have always felt that this great work provides guidance for all occasions, and for everybody. Whosoever needs light, he is sure to get that in this. Common people of our country live, and shape their cultural mores keeping in their consciousness the *Ramayana*, the *Mahabharata*, and the quintessential expression of our oriental wisdom in the 'Rama-katha' in the *Ramacharitmanasa*. If our culture is still vibrant, it is on account of these great writings.

Round and round the prickly pear: how the bullocks trampled grain out

The outer veranda overlooked an expansive lush paddy field stretching across a vast area which melted into the thick woods of the village Jaidevapatti. The luxuriant lush green paddy leaves at that distance seemed to turn into the waves of green. With strange delight, I observed the beauty and richness of the green maturing into different shades to become yellow and gold of the ripe paddy. The smell of the recently ploughed soil, especially on the first kiss of rains, couldn't be forgotten as it quivered its supreme delight into my whole self. When black clouds covered the whole sky, I found myself under a canopy of many shifting shades vibrant with the voice of goats, of frogs, of insects and a host of other creatures not all well known. From a mere observer I could become a participator. From the veranda I observed how chaff was removed from corn, how the sheaves were arranged round a pole for the bullocks to move round and round to thrash them to separate grain from them, how the heap of grains looked like in their full majesty, how the weigher weighed grain on his closely knit cane scales shouting with each exercise of weighing ' *Ramahi Ji Rama* ' followed by an increasing number. Either after his afternoon nap, or while sitting round the fire under the open sky, my uncle and elders would tell stories to the children who were used to assemble close to them for a piece of candy. The *Ramayana* and the *Mahabharata* equipped them with an encyclopaedic range of knowledge. It is well said that though every child lives in its unique universe, all the children grow alike. I belonged to a typical agrarian society. The feature of this sort of society is thus described by Professor J.K Galbraith:

“ For thousands of years, as Keynes later pointed out and as there will be occasion to stress, men and women had experienced no basic and continuing changes in their living standard – things were sometimes a little better, sometimes worse ; there was no fundamental, durable trend.”²

For the first time, the heavens revealed their beauty to me when I looked up to see the sky from my courtyard. The starry dome provided the wide sphere

where imagination could go wild. Gazing at the images of the Moon in the water-filled brass tray, we implored Him to bring rice and milk from the high heavens. The stars brought to us things of delight on their beams which we tried to catch by lying flat on a cane carpet in the courtyard. Perhaps, I thought later, Pythagoras might have got an analogous experience when he found in the movement of the heavens a superb and ecstatic music of the spheres.

I saw many interesting and amazing things happening in our courtyard. Only one I mention, as the constraints of space do not permit me to reflect on the incessant activities going on there. The chaff of wheat flew away whilst grains fell on same place. It was strange. Why did chaffs get scattered in the wind whilst the grains fell down? What would happen if on the break up of the ears, the grains flew away and chaffs fell down. Stock answer I got was: "It is God's wish". It took me many years to know from J. Brownoski that in the remote past it did happen that way. Only some strange genetic revolution made it happen as it is happening now. Questions swarm in a child's mind which often baffle most adults. The early childhood is appropriately called the Age of Questioning. A child's curiosity to know the universe makes it ask questions which many adults falter in answering.

The House and its courtyard

The design of my house was of the pre-historic vintage. It was an intricate bamboo structure which supported a thatch. When I looked up towards ceiling I found that all the geometrical forms were integrated in the structure. Off and on snakes crept through the designs in the structure. Snakes sneaking through the crisscross of the structure could be spotted by the curves of their soft yellowish belly. The snakes registered their presence quite often but they caused no worry to us. The entrance of the master bed-room was on its right; and on both the sides of the entrance were the prints of hand painted with white rice paste on which was affixed the deep red flattened cotton symbolizing the blessings of the Goddess Kali.

Every morning and evening, a host of pigeons swooped down the courtyard to eat the leftovers and the scattered grains. The symmetry of their body, the rhythm of their movements and their sweet inviting coo were all arresting. But all things of beauty have to face hazards. We children contrived traps to catch them. Often a big basket was raised on its side with a bamboo stick with which a long sturdy thread was tied firmly by us standing in the hide. This device afforded the birds a way in, but not a way out. We scattered some grains near about and underneath the basket. Then we used a typical sound *aaja, aaja* inviting the unsuspecting creatures to the trap. Once the little creatures were lured inside the raised basket, we dragged the stick suddenly out. This entrapped the unfortunate creatures. Children caught them for their joy, whilst our grown-ups killed them for their food. I abhorred their acts. But I found great thrill in catching them. But when my father told me the story of a fox at the point of its death harrowed by the creatures it had killed, I stopped being a party to the crime against the innocent birds.

The Witches

There was a widespread belief in witchcraft. Some women had acquired bad name, and were generally avoided. Mothers would take their babies inside their

house on seeing them coming. Children were not allowed to eat in their presence. My mother, like others, believed in black magic. Lots of stories had been put into circulation about the witches. It was said that some of them could drive trees, and set even water ablaze through their glance; whilst some even visited, at midnight, the cremation grounds to appease their deities in order to perfect their magic. A woman had gone mad as she could not oblige her deity who wanted her to sacrifice her only son. Our locality had some distinguished, witch doctors, who claimed cent per cent success in exposing the witches and removing their spell. There were many who bore themselves as the witnesses to prove the power of the witches. They were the self-proclaimed exorcists. I was advised that the mentioning of a needle, within the hearing of a witch, neutralized the lead effect of her craft. Once on seeing an old drooping lady coming, I slowly told my friend that my mother had asked me to buy a needle from a nearby shop. The old lady heard it. She turned furious, and cursed me to her heart's content. She even went to my mother to tell her what her son had done. When I returned home, I was beaten mercilessly. It was a trial, judgment, and execution in one go. My mother was angry with me, and asked me never to do that sort of thing again.

As a child, I believed in witchcraft and in ghosts. It was natural for me to believe in the ghost when many testified to have seen them. It was said that in the small hours one could see them without risk if one sat on a buffalo's back as, it was believed, the ghosts could not come near the huge black beast. I was never allowed to undertake that adventure. My mother believed that once I had become a ghost's target. No medicine worked on me, but someone removed the spell cast on me. The poor ghost, it was believed, was taken to *amahuatree* on which it was nailed to remain there forever. I couldn't deny the existence of ghosts. Once my sister, who was four years younger, fell down, and became unconscious. When the holy ash of God Mahadeva was smeared on her face, she immediately regained her consciousness. Such events occurred every evening for almost a month. Whilst in trance, she spoke so many things about my remote ancestors which even my parents neither knew nor remembered. Once, while she was not in her senses, the ghost said in chaste Maithili that she was a captive of a witch who had killed her through her black magic. She was sent by that witch to kill my sister so that her subtle self could be under her servitude forever. But her scheme could not materialize as each evening, whenever she fell into trance, my mother smeared the holy ash on her, and sprinkled on her the holy water of the Ganges. One evening my sister, still in swoon, implored my mother to take her to the temple of Lord Shiva at Baidyanath Dham where, she felt, she would stand freed from the nasty witch's trap. The next morning we set out for Baidyanath Dham. Those days the Ganges at Semariaghat had to be crossed by boarding a small steamer which could often become unsteady in the river. We spent a night on the bank of the Ganges. After the sunset, my sister slipped into a trance. Through her mouth the ghost spoke, "I have cast my spell on her merely to make clear to all that I was going along with her. After this, I shall not trouble her again as I shall be freed from the bondage under which I was bound to serve the witch." The world is mysterious, the universe is mystical, and life is baffling.

The Myna

I have already referred to the mango tree in the courtyard of my house. A lot of birds had made their nests on its branches. Once I climbed the tree to rob a Myna of its young. I brought the little creature down on a patch of soft grass. The sorrowful mother's doleful cry did not move my heart. I can still, at times, hear the plaintive strain of the heart-broken bird. Its pathos was beyond words. I caught grasshoppers after rummaging the nearby green fields for the tiny bird to eat. I spent many hours cajoling the bird to open its beak to gulp small grasshoppers. I fed the bird for a few days. But I could not prevent a disaster, (who can avert cruel Fate when it chooses to strike?). A black cat caught the bird unawares, and vanished. For several days, I wept at its tragedy. We children formed a funeral procession; and I lit its funeral pyre on the bank of a nearby river.

The Creative Plasticity

Those days, our elders had time to enjoy the pranks and the pretty flippant devilry of children. In the eyes of the adults the ultimate role model of every child was Bal Krishna. Childhood is most precious for many reasons; one being that it is not subject to the rigours of discipline which crush humans after that phase. I couldn't believe that the attitudes towards children could differ from a community to community. I felt amazed, when during my visit to India's North-East, I read about the Lepcha children:

"It follows that — save perhaps individually in the immediate post-infancy period—childishness is not considered an excuse either for anti-social behaviour or for stupidity; a child is capable of committing crimes as much as an adult is, and may be punished as severely, though in different ways; and, judged by adult standards, their conversation is stupid and largely meaningless."³

What has ashamed me over all the years

When I was a child, I witnessed every year a blood-sport at some public place in my village. I was shocked seeing the spectacle, we called *Hurrahuri*. It was celebrated in the month we celebrate the Diwali festival. Now, I hear, this game is not being played, as the animal protectors have succeeded in convincing people to consider it a cruel game. *Hurra* means to strike, to subject a creature to fatal blows. Cows, buffaloes and bullocks were brought into an open field, and were provoked, on the notes of drums, to strike a pig. The legs of the pig were tied to a wooden pole which was carried on the sturdy shoulders of some young men. The hapless and restless beast, the pig, made mad on being fed with *bhang*, was carried to the provoked animals. The animals were goaded and excited to strike at that creature with their horns; the pig could only cry, and cry. It was mercilessly killed. The spectacle was ghoulish to the extreme. Persons assembled there kept on shouting and clapping hysterically while the poor creature was drenched in blood, and wrenched into pieces. It was enormously more cruel than the bull-fighting which people of many western countries enjoyed. Years after, when I read the "Pro and Contra" in Book Five of Dostoyevsky's *The Brothers Karamazov*, I felt that Hobbes was right in calling the human beings 'brutish'. See how the novelist describes the cruelty inflicted comfortably, and as a matter of a pastime:

“ Well then, at the turn of this century, there lived a retired general, a man with the highest connections, a big landowner, one of those, you know (although even at the time there were only a few such left), who, upon retiring from the service of their country, feels sure that they have earned the right of life and death over those subjected to them. Yes, there used to be such people then. This general lived on his estate, which had two thousand serfs. He strutted around, feeling immensely important, and bullying his lesser neighbours as if they were hangers on and clowns obliged to amuse him. He had hundreds of hounds and just about as many kennel attendants, all dressed in special livery and every one of them mounted.”

“It so happened that one day an eight year old boy, playing in the courtyard, threw a stone and inadvertently hit the General’s favourite hound in the leg, injuring it. ‘Why is my favourite hound limping?’ the General demanded, and he was informed that the boy had hit it with a stone. ‘So it was you,’ the General said, looking the boy up and down. ‘Lock him up.’ They took the boy away from his mother and locked him up in the guardroom for the whole night. The next day, at dawn, the General rode out to the hunt in full dress, surrounded by his obsequious neighbours, hounds, kennel attendants, huntsmen, everyone of them on horseback. All the serfs of the estate were summoned too, for their edification, and so was the boy’s mother. They brought the boy out of the guardroom. It was a bleak, foggy, raw day – an ideal day for hunting. The General ordered the boy stripped down naked. The boy was shivering. He seemed paralyzed with fear. He didn’t dare utter a sound. ‘Off with him now, chase him!’ ‘Hey, you, run, run!’ a flunkey yelled, and the boy started to run. ‘Sic ’im!’, the General roared. The whole pack was set on the boy and the hounds tore him to pieces before his mother’s eyes.”

[Translated by Andrew R. Mochulsky (Bantam Classic)]

It was a crime on our part to become the onlookers of the ghastly scene of the little beast’s death. Whenever I go back to those moments, I feel shocked how the people gathered there chuckled and cheered at the wails of the dying creature.

When I drew my alphabet

In the fifth year, on the full moon day of Margasirsa, my *Vidyaramabha Samskar* (the Ceremony to commence learning alphabet) was performed by my father. The fifth year of a child had been considered appropriate for this by the sage Vishvamitra. It is said that Sankara had learnt everything worth learning before he reached this age of five. My nimble fingers wrote words in praise of God on a small heap of rice with the sandalwood paste. The curves that my nimble fingers drew gave me the first delight of *akshara* (a letter) which is the attribute of the Supreme God who is Himself *Akshara* (the One who never comes to an end). I began going every day to the village school. While going to the village school after the *Vidyaramabha Samskar*, I carried, as others did, my earthen inkpot with mud-ink, a pen of a twig, and a small wooden plank painted with charcoal. Each student carried a rag to spread on the dung-washed mud-floor of the school to sit

on. Chalk and quill were our writing instruments. On reaching the school, the first act was to assemble under the massive *peepal* tree to pray: ' *Raghupati Raghava Raja Rama* '. After this daily prayer, the students squatted on the mud-floor on the veranda canopied by a leaking thatch over which monkeys hopped the way they wanted. The adjacent massive Banyan trees were the places of their sojourn, and were also the resting places for birds of all sorts. Scribbling in mud ink on black plank had once seemed to me my great achievement. We heard our teachers whilst we listened to the croaking of the frogs in the nearby ponds, the bleating of goats tied in the bamboo poles supporting the roof, and the cacophonous sound made incessantly by a host of tiny insects. After our school hours, I enjoyed picking up the grasshoppers, which I carried home to be used as the feed for my pet birds. But the most fascinating pastime I and my friends had was to gather ripe tamarind which we loved to eat.

The Upanayana (initiation)

In my ninth year, my *Upanayana* (initiation) ceremony was performed. This is the most important of the *Samskars* for the Brahmins. With this I became a *Brahmachari*, a student. This *Samskar* is rich in symbolism and makes one realize that one is on a new assignment in one's life. Its symbolism is rich in suggestions. I started wearing a sacred thread which was spun by a virgin Brahman girl, and it was twisted by a Brahman according to the customary norms which had to be meticulously followed. The three-folds of the cord in the sacred thread represent the three *Gunas* out of which the whole universe is made, and which shape the propensities of persons through the proportionality of these three *gunas* [*sattva* (goodness), *rajas* (passion), and *tamas* (darkness)]. The twists of the thread are made upwards suggesting the triumph of the *sattvaguna* which helps one to evolve into a purer life. The three cords constitute a continuous reminder to the wearer that he has to discharge the Three Debts which he owes to the ancient seers, his ancestors, and gods. These three cords are tied into a knot symbolizing the Holy Trinity of the Hindu pantheon. This sacred thread was believed to transform the very way of one's life. My *Upanayana* ceremony was performed in my village. My father was the *acharya* (the guru, teacher). The one situation during this holy *samskara* had a seminal impact on my mind. It was when I put on the dress of a *sannyasi brahmachari* wearing only a strip made of sacred *munja* (a type of straw). Thus dressed, I begged alms carrying a long thin bamboo staff in my hand. For the first *viksccha* (offering), I went to my mother who put some offerings in the big white pouch made of cloth by tying the ends of cloth together. Thus began a phase in my life we called the period of the *Brahmacharya Ashrama*. It was in this phase that I learnt something of Sanskrit, and read the *Bhagavad-Gita* which became my companion for life.

NOTES AND REFERENCES

1. The expressions under the inverted commas are from Rabindranth Tagore.
2. Galbraith, *A History of Economics*, Pg : 87
3. Geoffrey Goerer in his *The 'Lepchas' of the North East* (**at p. 301**):

7

MY ADOLESCENCE : ON SWIMMING THROUGH THE RAINBOW

Whatever philosophers may ever, common sense is pretty well agreed that there is a different morality for youth and age, and a different one according to the station in life.

—W.S. Maugham, *The Novels and Their Authors* (Mandarin) p. 37

Adolescence is a period when one loves to go inside oneself. One is caught in the process of adjusting with the vanishing childhood, and the fast advancing and slowly revealing youth. It is a great transition when one enjoys building a rich rainbow, and then enjoys the raptures of sinking and swimming through the colour bands. This often results in emotional crises: the bands of colours get confused, and melt through each other presenting an assortment of interpenetrating colours. Thus this becomes a sweet-and-sour phase. Its worldview is distinct from what goes with childhood. A gale of creative destruction sweeps over the images and values built and cultivated during childhood. Mysterious demands are made by flesh; and strange urges stimulate the psyche to respond to myriad stimuli. Often strange emotional haze overtakes one's mind. This marks the advent of a phase in which one wishes to row across strange waters negotiating through the crazy rocks and queer creeks of life. It is really a period of "Storm and Stress" The psychologists say that adolescence is roughly between ages of 13 and 17. It comes on tip-toe.

I

SCRIPTING LIFE ON THE FIVE INCHES OF IVORY THROUGH THE STORMS AND STRESSES OF THE WORLD

Whilst my uneventful childhood was through its course, storm was gathering in the world. The chancelleries of the world had sown enough of their morbid deeds of discords to leave no alternative except for humanity to reap the whirlwind. The crescendo of wrath and venom that the imperialists succeeded in spreading in the world led to the horrendous World War II. For almost a decade before it, the cauldron of misdeeds by the politicians generated noxious fumes with which the world suffered, but pursued no effective remedy to make the world safe. The Government of India was actively involved in World War II on

the side of the United Kingdom. The Victory Day was celebrated throughout the British Empire. I was running my eighth year when on 19th May 1945 the Victory Day was celebrated marking the end of Adolf Hitler's Third Reich, and the surrender of Nazi Germany. But World War II raged till Japan surrendered on August 15, 1945. I was in my village playing *gulli-danda* and tending my cows when the governments were driving the world to the verge of total disaster. The villagers were never ruffled by such events as they simply did not know what was happening in lands about which they know nothing. We felt we had no reasons to bother about them. The traditional view, which even the Englishmen held before World War I, was that the foreign affairs were of no concern to the ordinary people. But the devastation brought about by the nuclear blast in Japan wrenched everyone. A story went round that the USA used the *Bramahstra* against Japan killing and maiming thousands of innocent persons: babies, infants, grown-ups and the aged. This nuclear attacks were on Hiroshima and Nagasaki in August 1945. Such acts were universally condemned. This news reached us immediately, and everyone condemned the nuclear attacks on Japan. It was this context in which I heard the story of Ashwasthama narrated in the *Mahabharata*. As the relevance of that story has grown more and more after World War II, I would revisit this event in Book III of my Memoir.

II

LOVE THAT LED ME TO OUR CLASSICS: THE FOUNT OF WISDOM AND DELIGHT

By the time I reached the threshold of my adolescence, I had known a lot of stories and poems from classics, epically from the *Ramayana*, the *Ramacharitmanasa*, the *Mahabharata*, the *Panchtantra*, writings of Kalidasa, Bhavabhuti, Vishakhadatta and many other great lights of our classical literature. I express my gratitude towards all those who had helped me develop love for our classics. Now I, in my seventies, wholly share what Lord Hailsham of St. Marylebone, who had been the Lord Chancellor of England, said in his autobiography: *A Sparrow's Flight*:

“Though I cannot complain of the reasons which led to their virtual extinction, I mourn the passing of the Classics. The modern world grew out of the ancient culture of the Western Church in the unreformed Middle Ages, and out of the study of Greek and Latin literature as developed by the scholars of the Renaissance and after. It is impossible to appreciate English, French or German history or literature without some knowledge of their roots in their past, religious and secular. *Cut flowers never produce seed or fruit, and without a vigorous practice of religion and knowledge of the cultural past there is danger that the modern world becomes the prey of eccentrics, hypochondriacs and quacks, or, worse still, criminal lunatics and demoniacs like Hitler, Stalin and Mussolini, and their followers and imitators today who had better remain unnamed.* The study of Classics and the scriptures certainly provided some safeguard against these, and we have not yet found an alternative in contemporary culture.”¹ [Italics supplied]

I have marked with distress the indifference of our young Indians to our classics. Most of our children have not even heard of our classics. Those, who have got some access to them, have got that through the cheap re-told versions made inviting to the eyes with illustrative pictures and diagrams. Such versions of our Classics can serve no good purpose. The resonance of the words in Classics, and the richness of their meaning, cannot be had through cheap visuals. It is our common knowledge that even our university students and the young men recruited to Class I services do not know about our classics except to the extent required to answer the general knowledge questions. Not only our young men are indifferent to them, they even deny their importance. This morbid situation illustrates the 'Slave's syndrome' with which our country seems to suffer these days.

Our Classics have shown with vigour that we all are ethical creatures. We have to perceive our *kartavya-karma* in the changing moments and in the changing contexts. Our Classics say that the two factors which shape human life are, as Tulsidas, said: काल सुभाउ करम बरिआई [the factors of Time (Time, Destiny, the Unseen) and *Karma*]. Human history is the story of the operations of these two factors.

I was enrolled as an Advocate about 35 years back, and I have been practicing as an Advocate from 1998 as a member of the Supreme Court Bar of India. I have all along felt that my knowledge of classics helped me in many ways. I have had good reasons to wholly approve the view of Lord Hailsham explaining the importance of the study of Classics, even for lawyers. He said:

"I became a classical specialist and remained so until after I had taken a first degree. The price I paid was that I did not begin my professional training in law until years after most of my contemporaries at the Bar. In mitigation, I can only say that I am quite certain that I was a better lawyer by the time I was forty- five than I would have been if my first degree had been in law, and that, when ultimately I came to be appointed to high office, I was far more suited to it, even as Lord Chancellor, than I would have been without my classical studies and general training in the history of ideas and of the Christian Church." ²

III

MY VILLAGE

My village continued to attract me. Whenever I could, I rushed there to meet my mother, my cow and a host of friends, animate and inanimate. I saw the shades of the changing seasons, and marked the stages of the growth of the saplings and crops, and their changing colours and shapes. Most enjoyable time was the period when paddy was ripe for being harvested. My role was to keep a watch over the reapers. Often reclining on the sheaves of seared paddy, I would chew the balls of candy which the village hawkers sold on barter. The chitchats of the romantic reapers were sweeter than the sweets. The environment was very pleasing. The incessant cutting of jokes and the singing of songs by the reapers, while at work, stimulated my young mind to romantic emotions. When the work

of reaping was over and the sheaves were made into bundles, their children and I used to get busy picking up grains which had got scattered on the soil despite the care taken by the reapers to ensure that not to happen. I feel I had become the great philosopher Kanaad, who maintained himself only on the fallen grains picked up from the soil when harvesting was over. What drew me most towards my village was my mother, and next to her my cow which responded to my feelings with great intimacy. It was my duty to look after the cow when I was in my village. Once, when she had body ache and high temperature, I massaged her with mustard oil heated with some medicinal ingredients. She allowed me to squat under her udder to sip her milk as if I were her calf. Some of my finest hours were those when I took her to the nearby grove for grazing. While she, along with her calf, grazed, I jumped from branch to branch plucking guava, mango, or blackberries for my instant consumption.

My most enjoyable perch was the fat mango tree branches in the thick grove adjacent to my house. Loneliness made nature alive and communicative. It was joy to hear the hissing sounds of the leaves kissing each other in the ecstatic wind ruffling them on its rhythm. It was joy to observe doves and sparrows romancing and squirting in their ecstasy. Rapture used to be so intense that even the bite of several red ants would not draw my mind away from them.

Almost every afternoon I went for angling in the nearby huge pond called Ranipokhar, said to have been got dug under the instructions of some Rani (queen), I sat on the *Kadamba* tree's thick root protruding onto the water. I sat at times for hours holding my fishing rod. I used to return home with my catch, I felt I was returning with valuable trophies. I recall those days now sitting before my computer awaiting the Great Angler to withdraw His fishing line so that I might rest in His basket of repose.

IV

I CAME TO DARBHANGA

Sometime towards the end of August 1945, I came to Darbhanga where my father had joined as Headmaster of Mukundi Choudhary High School. I was brought there because in the assessment of my parents I was going wayward in my village, and showed no interest in learning at my village school held every morning under a huge banyan tree. The day I reached Darbhanga, I saw the whole town in the mood of festivity. I saw a lot of banners and posters and placards of all sizes and shapes announcing and glamourising the V-Day. Britain and her allies had won World War II. But it was not unalloyed happiness all around. Many persons wore black bands, and shouted acerbic slogans against the victors. I could learn from them that they intended to express their wrath at the nuclear attacks on Japan by the USA one of whose allies was England. Our elders were eagerly awaiting our country's freedom from the British yoke. We were sure of our freedom soon because of our sacrifice and verve. England too had fallen into a worse predicament than ever before. She had wrought that fate for herself through her misadventures in World War II.

That great day came on August 15, 1947 when our country declared her independence. The phase of slavery that had begun with the Battle of Plassey (1757), and the Treaty of Allahabad (1765), ended at the stroke of the midnight

hour; when the world was asleep, India awoke to her freedom. The celebration of this Independence Day was marked with remarkable verve. Joy of people overbrimmed everywhere. Sweets were distributed at all the schools. I was one of those who decorated our school. Songs were sung, and *kavi-sammelans* (the gathering of the poets) were organised at several places. Patriotic songs, and the songs depicting the heroic deeds of our freedom fighters, were recited everywhere. All the buildings, and all the hovels, had been decorated with thick *ashoka* leaves studded with marigold. It seemed that time had come when all, high and low, would live with happiness and dignity. We felt that we had reached a point where everyone could live following the motto which Arjuna had set for himself: *na dainyam, na palayanam* (no cringing and no abdication of duty). This mood of jubilation lasted for about a fortnight, and then matured into the general hope for the great and good days ahead. I belonged to a family of freedom fighters. My father saw his great dream come true. Our expectations, and serious apprehensions of our freedom-fighters, found expression in a number of popular songs including that well-known song from the Hindi film *Jagriti* (1954): “*Hum layein hai toofan se kisti nikaalke, Is desh ko rakhanamere bachhesambhalke,...*” (We have rowed through storms the boat of our motherland to our destination: Freedom. Dear sons and daughters of this land, protect and save it forever.) Prof Arun Kumar of the JNU has well said: “In a 1958 movie, “*Phir Subaha Hogi*,” Mukesh singing with pathos, “*Woh subaha kabhi to ayegi*” (That morning will come sometime), epitomized the dream of the common Indians of the fifties and the sixties.... Sixty years after Independence the shreds of this dream are not even left in the dustbins of those in power and supposedly guiding the destiny of this nation. That dream has been blown away in the hurricane of achieving 9 per cent growth”. But more on this in the Book III of my Memoir.

It was 30 January 1948: We heard on the All India Radio that Mahatma Gandhi was shot dead in New Delhi whilst on his way to the Prayer Meeting. I did not have a radio. I rushed to my neighbour's house to hear all that had happened to that great soul. Our nation was in gloom. For several days I didn't see an eye which did not have a film of tears. Sombre silence was broken only by frequent shrieks and sobs of the mourning crowds of all communities. We all fasted that day, and conducted prayers. The story of Gandhi's assassination is so widely known that I must not give you more details about it. But it amazed me, and the amazement remains unabated over all the years, to see how Death came to him as a supplicant seeking his life while he was on way to the Prayer Meeting. The way he died was just his offering of his life at the feet of the Lord, with the holiest of all mantras 'Hey Rama' (Oh God). Death could not have come in a better way. Strange. Whenever I look back on my life, I feel great that I lived in an era in which a man like Gandhi was amidst us.

V

THE LOITERER

My schooling began in my village. The school was held on the veranda of a benevolent and altruistic widow, related distantly to us. I was sent to the Kurson Middle English School, the only pucca building in my village then. I studied there

for about a year. My parents decided not to allow me to continue learning there as a regular student as they were not happy with my ways. Whenever my mother could know about my escapade from the school, she sent her maid servant to discover me for being taken to task. But she seldom succeeded in finding me out as I used to lie between the rear wall of the ancient temple and the mound of the rolled-up old massive *samiyana* which could shelter more than one thousand heads. I still wonder how I could be so indifferent to snake bites as that structure abounded with snakes and lizards of all sorts. At times I felt these creatures crawled on my body with nonchalance. Those days the offenders in our village were like the pirates against whom anybody could proceed to reprimand. Finding me crouched and hiding, my mother's maidservant erupted at me in anger. I felt my whole self melted in the molten lava. My mother's anger was a terrible cloudburst which drove me into some bush to cry and sob. Finding me incorrigible, she sent me out to Darbhanga. I was dragged to that place as if I were a bleating little lamb tagged to a lead in the hands of some unseen powerful force.

But before my formal admission to Class VIII at M.L. Academy in 1950, I studied for two years at the Middle School near the Court campus at Laheriasarai. The school began every day with a prayer. Students and teachers lined up to sing Maithili Saran Gupta's *Sitapate Sitapate Sitapate* from his celebrated *Bharat Bharti*. This book was most popular amongst the students those days. This book sang the glories of Mother India, and of our great culture. Teachers invariably wore the 'Gandhi cap'; and most of the students did the same. Impact of Gandhi was great on the way we lived and thought. At the school, the most interesting periods were those devoted to *Antakshari* in which my performance was rated the best. We were supposed to recite a few lines from songs and verses which began with the letter with which the earlier quotation had ended. There were certain norms governing the game. Quotations from the film songs were not permitted. My most enjoyable situations were when I ran short of appropriate quotations, but instantly composed my own lines making them pass for some poet's composition. I succeeded in deceiving my fellows, but it was not possible to deceive my teachers. They just smiled at the skill of a budding poetaster.

While returning from the Middle School I never missed loitering in the District Court campus at Laheriasarai, or in the areas adjoining to that.

Loitering was a pleasure which I valued. It gave me an opportunity to concentrate on the shifting moments, and advancing steps without any destination. I could gaze on things which charmed me, or hear voices I loved; but what I enjoyed most was loitering as such just to see yet not see, hear and yet not hear: just floating this way or that. Much of my time I spent loitering in the Court campus. The creatures in the black coat fascinated me. Later, I could discover that they were the advocates ready enough to plead anyone's case, if paid. As my father had often referred to the Court of the District Judge which had freed him from jail in 1943, once I went inside that court room in which I saw things going on which appeared to me noise and antics of eccentrics. Whilst some seemed to be inspired gladiators, others stood with blank face. Those who spoke, spoke in some funny language, a strange mix of Hindi and English. Outside the court

rooms I moved jostling with crowds busy with things wholly beyond me. But I had many reasons to get amazed and amused.

Most of the time while loitering in the Court, I watched the play of the monkeys well trained in their performing art. In the campus, at many spots, magic shows went on. But what I enjoyed most was the song that an old couple sang. They sang the heroic ballad of the great fighters Aallha and Udal of Mohoba. They sang with flourish and with full-throated ease whilst their nimble fingers ceaselessly struck the drums they held. They sat near the outer gate of the office of the property registrar where all sorts of persons streamed in and out. The rhythm of their heroic songs captivated every one who heard them. I found the story of these great fighters extremely interesting. In fact, there is a specific style of singing 'Aallha and Udal'. In 1992, I went to Mohoba from Hamirpur in Uttar Pradesh. I heard this ballad sung by the traditional singers of that place.

VI

AT M.L. ACADEMY

In 1950, I was admitted to Class VIII at M.L. Academy, Laheriasarai. I studied at M.L. Academy for four years from 1950 to 1954, from Class VIII to my Secondary School Examination. Its headmaster Shri Jhingur Kumar was a strict disciplinarian. He kept distance from everyone yet none could escape his notice. We felt he was omnipresent. Nobody's trick could evade his watching eyes. But his fatherly affection humanised his strict discipline, and endeared him to all.

The School had a set of very distinguished teachers. Professor Mahesh Sharma was a distinguished Hindi Scholar. He had written some interesting novels of which I liked *Dil Ke Phaphole* in which he had expressed his most deeply felt emotions. He could not excuse blemishes in prose whether English, Hindi, Sanskrit, or Maithili. His Hindi was dominated with Sanskrit words. He felt, and I think rightly, that for expressing profound and complex ideas there was no option but to draw on the vast treasure of Sanskrit. He made us study with great care Ramachandra Verma's *Hindi Prayog* and *Achhi Hindi* so that our Hindi language could be free from blemishes. Gopal Babu was a brilliant English teacher who took us to task even for a small linguistic lapse. He made us go through H.W. Fowler's *Kings English* and *Modern English Usage*. He considered the study of Grammar essential. He fed us on *Nesfield's English Grammar*. His frown made us shiver. Shri Mahakant Jha taught us Sanskrit. He had himself written a good book on Sanskrit Grammar. His class was most hilarious. His anecdotes and witty remarks made us chuckle again and again but we always maintained restraints. I did not take the study of Sanskrit seriously. This was my misfortune. Shri Chandranath Mishra "Amar" was one of the major Maithili poets. He was an excellent teacher, and a noble soul. He taught me prosody because I was often composing poems to recite at the frequently held *kavi sammelans* (gathering of poets). He always stressed on maintaining the purity of sound. He inspired us to work for the introduction of Maithili (our mother tongue) in the syllabus. We struggled for this, and by the time I passed Class IX, Maithili got that status. Shri Shiva Shankar Choudhary developed my interest in

history. History fascinated me. I had a lot of interest in history, and I studied it comprehensively. I wrote the *Bharat Ki Aitihasik Jhalak* (1954) whilst I was a student of Class XI. The book was published with the financial help from my mother. Prof. K.K. Mishra, who taught me history for four years at C.M. College, commented on my book:

“The history of any country is best understood when studied in its social, economic, political and cultural aspects. The writer has spared no pains in analysing such aspects throughout the book.”

Mohini Babu was the Crafts teacher. We had to work at spinning wheel every day. I had my own *narvarachakra*, a personal spinning wheel. We worked at the spinning wheel with a sense of sacred commitment.

Those days our school had assigned a tiny plot of land to each student in the school campus to conduct primary and secondary agricultural or horticultural operations thereon. One period was prescribed for this work every day. It was really a great experiment. We learnt the dignity of labour in the agricultural field, besides we learnt how the things planted grew day by day. Seeing them grow thus was joyous experience. But now this system of training has gone. Now, who remembers Gandhi?

At the Secondary School Examination 1954, a passage in Hindi was set requiring us to render that into English. I remember it as it stuck in my mind because it stated something extremely important. The central theme of the passage ran thus:

“A student of a foreign language can be its scholar but not its creative artist. A genius expresses himself best in his native language.”

What it says is a fact. Madhusudan Datta and Aurobindo wrote great epics in English language yet could not acquire that eminence which they should have got. Conrad acquired a unique distinction of writing great novels in ‘a learnt language’. But even he was considered “careless of some conventions of the average English taste”. (Prof. Cazamian in Legouis and Cazamian’s *History of English Literature* p. 1334). Of late much is being said in appreciation of the writings of the Indo-Anglian writers. These days new books are launched in the market under high pressure advertisement resembling the ‘sales promotion’ of the new brands of toothpaste. Politics is involved in promoting English in the countries which once upon a time were the colonies of British Empire. I still believe that the ideas set forth in the passage, which I had rendered into English, are correct, and worth our serious consideration.

VII

KAVI SAMMELAN (THE GATHERING OF THE POETS)

During my adolescence I developed a craze for listening to the poetry recitations in the *Kavi Sammelans* organized frequently at several places in Laheriasarai, the most noteworthy place was the Kamla Memorial Library, very adjacent to my house. A good number of listeners gathered there to listen to the

poems in sessions generally lasting for two hours. I too composed poems which got appreciation in some of the *kavi-sammelans*. The dead weight of intellect had not deadened my aesthetic sensibility. But now we see the *Kavi Sammelan* is going out of fashion. In this strange world only such things can survive which can be turned into commercial wares. Paintings have acquired commercial importance in this capitalist society.

VIII

THE BRAHMACHRYASHRAMA: OUR WAY OF LOOKING AT SEX

The western psychologists say that during adolescence one is most often troubled by Fear and Sex. Physical and psychological changes occur in this phase. Adolescence brings about hormonal changes. As a result, sexual feelings spring up to condition inter-personal relationship, to add inviting fragrance and romance to human body, to weave new dreams and hopes. But I would not agree with Bertrand Russell that the idealistic feelings are “an unconscious sublimation of sex, and an attempt to escape from reality.” Over all the years I have reflected on Freud’s ideas. I was never appreciative of Freud who noticed sex as the primal force at work in all human activities. I have been led to feel that it was Freud who generated sexual libertinism; and it was Marx who freed people from the sense of responsibility by stating that things and conditions were the product of social forces alone. An individual in the West, thus, became liberated from all responsibilities.

Our philosophy of life:

Our tradition believed in a structured life in four stages each one of 25 years: conventionally called *Brahmacharya* stage (student, devoted to learning and acquiring skill), *Grahashta* stage (householder, involved in procreation, and discharging obligations), *Vanprastha* stage (forest recluse, involving gradual withdrawal from the personal worldly obligations, but working for the good of all), and *Sannyasa* stage (free supersocial man, when one pursues one’s spiritual goals for *mukti*). The *Isavasyopanishad* says: ‘One should live for 100 years by being always at work’ Aurobindo considered this view of life-pattern as “the most original and indeed unique”. My father believed that this pattern was the best for pursuing holistically the objectives of life we call *purusartha* that expresses itself in the pursuit of *dharma*, *karma*, *artha* and *moksha*. These terms have no synonyms, and are not capable of being translated into any of the European languages. A language is always shaped and conditioned by the *zeitgeist* (‘spirit of the time’ the ‘outlook characteristic of a period or generation’) that helps it to grow. We believe, contrary to what many others believe, these aforesaid objectives in life are not sequential, not even consequential, rather they are supremely compatible with each other, and can go together differing only in predominance and accent from a stage to stage, and also in the medium and mode of expression. It is wrong to translate ‘*kama*’ as ‘sex’ as it is often done in the West. ‘*Kama*’ is just ‘creative energy’ which expresses itself in pursuing other *purusarthas*. Its continuous transformation is natural as without it nothing else can ever be done. The stage of *Brahmacharya* is unique, as during this period one requires ‘*Kama*’

to learn wisdom and acquire skills for responding to the challenges to come later in life. Even in this period of one's life, one comes to know of the value of 'artha' as without it human existence is inconceivable, comes to recognize the value 'dharma' because wisdom and knowledge cannot be gained without it, and comes to feel the value of 'moksha' as the final pursuits in human existence. These terms have great creative richness that is context-specific. A most remarkable feature of this sort of life-pattern is what is not obvious. The beauty of life's poetry is infinitely rich: it expresses itself in one's spiritual evolution through the right attainments of the different objectives. Life's objectives have been exhaustively expressed in Hindu eschatology thus formulated. Life becomes the flame of an earthen lamp (*pradeep*), the flame that sheds light, and goes up, and up. . . .

The aforementioned reflections, with their philosophic import, are based on what I heard from my father in one of those evening instructions that he provided in his capacity as the *guru* at my sacred thread ceremony. He not only said but also illustrated those ideals in his life.

The present consumerism has terribly disturbed and undermined our view of life. The consumerist agenda cannot be implemented unless more and more desires are generated in human minds. Whilst all the sections of people are the targets of this psychological engineering, the prime targets are children and the aged. Through television and other advertising means, a mass society is being created in which we are deluded to develop a craze for lusty desires, making the humans themselves saleable commodities governed by the market forces. The corporations, which rule the world, would consider the ideas governing the different stages of life stated above, greatly prejudicial to the market forces that rule the world these days.

IX

THE MYSTERIES

Of all the fears, the worst is of Death. I had the misfortune to see in my early years several dear ones die. I was about 10 when my lovely cousin sister died of malaria. Her six children too passed away within a few months. They too died of malaria. My grandfather and grandmother too died, of course, of old age. Several other deaths occurred: some on account of snake bite, but most others were believed on account of the exercise of black magic and witchcraft. With so many deaths occurring in quick succession, I felt that even my own death was fast nearing. As I had not known much about life, I was not worried about my death. My mother sensed my state of mind, and helped me to get over my sinister dread. Through several religious lores she succeeded in restoring my faith in life. She built up my sagging self-confidence almost the way Krishna had engineered Arjuna's sinner self to acquire harmony and high creativity in the battle-field of the Mahabharata. The greatest event which altered my worldview, and helped me to get rid of Fear in all its manifestations, was the *mantra* that my mother gave me in a secret ceremony. A *mantra* is a secret instruction given in words with mystical import. It is meant to be recited every day.

NOTES AND REFERENCES

- 1 Lord Hailsham of St Marylebone, *A Sparrow's Flight* p. 38
- 2 Lord Hailsham of St Marylebone, *A Sparrow's Flight* p. 39

8

THE FLOWERING OF MIND : MY ACADEMIC WORLD

*Human history becomes more and more a race between education
and catastrophe.*

H. G. Wells, *The Outline of History* Ch. 15

I. At C. M. College, Darbhanga

I was admitted in 1954 to the first year of the Intermediate Arts class at Chandradhari Mithila College at Darbhanga. I was lucky to experience and witness what was the best in the academic world of Bihar at that time. The College's sprawling campus had a huge circular single storied building originally built for commercial ventures. The inner campus had a wide space for assembly, and the meadows skirting the building were rich with green foliage and flowers. Mr. A.K. Datta was the Principal whilst I was a student of the Intermediate class. He had done his Tripos from Cambridge, and was a strict disciplinarian. He was succeeded by Dr. L. K. Mishra who had done some fundamental research in science in the United Kingdom. His writ ran with ease as none thought it good to do anything unbecoming of a student because the Principal had himself set a model of impeccable integrity. The College had an excellent Library. As those days we did not have photocopiers, we carefully read the books and journals in the library, and summarized in our notebooks only the points of relevance. Now things have changed. Needed or not needed, volumes of papers are mechanically copied much of which remain unread. This easy copying, often done mechanically, can deprive one of the critical sense which helps one to select and summarize.

The Visit of Mrs. Indira Gandhi

While I was an undergraduate student at C.M. College, Darbhanga, Mrs. Indira Gandhi visited the College in 1958. For a few months before that great day, the whole college was astir with excitement. A grand meeting was organized in the College campus where she addressed the teachers and students. Before this formal function began, she gave a round in the College, and was quite impressed by that institution. We were thrilled by the beauty and poise of the lady about whom we had already heard a lot.

Maharajadhiraja Dr. Sir Kameshwar Singh was presiding over the said function. Pandit Nageshwar Mishra, a leading Advocate, welcomed the distin-

guished guests. He was the Secretary of the College and had leanings towards the Rastriya Swayamsevak Sangh. Pandit Mishra, in his flowing introductory speech, pointed out the difficulties of the students, and the people of Mithila; and observed (with an obvious irony) that the authorities, living in the “Silken City” of New Delhi, were totally impervious and indifferent to their plight. He added some barbs to his expressions. He displayed his forensic skill, perhaps at a wrong place. Mrs. Gandhi was stung by his comments. She sprang up breaking all conventions to make a vitriolic reply to Nageshwar Babu. She was furious. She used certain harsh words. She used even the language of gesture to convey her extreme displeasure. She snubbed the organizers by telling them that it was improper to do at the stage what should have been done in the green-room. For a while everyone was struck dumb. Maharajadhiraja Kameshwar Singh left the dais, and went out. This unseemly situation was saved and managed by Professor Jagganath Prasad Mishra. He was the Head of the Department of Hindi, and also a member of the Bihar Legislative Council. He was an eminent writer. He assuaged her ruffled feelings, and calmed the situation. His extraordinarily pleasing style cast a spell on the listeners, and also softened Mrs. Gandhi. She smiled, and the proceedings of the meeting were resumed. The Maharajadhiraja too came back on the stage.

This was my first impression of Mrs. Gandhi: sweet and lovely but egotistical and full of vanity. My assessment of her personality underwent changes as I advanced through years, and as I saw more and more of our polity at work. There was a time when I held her responsible for imposing the infamous Emergency. But greater study and maturer reflections in subsequent years led me to revise my opinion, and to consider her our “the last patriot”. In one of my Public Interest Writ Petitions before the Supreme Court of India I called her our “last patriot”. I would come to her again and again in this Memoir in various contexts.

My Teachers

While at C.M. College, I studied History, Civics and Hindi for my Intermediate Examination. For my graduation, I studied History and Political Science, and had Honours in English literature. In 1958, I could stand second at the Honours Degree examination, and obtained distinction in History and Political Science. My first love was History, but I could not do Honours in that subject as that course had not been yet organized at that College. By and large, most of the teachers of the English Department at C.M. College were following the literary approaches of certain eminent teachers at L.S. College at Muzaffarpur, and Patna College at Patna. Our teachers were greatly influenced by the literary approaches of Dr. I.A. Richards and Dr. F.R. Leavis. T.S. Eliot was widely read, both as a great poet and as a great critic.

Prof. Srikrishna Mishra brought in a fresh breeze of thought for us. He taught us History of English Literature. He was widely read, and had a rich sense of measured style. Those days he was writing his thesis which later earned him a D. Litt. Degree from Patna University. His work came out in 1979 entitled *Coleridge and Abhinavagupta: A Comparative Study of the Philosophy of Poetry in the East and the West*. Commenting on this work, Dr. Satkari Mookerjee observed “Dr. Mishra’s discovery of the fundamental affinity between Coleridge and

Abhinavagupta is bound to prove a landmark in critical thinking on poetics as well as philosophy of poetry. The West will find Coleridge re-discovered and hail Abhinavagupta as a kindred spirit.” Dr. Mishra was the first scholar who made a detailed and comprehensive comparison of the two critics acknowledged as the greatest in their respective countries. His work became a high water-mark in literary cosmopolitanism. He showed that Abhinavagupta, the great philosopher, critic and saint of Kashmir, combined the merits of the various approaches which we get in Aristotle, Plato, Croce, Coleridge, Richards, Eliot, Empson and many others. Dr. Mishra explored the possibilities of universal poetics by examining the fundamentals drawn from the East and the West. Dr. Mishra, after a scholarly exposition, held that the depth and insight, which Bharat, Anandavardhana and Abhinavagupta had shown in ancient India in the study of poetry, was never acquired in the western literature. I was greatly impressed by Dr. Mishra’s interpretation of Coleridge’s Primary Imagination, and by his interpretation of Katharsis, *Guna, Rasa* and the Tragic Spirit. Dr. Mishra deepened my understanding of Sanskrit Literature which helped me in understanding the Principles of Hindu Jurisprudence.

Professor Sacchinath Mishra taught us Political Science. Prof. Mishra had special liking for Harold J. Laski whose pluralist view of Sovereignty and socialist ideas had greatly influenced my thought. At his suggestion I read Laski’s *Introduction to Politics* and the *Grammar of Politics*. It was Laski’s ideas, as expounded by Prof. Mishra, which helped me to interpret and evaluate the concept of ‘sovereign power’ in my Public Interest Writ Petition before the Delhi High Court, and the Supreme Court of India. Prof. Mishra’s exposition of the grammar of revolution was extremely thought-provoking. After analyzing the factors which led to the American War of Independence, the French Revolution, and the Russian Revolution, he taught us that all the great revolutions disclosed certain revolutionary grammar at work. I would revisit this point in Chapter 22 of this Memoir.

I commenced the study of the Indian Constitution in the year 1950, and I am still its close student. Prof. Shankar Kumar Jha had taught us the Indian Constitution. What has agonized me is that over the decades we have substantially defaced and defiled this most solemn charter. I remember how emphatically he asked us never to forget that Democracy survives only when the citizens are assertive and vigilant. He often quoted John Stuart Mill who said in his *Representative Government*:

“Political institutions are the work of men; owe their origin and their whole existence to human will. Men did not wake on a summer morning and find them sprung up. Neither do they resemble trees, which once planted, ‘are growing,’ while men ‘are sleeping.’”

Prof Krishna Kant Mishra taught us the history of India. I would tell you about an interesting discussion we had when he was delivering his lecture on the establishment of the East India Company’s power in Bengal. With reference to the exposition made in V. A. Smith’s *Early History of India* and P.E. Roberts’s *History of British India*, he discussed the ‘judicial murder’ of Maharaja Nandakumar who had been the ‘deewan’ of the Nawab Mir Jafar. Nandkumar fell in the disfavour of the East India Company because he had invited the wrath of Warren Hastings,

Governor-General (1774-1785) of the Fort William in Bengal. Hastings had personal animus against him as Nandakumar had disclosed how the Governor-General received hefty bribes from Munni Begum, the charming woman with plenty of wealth. Hastings conspired against him. He was accused of forgery, and was hanged. Elijah Impey, the Chief Justice of the Supreme Court in Calcutta, established under the Regulating Act, was unjust and unfair. P.E. Roberts rightly called the punishment to Nandakumar a 'judicial murder'. Nandakumar was a tax officer of great distinction. Chief Justice Sir Elijah Impey had defiled the seat of justice. Whenever these days I read about judicial corruption, I am not surprised. The problem, which Prof. Mishra highlighted in 1954 while discussing the 'judicial murder' of Nandkumar, is still the problem defying solutions.

The Darbhanga Raj

In the Darbhanga Raj area, there was a huge campus earmarked where the Maharaja's stable existed for keeping horses. In the stable there were numerous chambers each fitted with a ceiling fan for providing cool air to the stallions each having its specific name. The most impressive amongst them was the Mussolini (virtually *Primus inter pares*, meaning 'the first among equals'). I got a lot of pleasure in observing the horses marking the excellence of their mien and their shapely body which thrilled me. Often I went to that campus to loiter around, and to listen to the musical clock in the majestic tower. The gong of that imported massive bell was sharp but sweet with prolonged resonance. Both in sound and shape the four clocks on the four sides recalled to mind the Big Ben at the Westminster in London. Now all these have gone. The structure of the tower stands with the clocks gone. It appears now as a terrifying monster whose eyes have been gouged out. You might even feel that you saw something like *Guernica* by Pablo Picasso. In this campus I met Bhikku Aryadeva who was residing in the corner room of one of the blocks of buildings. The room was just a black hole. The Bhikku was a tall, sturdy and imposing person. I came to know from him that he was a Frenchman, and had been one of the Generals who fought in the Second World War. The mass destruction caused by the War, and the Nuclear holocaust committed in Japan, brought about a change of heart in him. He became a Buddhist and devoted his life to the study of *Dhamma* (*Dharma*). When I met him sometime in 1955 in his room, I was received with a lot of warmth and affection. All the shelves, from ceiling to floor, were full with books. A sweet bond was established between us. I kept on going to him off and on. He gave me elementary lessons in French. He told me that, while in the thick of the warfare during the Second World War, he had the *Bhagvad- Gita* with him always. Like J. Robert Oppenheimer, the Bhikku learnt Sanskrit to study the *Gita*. Oppenheimer amazed the world by telling them that on seeing the atomic blast he recalled certain verses of the *Gita*, and was guided by Krishna's *karmayoga*. The Bhikku too quoted the *Gita* in course of his conversation. His reflection on life led him to become a Buddhist. After 1958, when I left for Muzaffarpur to do my Post Graduate studies, I lost contact with Bhikku.

Darbhangha was famous for being the seat of the Raj Darbhanga. The Raj Darbhanga was India's biggest Zamindari before the abolition of *zamindari* system. The Maharajadhiraja Kameshwar Singh was its last holder. As per genealogy drawn up by Shri Kirtinath Jha Panjiyar of Koilakh, Mahmamopadhaya

Mahesh Thakur, who got the grant of the Darbhanga Raj from Emperor Akbar, was the son of Rudra Jha's daughter who figured in my genealogy. The family, to which the Maharajadhiraja belonged, was the family of the Sortriya Brahmins. This family achieved in Mithila highest distinction for promoting and protecting the cultural values of the region. The Maharajadhiraja's ancestors were great scholars. Akbar had granted a high distinction to Mahesh Thakur on being impressed by his learning and purity of the style of living. I had opportunity to visit the palaces of many of the Rajas and Maharajas of this country but what appeared to me unique was Maharajadhiraja Kameshwar Singh's love for books, and his readiness to provide patronage to the scholars. The shining Burma teak almirahs in his living room contained rare books in the loveliest bindings. I was lucky to have access to the library of the Raj Darbhanga which had a large collection of most precious books on diverse subjects. The library had a lot of rare books which Danby, the Secretary to Maharaja Darbhanga, had purchased from several sources in India and England. The collection of the books included a lot of books got from Disraeli's collection. I could consult the first edition of the great *Oxford English Dictionary* (1928). When, in 1964, Mr. C. C. Ganpathy, the Commissioner of Income Tax and Director of the IRS (Staff) College, Nagpur, came to know that I belonged to Darbhanga, he told me that the two persons, who had contributed most to the development of the fundamental principles of the Income Tax Law, were Maharajadhiraja Kameshwar Singh of Darbhanga and Raja Bahadur Kamakhya Narayan Singh of Ramagarh. The administration of Raj Darbhanga was effective and well organised. For several years I held jurisdiction over the Darbhanga Raj in terms of the Income-tax Act, 1961, I was amazed how this assessee managed his complex economic and financial affairs so well. The Raj was not ever subjected to any penalty for the breach of the provisions of the tax law. It was not even rumoured that the Raj tried to sully the administration of justice by any foul means. It carried legal disputes to the highest courts, the Privy Council in the U.K. and then to the Supreme Court of India. I saw how some of our greatest legal minds, like Muhammad Ali Jinnah and N.A. Palkhivala, honed points and issues in the Raj's tax cases. I suggested several times that their records deserved to be preserved so that some researcher could get good materials for doing research on the history of income-tax administration in our country.

Maharajadhiraja Kameshwar Singh's father, Maharajadhiraja Ramaeshwar Singh, was a great, *Tantric*. I heard from knowledgeable persons that Goddess Kali had manifested Herself to him. On his *samadhi* stands now an imposing temple. Nowhere in India have I seen such an impressive full-size image of the Goddess with Her one foot accidentally put on Lord Shiva's chest making Her terribly embarrassed. She protrudes her lips in utter shock. The artist who made the image blended in Her image the excellence of extreme ferocity and the qualities of absolute affability. She is called the 'Ramaeshwari Shyama' after the name of Maharaja Ramaeshwar Singh. Most evenings I spent in the temple. Also near that temple is the temple of Goddess Tara, called Rudreshwari Tara, installed to mark the place where Maharaja Rudra Singh was cremated. As She is my Deity, She comes before my mind's eye every morning when I get up.

The main residential campus of the Maharaja had been protected by a huge fort-like wall. When I was studying at school, a part of it was under construction.

I had studied in my Geography books that the plate, on which our Mithila region exists, was slowly creeping underneath the plate in the Trans-Himalayan regions. This movement made the whole belt an unstable seismic zone. I was wondering at the prudence of the Maharaja's advisors who had advised him to construct that fort at a place where the earth-crust was unstable. My apprehension came true. Some decades later, under the impact of some severe earthquake, the fort developed several cracks, certain portions even collapsed. The Maharaja died issueless in 1962. Towards the end of his life he was despondent. Under his Will he donated many of his palaces for public and charitable causes. The Mithila University occupies one of his campuses gifted by him. After his death the Darbhanga Raj declined fast: now it is just history. Much of the fabulous wealth was allowed to get lost, perhaps for petty gains!. Campuses lost grandeur. Buildings lost their sheen. Many of the valuable books are now stolen. The imposing structures are now dilapidated. The Indra Bhawan, wherein once Jaddan Bai sang, stands utterly neglected. Only the campus of the temples is always abuzz with activities. Where ordinary people had no access then, everyone can get access now. The campus is now under the supervision of the Bihar Religious Trust Board. People throng there not only for *darshan* but also for performing some sacred ceremonies like *mundan* and marriage. The Shyma Mandir complex presents a very glittering show. But the rest of the Raj area has lost the glamour which it had once upon a time.

The Centenary Celebration of the First War of Independence

In 1957, the centenary of the 1857 was celebrated in this country. A grand function had been organized at C.M. College. One of the highlights was the reading of papers on the great event which constituted a great divide in the history of Modern India. The Board of Evaluators consisted of Dr. Sheetal Prasad Sinha, FRCP, Pandit Nageshwar Mishra, a Senior Advocate, and Prof. Sachinath Mishra, Head of the Department of History and Political Science. I made an extensive study to know what had happened in 1857. I studied several standard books, like Forrest's *History of Indian Mutiny*, Sir George MacMunn's *Indian Mutiny in Perspective*, Dr.S.N. Sen's, *Eighteen Fifty Seven*, P.E. Roberts's *History of British India*. But what appealed to me most was Vinayak Damodar Savarkar's *The History of the First War of Indian Independence*. In this extraordinary book this great Freedom Fighter interpreted the events of 1857 to discover the forces which had made it happen. He discovered the forces of *Swadharm* (love for own *dharma*) and *Swarajya* (love for independence) at work. My article received a resounding appreciation from the listeners. Shri Nageshwar Mishra considered my paper excellent and rated it the best. Dr. Sheetal Prasad Sinha was not only a distinguished physician but also a widely read person. He felt that Savarkar's approach was coloured by his assumed point of view, and was not scholarly enough. By a majority of two to one, my paper was adjudged the best, and I received Dr. Bhatnagar's *Encyclopaedia of Knowledge* as the First Prize.

Darbhanga & Laheriasarai

Those days the intellectual ethos at Darbhanga was of the highest order. The Mithila Sanskrit Research Institute, and the Kameshwar Singh Sanskrit Univer-

sity were the two great centres for the advanced study in Sanskrit and Philosophy, and had on their faculties very distinguished teachers. I came in contact with some of the scholars but was greatly impressed by Pandit Trilok Nath Mishra, a distinguished Pandit of the old school, and by Dr. Bagchi, who was the Director of Mithila Sanskrit Research Institute. I had the fortune of learning a little of Sanskrit from Pandit Mishra whose sense of humour made his exposition extremely lively. I interacted with Dr. Bagchi in connection with my study of certain aspects of Aesthetics. He was vastly learned in the literature of the East and the West, and had an original insight into the issues ranging from Poetry to Physics. When I knocked at the door of his residence at Kabraghat at Darbhanga, he was busy cooking his food. He used to cook his simple food himself. He came near me, and asked me to sit comfortably for some time. And he went inside to complete his work. He returned after a few minutes wearing *dhoti*, and had a short scarf across his shoulders. It was a remarkable meeting. It was in his association that I developed some interest in Navvya Naya. He told me about Gangesh Upadhaya whose contribution to 'Navvya Naya' is great. The interest that he helped me develop in this subject never diminished. In 1995, when I was the Director General of Income-tax Exemptions, I had to consider a petition for granting exemption from tax on the grant of award of money to Prof. N.S Ramanuja Tatachariya who had been selected for Ramakrishna Dalmia Shreevani Alankaran for 1994. The contemporary relevance of the work of Gangesh Upadhaya became clear to me on reading Prof. Tattacharya's '*Pratyaksha-Tattva-Chintamani-Vimarsha*' in which he made a critical study of Gangesh Upadhaya's *Tattva-Chintamani*.

But now the story of this place is the story of decay and deterioration. The fifty years of India's Independence have improved nothing. Trade and industry have registered no development. Good educational institutions have deteriorated fast. Poverty has impeded the economic growth, and has bred a frame of mind which is not conducive even for the preservation of cultural heritage. Both the adjoining towns (Laheriasarai and Darbhanga) appear sleepy. Electricity hardly comes. Mosquitoes abound. Rain water turns vast areas into cesspool. The system of drainage seldom functions. Civic amenities are virtually zero. If the society is surviving, it is doing so despite the activities of the Government. The people's representatives suffer under crash ignorance of their public duties. They seem to be busy feathering their own nests unmindful of their obligations and duties to people. My heart really bleeds when I think of the place, and the sufferings of the people. Their present plight brings to my mind the Painter's reply to the Poet in Shakespeare's *Timon of Athens*:

"Poet.....how goes the world?
Painter: It wears Sir, as it grows."

II. At L. S. College, Muzaffarpur

I went to L.S College at Muzaffarpur to do my Postgraduate study. I got a room in the New Hostel of which the distinguished Prof. Amarnath Thakur was the Superintendent. Though I had not lived in a hostel before, I got used to its lifestyle mainly because of the warmth shown by my friends, and the paternal affection of Prof. Thakur. My batch was destined to be the last batch of the old

Bihar University which held jurisdiction over the whole of Bihar, except Patna. Now it is called B R Ambedkar Bihar University.

The Department of English

The College had several blocks of massive buildings which were earmarked for different faculties: Arts, Science, and Commerce. Post-graduate courses, run by the Bihar University, were held at the College. The Post-graduate Department of English had on its one side the P.G. Department of Philosophy, and on the other there was a huge room meant for the offices of the English teachers. The teachers' sitting hall was beautifully skirted with ornate wooden structures with cupboards for some important reference books to which even the students had an easy access.

At the L.S. College, the Department of English had, in those days, high distinction. Principal F. Rahman, had expired before I joined the Post-graduate Department, but he had become a legend in his own time. And he had his living presence in the style of English teaching at the College. He stressed on the need for developing critical sense and sensibility in his short introduction to the *Intermediate Poetry Selections* which we had studied as students of the Intermediate Class. Prof. Mahendra Pratap was the Head of University Department of the English. He was a Cambridge Tripos. English became an independent subject of study at Cambridge only in the post-First World War period. The first examination for English Tripos was held in 1919. But it was in 1926 that a separation of literary from linguistic studies was made for obtaining an English Tripos. Stephen Heath¹ tells us that at the Tripos course, Part I, comprised of papers in English literature, life and thought from Chaucer onwards, *plus* passages for critical discussion and some books of literary criticism; and Part II comprised of papers on tragedy, history and theory of criticism, English moralists, special periods and topics in English literature, practical criticism, and foreign language and literature. This protocol at Cambridge provided the basic framework for the study of English in the Universities of Bihar for about forty or more years (mainly 1940s onwards till 1970s).

The Cambridge English

In fact what we studied at that time was not English *simpliciter* but it was the 'Cambridge English'. We heard this expression from our teachers but could not understand this expression then. I felt that English was just English. Many years after, I could grasp what it meant when I read Stephen Heath's essay on "I.A. Richards, F.R. Leavis and Cambridge English", published in the *Cambridge Minds*.

To understand 'Cambridge English', it is appropriate to consider the work of two men, I.A. Richards and F.R. Leavis. It is from them that 'Cambridge English' derived its definition, and prime characteristics. Dr. I.A. Richards published some remarkable books in the 1920s which led to the emergence of a new point of view in the study of literature. The books were: *The Foundations of Aesthetics* (with C.K. Ogden and James Wood, 1922), *The Meaning of Meaning* (with Ogden, 1923), *Principles of Literary Criticism* (1924), *Science and Poetry* (1926), and *Practical Criticism* (1929). *The Meaning of Meaning* had a profound impact on me. The art of exploring 'meaning' has been my prime concern not only in the study of

Literature but also in the study of law and Jurisprudence. I was delighted that R.W.M Dias, who had studied at Cambridge for his LLB examination, dedicated his celebrated work on *Jurisprudence* to the authors of *The Meaning of Meaning*. I am greatly indebted to Prof. Amarnath Thakur who trained me in the art of Practical Criticism. Periods, in which we were taught practical criticism, were really fun-packed. Prof. Thakur distributed short poems for written comments after critical evaluation. This is what precisely Richards and Empson had done in the classes they had conducted. Our responses were closely examined to see whether we caught their meaning without the taints of stock responses, doctrinal inhibitions, and other preconceptions. The art of practical criticism helped us in developing trained literary sensibilities. F.R. Leavis (1895-1978) too had a wide impact on us. Leavis was much concerned with the hazards of this materialistic civilisation and the perilous state of our culture. His *Culture and Environment*, *Revaluation*, *New Bearings in English Poetry* and *The Great Tradition* were widely read. "Cambridge English" says Heath, "developed an identity as such from the work of Richards and Leavis, from the former's analytic procedures and from the latter's development of an evaluative literary-critical practice wedded to a powerfully adduced literary history." I developed a great liking for Cambridge, and wished to study sometime there. I read, as much as I could, the writings of some of the distinguished Cambridge minds: viz. John Milton, William Wordsworth, Charles Darwin, J.M. Keynes (the economist), G.M Trevelyan (the historian), Bertrand Russell and Ludwig Wittgenstein (the philosophers). Prof. Pratap told me that even the bricks, and stones, and the trees at Cambridge speak if one can develop competence to hear their voice. All arrangements were made for me to join the course at Cambridge, but my destiny had something else in its store. My mother fell seriously ill. Being the only son, I couldn't have left her ailing at Darbhanga. Besides, I got an appointment as a Post Graduate Lecturer in English at the Magadh University at Gaya in 1962.

My Teachers

Prof. Mahendra Pratap, who was the Head of University Department of English, delivered a series of lectures on John Milton. Prof. Pratap was an avid student of Milton. His magisterial tone in the exposition of Milton's art and ideas had tremendous impact on us. I can even now hear him speaking before my mind's eye. He first presented the conventional view as to Good and Evil that Milton presented. The universe presented a spectacle of the warring forces of Good and Evil in which the ultimate triumph is secured by the forces of Good. He put his own original gloss on the problems of good and evil by suggesting the Indian philosophical view that the Supreme transcends Good and Evil both. He proved his point in measured and cadenced style. He was a close friend of Dr. Harivansh Rai Bachchan; and they had many shared ideas. It was at his residence that I had met Dr. Bachchan who had done his doctoral research on the occult in W.B. Yeats. He said that neither the Christian nor the Hebrew tradition answered the questions pertaining to the problems of Good and Evil so well as the Hindu tradition had done. He quoted the *Ramacharitmanasa* by Tulsidas to explain his point. He developed it more comprehensively whilst delivering his lectures on the Book of Job, one of the books in the *Old Testament of the Holy Bible*. I would develop some of his ideas later when I would refer to my lectures on the Book of

Job which I delivered in 1961 in the Post Graduate Department of English at L. S. College at Muzaffarpur.

Prof. Kamta Charan Shrivastava, well known by his acronym KCS, delivered lectures on D.H. Lawrence and Joseph Conrad. I felt that while delivering his lectures he meditated and ruminated over the subject matter of his lectures. Often we felt he had gone into a trance. He stood for long without any movement except of his lips. He was like the flame in darkness without a slightest twinkle. He seemed to be reflecting over the various aspects of the diamonds of his thoughts, trying to catch the glimpse of each ray being refracted and reflected by them. He focused more on the culture of mind than on the details of facts. He made alive subtle trends of thoughts and emotions, also their undertones. Listening to him was pleasure though it put a heavy demand on the listener's imagination and critical sense.

While at L.S. College I read a good deal of the great writers of the past. I accepted Shri. Aurobindo's view in *The Future Poetry* that the great lights of the past could be put in three rows :

First row: Homer, Shakespeare, Valmiki.

Second row: Dante, Kalidasa, Aeschylus, Virgil, Milton.

Third row: Goethe.

I tried to familiarize myself with these great minds, though I was not intellectually well equipped to grasp them well. Shri Aurobindo's comments, supporting his aforesaid classification, seemed to me apt, and I enjoyed reading them. One such a comment was the following:

“....the first three have at once supreme imaginative originality, supreme poetic gift, widest scope and supreme creative genius. Each is a sort of poetic demiurge who has created a world of his own....”

In the Postgraduate Department at L. S. College, there were many other distinguished teachers. I hold myself under an eternal debt to them all (though, I know, I have not given good account of myself which would have delighted them).

My indiscretion: Under the threat to “lay me by the heels”

In December 1958 the Bihar University organized a convocation for conferring degrees to the Graduates. It was held in the campus of Veterinary College at Patna. Dr. C.D. Deshmukh delivered the Convocation Address. I sat in the remote corner under the huge Shamiana. I succumbed to friendly persuasions, and sneaked out of the function to see a movie 'Madhumati.' Prof. Mahendra Pratap, who was sitting on dais, saw our conduct. He didn't say anything then. A few days later, he came to deliver his lecture explaining the invocation to light in the third Book of Milton's *Paradise Lost*. But before he began his lecture, he cast a pointed and piercing glance at me. That unnerved me. He told us about the Original Sin, and also how and why it had been committed, and with what outcome. His sharp gaze made me conscious of the sin I committed by leaving the Convocation for viewing the film. A line of a famous Urdu poet came to my mind: *Lamoho ne khata ki thi, Sadiyon ne saza payi*. Prof. Pratap was a master of the art of understatement. Once the period of his lecture was over, we went to him to apologize for our misconduct at Patna. My indiscretion agonized me for years.

Acharya Janaki Vallabh Shastri was one of the most distinguished Hindi poets. He was widely known for his learning and his exquisite genial temper. I

wished to call on him. On some Sunday I proceeded to call on him. I was accompanied by a few of my friends who knew him well, and who often visited his house at Chaturbhujsthan. This area was referred in hush-hush tone despite the fact that there existed a wonderfully ornate sprawling temple. Many of my friends had counselled me not to visit that area as it had gained a notoriety of being a red-light area where many courtesans and whores lived. But I had a desire to have the great poet's *darshan*. Much before we reached the grand temple of Chaturbhuj Bhagwan, we had the sight of young inviting voluptuous women, almost displaying themselves as wares, on the verandas by the roadside. A matron recognized one of our friends because in his marriage she had gone to his village to perform her music to entertain the *baraati* (a bridegroom's wedding procession) at his wedding. She invited us to stay a while to listen to some select *thumris*. He yielded to her persuasion; and we had no choice but to follow him inside her house. She sang with exquisite grace; but she sang *abhajan* rather than something prurient pandering to one's lascivious tastes. She sang a song by Vidyapati: *Kahan Harab More Dukh He Mahadeva* (when will you, Mahadeva, rid me of my sorrows). We devoted some time in the temple. We knew that the embellished ladies, with roses tucked in their hair coils, had gone to worship the Lord before they could take to their trade. We had an enjoyable interface with the poet, and we were inspired by some of his poems. We returned to our college hostel but by that time it was late at night.

Somehow the story about this visit reached my father's ears. A few days later I got from him a cryptic letter where, almost out of context, he had written:

“Virgo (*Kannya*) to Libra (*Tula*). The Sun on its path in the heavens moves through the twelve stations. After sojourning in the zone of Virgo (*Kannya*), it moves to the zone of Libra (*Tula*) to demonstrate to the Universe that it committed no indiscretion whilst in the zone of feminine seduction.”

Soon I realized that he was suggesting to me to recall a famous story which I had heard long back. A son of a noble man went to Varanasi to study the Vedas. Once he was seen by someone in the notorious red-light area. Somehow the tale was carried to his father residing in a village. He composed a verse for his son's instruction, and he sent that to him. In that poem he told his son the pattern of the Sun's journey through the zodiac signs. Once the Sun sojourned in the zone of Virgo he demonstrated his blamelessness by putting himself on the scales (Libra): proving that he committed no indiscretion. I could easily understand what my father had in his mind. Justice 'should not only be done, but should manifestly and undoubtedly be seen to be done.'

III

THE SADHU AND THE VAISHYA (A WHORE)

A story came to my mind on seeing the damsels of delight displaying themselves near about the great temple. I had read it somewhere in Acharya Rajaneesh's oeuvre. Once it so happened that a Sannyasi and a prostitute lived in the same locality. They died at the same point of time, and were brought before the Lord of Death for His judgment. The Lord of Death sent the prostitute to Heaven, and the Sannyasi to Hell. Naturally the Sannyasi was furious at the

perversity of divine justice. He entered an instant caveat, and called for the Lord's explanation for the abuse of power. The Lord of Death said: "Divine dispensation is always fair. When she sold herself to her customers she acted with a sense of helplessness on account of her constraints from which it was impossible for her to get out. But even when the Sannyasi worshipped the Lord, his mind remained lost in the breeze of fragrance coming from roses tucked in the prostitute's coils. The story is wonderfully suggestive.

My mind goes to another story which too I read somewhere in Acharya Rajneesh. He wrote about a Sannyasi and a Vaishya (a whore). The Sannyasi was Swami Vivekananda. He refused to participate in a function organized in his honour by the zamindar of a particular area. He did so because he came to know that a Vaishya was to perform her art there. But she sang in the gathering, quite close to the Sannyasi's tent. He could hear her. She sang *abhajan* by Narsi Mehta. It said that it is the same iron which is seen in a temple and also in the butcher's shop, but the *paras* does not discriminate between the two. Both get transformed into gold by the sheer touch of *paras*. And then she sang with intense feeling प्रभुजी, मेरे अवगुण चित्त न धरो. Vivekananda ran to the place where she was singing. He realized that he had gone wrong. He was in tears. It was evident that on seeing her, he had no feelings unbecoming of a *sannyasi*.

The Ways of God: The Book of Job

I remember to have annoyed the Bishop of Muzaffarpur while discussing with him the role of God as revealed in the *Book of Job*. I had studied the Old Testament of *Holy Bible*, and had gone through the *Peake's Commentary on the Bible*. The Old Testament is a masterpiece of literature. The *Book of Job* is the finest specimen of literary flourish and dramatic art in the Old Testament. I had studied it as a Postgraduate student at L.S. College Muzaffarpur. Later on, as a Lecturer in the Department of English, I delivered a set of Lectures on this. I told the Bishop that the *Book of Job* showed God's failure to answer the fundamental questions which Job had posed. The majesty of God was not to be proved by His fascist command to Job to accept his sufferings in the mood of total self surrender to God. Job was a good man. He had to suffer because God wanted to prove to Satan that His devotee would not swerve from path of obedience to Him even if he is racked under boundless sufferings on the wheel of fire. A question keeps on recurring in our mind: Why should Job be made a pawn in the cosmic conflict between the forces of Good and Evil? In the *Bhagavad-Gita*, Arjuna was at liberty to ask all sorts of questions, and Krishna explained every aspect of the matter comprehensively. Towards the end, Arjuna himself realised what was right for him. There was no ring of assertion in Krishna's tone who, in the end of his exposition, granted Arjuna liberty to do whatever he thought appropriate. Why should a blameless man suffer? Why should God allow Satan to subject Job to an ordeal when He was sure of Job's innocence? How could Satan question even God's judgment about Job? Is not God Himself responsible for Job's tragedy? Why should He allow Satan to subject a good soul to such horrendous acid test? One often feels God had Himself failed. There was a point when German philosopher Friedrich Nietzsche found Him dead. I considered my comment fair exercise of my critical sense but the Bishop was furious at me. He felt that the prevailing modernist thinking had

perverted my perspective, and distorted my understanding of God's role in the *Book of Job*. I felt I was correct in expressing the following about 'Man' in the *Magadh University Journal* 1962 issue; to quote—

"In the Greek thought MAN was a dynamic creature with brilliant creative faculty. Gods ruled the universe: and Destiny often exercised its arbitrariness but MAN was exclusively preoccupied with the working out of the riddles of existence. Man was a great sufferer: he was also a powerful cognitive instrument. In the Middle Ages MAN became a frail creature standing in the mood of self-surrender before the massive CROSS. The Renaissance witnessed the revival of the Hellenic view of man modified by the medieval view of man [-a creature of passion who needs constant restraint of Reason (Christ himself is Reason)]. In the Age of Enlightenment MAN became one dimensional creature, a mere cog in the world-machine. The MAN in the Romantic period had greater knowledge of the melodrama of existence than of its equilibrium. The Victorian culture was itself superficial and had a wrong sense of values. MAN in our century is "a helpless and fragile beach-ball²". In the melodrama of existence we are all pathetic characters. With no amount of glittering achievements our civilization can camouflage its wounds. Modern man is

"Like a patient etherized upon a table"³.

Even if he regains his consciousness he is bound to collapse again for in the present state of affairs his disease has no cure."⁴

My Four Years of Lectureship (1960-1964)

The day the last paper of my Post Graduate Examination was over, I was asked by Prof. Mahendra Pratap to meet Shri Collector Singh Keshri, Principal of Samastipur College. Keshariji was himself a great Hindi poet. He wanted to appoint me as a Lecturer in the Department of English. I worked in that College for about a year. I enjoyed working there. When I was leaving Laheriasarai for joining the post of a Lecturer, my father advised me in the same style as Polonius had advised Laertes in Shakespeare's *Hamlet* (I. iii.59). He told me that while I would be observing my students with two eyes only, I would be observed by them with two hundred or more eyes. My lapses could not escape being noticed by my students. And it is the worst misfortune for a teacher to be judged by his students, and found wanting. In a year's time, I was appointed a lecturer in the Department of English at L.S. College where I had studied for my Postgraduate degree only a year back, and to which I was infinitely indebted.

In 1962, when I joined the University Department of English at Gaya as a Postgraduate Lecturer, the Post Graduate classes were being held in the Jamuar building in the main market area. The University's Administrative Block was in a rented building belonging to the Tekari Estate. The University building was under construction at Bodh Gaya. Gaya is an ancient town famous for its Vishnupad Temple. The footprint of Lord Vishnu is worshipped there. The temple is on the bank of the Falgu river. It is customary to perform *Sradha* (the last rites) of the deceased ancestors on the bank of the Falgu river. It is said that Lord Sri Rama had performed *Sradha* of his father Dashrath on the bank of this river. I too performed in 1996 the *Sradha* (a sacred pooja) of my parents on the bank of

this river sitting underneath the Akshya Butt (a sacred ancient tree). The town is ancient and highly congested, with narrow lanes and sub-lanes. While going to the University Department from my rented house at Tekari Road, I often suffered the shower of the domestic refuse hurled down callously from above. Bodh Gaya is an adjoining town, famous for its Buddha Temple. I visited the temple several times. The Buddha is worshipped by all sections of the society. The Hindus consider Him an incarnation of Vishnu. The poet Jayadeva sang: केशव धृतबुद्धशरीर जय जगदीश हरे.

The Magadh University at that time had Dr. Kalikinkar Datta as its Vice-Chancellor. I had studied his *An Advanced History of India* which he had written in collaboration with R.C. Majumdar and H.C Raychaudhuri. His assortment of quotations led me to criticize him as a specialist in 'scissors and paste method'. But later, I realized I was wrong. His *History of Freedom Movement in Bihar* is a monumental work of scholarship. When I came in close contact with him at Gaya, I developed great admiration for him. He was not only a man of profound scholarship, he was also an extremely loveable person. He lived a structured lifestyle, and meticulously maintained his schedule of work. I had to leave for Mussoorie to join the Indian Revenue Service. I called on Dr. Datta to receive his blessings. He blessed me and told me a few lines by the great Rabindranath Tagore which meant: 'If none responds to you call, march even alone.' These words have inspired me and have saved me whenever I found myself teetering on the edge.

The Chinese Aggression: India's dismal response

1954, the year I passed my Secondary School Examination, was the high water mark in our relationship with China. Chinese Premier Chou En-Lai had visited India that year. Even in a place like Darbhanga, processions were taken out shouting 'Hindi-Chini Bhai-Bhai'. Prime Minister Jawaharlal Nehru was acclaimed as the architect of the new era of intimate and cordial co-operation between two emerging giants of Asia. But with the best intentions, he incurred the worst. On September 8th 1962, the Chinese forces invaded Thag La Ridge and defeated the Indian troops. On October 20, 1962, the Chinese troops invaded Ladakh and the North Eastern Frontier Agency. For years the Chinese had constructed roads, and set up their military infrastructure in the strategic region. The Indian forces were defeated. Soon Bomdi La fell. Assam was at the point of being captured. Humiliation of India was complete. The vacuity of the slogans - 'Hindi Chini Bhai-Bhai' - stood demonstrated. The Bandung declaration on promotion of world peace and cooperation came to naught. After inflicting a terrible aggression and capturing a lot of Indian territory, the Chinese declared a unilateral cease-fire. At that time I was a lecturer at L.S. College. The news of the Chinese aggression was shocking, reminding us of Shakespeare's expression: 'You too Brutus'. Initially the Government of India was slow and sluggish in its response to the challenge posed by the aggressor. A week later, the Chinese troops invaded the eastern sector in NEFA (now Arunachal Pradesh). The whole country shuddered with fright and forebodings when the Commander in the NEFA abdicated his resistance. For a few days, nobody was clear about the design of the Chinese. Did they intend to overrun the major part of North India? Chinese planes were sighted even above Muzaffarpur. Whenever we heard the sound of

aircrafts, we had reasons to be apprehensive. The news of the collapse of Indian Army in the Western sector, especially in the Galwan valley, was shattering to the morale of most Indians. For some days our faith in defending our country stood greatly undermined. Prime Minister Nehru sought assistance from President Kennedy by writing to him that the situation which his Government was facing was desperate. He solicited the help of United States of America. He approached the British Government also for help in the critical hour. But in the crisis management our Government was a failure. Zhou Enlai (Chou Enlai) of China declared a unilateral ceasefire on 20 November 1962.

But the people of the country displayed remarkable solidarity and unity of purpose. During the period of the Chinese aggression, I witnessed a groundswell of sympathy and support of the people for the Government. Wherever I moved, I found people astir with excitement, and working to help our Government to mobilize the nation's resources against the invaders. Even beggars contributed out of their begging bowls. My mother donated part of her gold ornaments for the national cause. We heard that Maharaja Kameshwar Singh of Darbhanga made heavy donation in terms of cash and gold. Besides, he invested several maunds of gold in the Gold bonds floated by the Government. Almost every household was contributing to the national cause. Ladies were knitting woollen garments for soldiers fighting in the extreme cold regions of the Himalayas. Garments were being prepared and transmitted to the appropriate places through voluntary agencies. Poets sang patriotic songs, and people showed remarkable solidarity never witnessed in the history of India. In dealing with the Chinese aggression, our Government showed incompetence, but our people displayed intense patriotism and solidarity. There was a mass upsurge in support of the Government. Our armed forces, deployed in the eastern and the western sectors, were highly motivated but not well equipped. Those days, I was going to Muzaffarpur from Darbhanga almost daily by train. So I could see the massive response of the ordinary people to help our fighting forces. Voluntary organisations had sprung up to collect things which could be used by our armed forces: things like woollen clothes and food which could last. Songs with nationalistic fervour were being sung to pep up the morale of the forces being transported by trains from east to west. The aircrafts of the Darbhanga Aviation (belonging to the Darbhanga Raj) were acquired by the Government to meet the challenges on the borders.

Within 24 hours of Nehru's SOS to the US President, China declared unilateral ceasefire, and withdrew. In the graphic words of Bipin Chandra, 'the Chinese dragon disappeared from sight, leaving behind a heart-broken friend and a confused and disoriented people'.⁵ But this happened after inflicting a terrible aggression, and after capturing a lot of Indian territory. Nehru was broken and could not survive long. He died in May 1964. When I joined as a probationer at the National Academy of Administration at Massourie, on June 29, 1964, I found the gloom, after Nehru's death, intense and pervading.

Pandit Nehru had studied history widely. His books on the history of India and of the World are acknowledged masterpieces. It amazed me how such a learned man failed to learn the lessons of humility from history. During the India-China crisis, Lord Bertrand Russell wrote a letter both to Chou En-Lai and Jawaharlal Nehru. The letters which the two Prime Ministers wrote in reply to Lord Russell are available in Lord Russell's *Autobiography* (see pp.648-650). The tone and temper of two letters are markedly different. Chou En-Lai's letter is

polite and suave, and was prompt. He presented his case well in his reply to Lord Russell despite the fact that the Lord had no governmental standing. He was just an eminent person widely known for knowledge, and was renowned for his deep involvement in public causes. Pandit Jawaharlal Nehru's letter was sent after receipt of a reminder. It was written in the highbrow tone with an evident imperiousness in his logic. It showed that Nehru had ceased to be the master of the situation. He pleaded on certain points which should not have been mentioned in a letter being written to a person of the calibre of Bertrand Russell. A comparative study of these two letters highlights Nehru's *shubris*, his tragic trait, and his fatal flaw. Nehru was, in the end, a tragic hero: one with great potentialities but destined to fail on account of his tragic trait.

I have referred above to Pandit Nehru's letter to Bertrand Russell. I noticed two points which deserve to be mentioned to be remembered: one pertains to the nature of our people's response that put our government's endeavour at pathetic contrast; and the other, the Chinese attitudes towards nuclear weapons. Both the points are important even from sociological point of view, and also in the matter of our nation's preparedness for a war in times to come.

- (i) Nehru rightly noted in his said letter: "But there are limits in a democratic society to which a Government can do. There is such a strong feeling in India over the invasion by China that no Government can stand if it does not pay some heed to it." The upsurge of the patriotic feelings throughout India was so great that China must have inferred that the people of India could not be caged under any servitude; and every effort would surely turn futile. Before America initiated the calamitous process culminating in the use of nuclear power against Japan during World War II, it studied the psyche of people of Japan, "By 1944, it was felt important in the military hierarchy in America to commission a study to study 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."⁶ China could easily read that. Though the Indian government gave no good account of itself, the people made it clear that no power could subdue the resurgent India because of the commitments of the Indian people to freedom and democratic polity. We must not do anything to undermine our people's patriotic commitments to our nation.
- (ii) Our country must remain prepared for its defence against the foreign power that turns foolish, tyrannical, or short-sighted. Chinese position was rightly noted by Nehru in his reply to Lord Russell⁷:
 "The present day China, as you know, is the only country which is not afraid even of a nuclear war. Mao Tse-tung has said repeatedly that he does not mind losing a few million people as still several hundred millions will survive in China."

It would be prudent for our Government to keep the Chinese strategy and ideas in view while responding to the Chinese challenges, if they are posed again.

IV

THE PLIGHT OF EDUCATION

My association with the academic world never ceased. Even whilst a member of the Indian Revenue Service, I addressed various academic fora, and was a member of the Council of the Higher Legal Studies of Nagpur University. I was

a setter of questions and an examiner for the LL.M Examinations of the universities at Patna, Kolkata, and Nagpur. On 18th September 2010, I had good interactions with the students and teachers at National Law University, Jodhpur, where I had gone to deliver a lecture on the 'Abuse of Treaty-making Power'. There I had good interactions with the students. Besides, I have had good friends in the academic world. My father, and one of my uncles, never ceased to be academicians. These I write just to establish my credentials to make short comments in the next paragraph.

I would not write about the great improvements brought about in the academic world over these years, and the vast technological facilities provided to the teachers, students and the researchers, though these have been great and good. It is normal not to think of one's health till it is not struck with some ailment. But in this phase of Economic Globalization, some worrisome features have become manifest. The constraints of the Memoir do not permit me to go into details, but a few points are just touched for my readers to reflect on the plight of our education:

- (i) It is seen that no concern is shown for the development of aesthetic sensibility and spiritual values; and the stress has shifted to acquire proficiency needed merely to run the market-driven consumerist society emerging so aggressively these days.
- (ii) In the market-driven economy the only criterion for evaluating the importance of a subject for study is dependent on to what extent it is market-friendly. In accordance with the Darwinian cynicism, it is said that all subjects, which do not promote market, must be ignored to die out soon. There is a growing indifference towards the values to equip people to develop the qualities of good citizenship, good householder, good creative artists, in short, good human beings. John Maynard Keynes expressed his great apprehensions in connection with economics too. He said: "the 'economic' problem is not —if we look into the future —the permanent problem of the human race."⁸
- (iii) This dominant passion that education is to run the market only, has produced a branch of study that is attracting most of our good students. As market is run on the greedy self-interests, this passion has produced such subjects as the MBA. Allan Bloom, the author of *The Closing of the American Mind*, has a point when he says: the MBA is 'a great disaster' because the students' lives were 'never radically changed by it, as they should be in a proper education.'⁹
- (iv) It is clear that the Vishkanya of the capitalist society is 'MONEY power' as by abusing it the governments can be purchased, public opinion can be silenced, intellectuals can be hired.
- (v) Great imbalance is being created in our society by giving wrong and distorted values on academic and cultural pursuits. Conditions have been created for our brilliant boys to discover that they can get better remuneration by selling wine or toothpaste than by such pursuits which had once produced a Shakespeare, a Russell, or an Einstein. If spreading falsehood becomes socially prestigious and economically more rewarding, then our entire value system becomes confused, even rotten. I wholly endorse the

concern expressed by my learned friend Professor Arun Kumar of Jawaharlal Nehru University¹⁰ (see at 'Note & Reference' 10)

- (vi) The corporations, under this or that format, are striving with, no holds barred, to establish what they call 'long-term Strategic Alliances with top rank colleges and universities' as that would help them to 'access to the most talented and motivated students', give them 'access to research that addresses corporate needs'. In short, after turning the State into the 'Sponsored State', and the government into the protector and facilitator of the corporate world, they want to turn the universities into sponsored institutions to bring about a sort of the genetic engineering on our young boys and girls by alluring them towards their corporate culture. Thomas Hobbes, in his *Leviathan*, considered the king wielding the absolute power of the State (*civitas*). In his " *The Law of Free Monarchies*", James I was all for the ideas so aggressively set forth in *Leviathan*. Hobbes argued that the Universities deserved to be disciplined. Hobbes said: "I despair of any lasting peace among ourselves, till the Universities here shall bend and direct their studies to the ... the teaching of absolute obedience to the laws of the King."¹¹ The neoliberal thinkers and strategists want the universities to become market-friendly by developing corporate culture to produce ideas and workforce to work for promoting the neoliberal paradigm at all costs.
- (vii) It would be unwise to let the corporations shape our boys and girls for their commercial purposes alone, starving our body politic, and our national and cultural pursuits of their much needed good talents. We cannot afford to export our best talents to serve the foreign countries leaving our country high and dry.
- (viii) What sort of education be provided in a democratic society is a political decision to be taken by the constitutional organs in accordance with the objectives set under our constitution. The universities cannot be allowed to become the surrogates, or back offices, or extension centres of the MNCs.
- (ix) It is our misfortune that all equitable norms in the matter of the payment of wages and remuneration are violated in order to hire talents for the specific corporate purposes. There must be a ceiling on payments otherwise economic injustice would be seriously wrought. By paying unreasonably high remuneration to some, not only pressure of high inflation is caused, even our perception of values gets distorted, and our young boys and girls get improper measuring rod to evaluate the ways of our world.
- (x) I have experienced two very pronounced aspects in the pro-corporation strategy: these are—
 - (a) High pressure persuasion through analogical reasoning asserting that this thing, or that thing, is also happening elsewhere, so India has no option but to swim with the global currents.. This point is made by overlooking the 'fallacy of similitude', by forgetting that India cannot emulate the countries like the USA or UK, which are the real beneficiaries of the market-driven systems;
 - (b) Threats are frequently advanced by telling us that we shall have to pay a heavy price if we do not help promote the neoliberal agenda of the IMF or the WTO. They say that if we do not follow their lines, the foreign investment would dry up, the hot money would vanish, and

we would expose ourselves to the consequences for the breaches of obligations under a number of agreements to which we have become a party.

In my view, these threats are given to promote the neoliberal agenda by adopting a new brand of colonialism being established in this phase of the Economic Globalisation. I would record my reflections on these aspects in the Book III of this Memoir, especially in Chapter 24 ('Our Worldview and the Trends of Our Times').

My quest for the Government Service

I was happy in my academic pursuits. But it was fashionable those days in Bihar, at least for good students, to appear at the competitive examinations. I got into the rut, and I appeared at the competitive examinations for Central Services. My knowledge of the Government service was almost zero. None in my family had ever been a cog in the machine that we call government. I was selected for the Indian Revenue Services (Income Tax Service). I was in two minds whether to join this service as a lot of persons had made adverse comments, and insinuated against the tax gatherers. I too had read in literature that a tax-gatherers never had good image. Marinus, a Flemish painter of the 16th century brought out the grotesqueness of the tax-gatherers in his famous painting "Two Tax Gatherers"¹² I was in two minds whether to join this service. But I was persuaded by Dr. K.K. Dutta, the eminent historian, to see the World as it is through my own experience rather than in the light of what others say. I would come to my days in the government service in the Book II of my Memoir in which I would portray my years in the Civil Service.

NOTES AND REFERENCES

1. *Cambridge Minds* edited by Richard Mason [Stephen Heath, "I.A. Richards, F.R. Leavis and Cambridge English"]
2. The expression is borrowed from Donald D. Glad: "Mind as an Organismic Integration" in *Theories of the Mind* ed. by Jordan M. Scher (New York 1962), p. 529.
3. T.S. Eliot: 'The Love Song of J. Alfred Prufrock'.
4. *The Magadh University Journal* (1961) pp. 115-116
5. Bipin Chandra, *India After Independence* (Viking 1999) Page 165
6. Peter Watson, *A Terrible Beauty*. P. 402
7. Russell, *Autobiography* p.650
8. Keynes, *Essays in Persuasion* p. 360 quoted by J. K. Galbraith, *A History of Economics* p. 283
9. Peter Watson, *A Terrible Beauty* p. 723
10. "Today labour is devalued while speculation and greed have been raised to a new high pedestal. A mere 1 per cent of the population linked to the corporate sector earns more than what 60 per cent, dependent on agriculture do. Disparities have risen more sharply in the last six years than in the earlier 54 years. The young are encouraged to sell soap but not to contribute to nation-building through teaching and research. Sacrifice appears to be stupidity, undermining the entire effort of the freedom fighters. Those of them who still survive ruefully ask: is this what they fought for? " Prof Arun Kumar, 'After 'Tryst with destiny': Unending wait for new dawn' in *The Tribune* August 29, 2007 Chandigarh.
11. Quoted by Noam Chomsky, *Failed States* p. 241
12. See *Our World Today* published New Caxton Library Service, London 1973.

BOOK II
A COG IN THE MACHINE

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9

ON JOINING CIVIL SERVICE

My mother believed that I was destined to earn my living by serving government. She was sure about this as my horoscope suggested that ‘the baby born on Ekadasi’ was to be parsimonious and contented, destined to support his existence by serving the government of this country. The horoscope itself recorded : ‘नरेन्द्राश्रय जीविकः’ and ‘अल्पतोषी नरेन्द्रस्य गेहगामी’. Her idea entered my consciousness to grow and flower in my later years. But the *causa proxima* was starkly mundane. As a lecturer in the Post-Graduate Department of the Magadh University, I was getting Rs. 275 per month, whereas on joining government service I could, as a member of the Indian Income Tax Service, begin in the scale of pay Rs. 400 to Rs. 1250. I decided to become a cog in the machine we call ‘government’. Edmund Burke had said, in his *Reflections on the Revolution in France*: “Government is a contrivance of human wisdom to provide for human wants.” If dreams were to sell, I could be their largest buyers. I didn’t realize that even I could become Time’s fool.

At the National Academy of Administration

My period of probation began in June 1964 at the National Academy of Administration at Mussoorie. It had a sprawling campus having an array of majestic buildings. The main building bore deep imprint of the Gothic Revival. Its liquid baroque style added romantic sweetness to the whole ambience. Its vast lounge, with its charming décor, provided a wonderful casement on the Himalayan Ranges across the vast ocean of green, dense forests ascending and descending the hills. They created the illusion of strange high tides of the green over which the rays of the sun wrought patterns of light and shade splashing colours from rich inexhaustible palette of nature. The adjoining dining hall could accommodate at a time almost all the four hundred and odd probationers. The adjacent hall, which had been once the cinema house of the hotel meant for the Britishers, was for us the lecture-theatre. The vast lawn had a lush garden in which we basked in the sun, and had sweet moments of friendship for which we had sufficient time. I was one of those who had been lodged in Chaman Estate built by some feudal lord decades back on the hilltop. The room in which I stayed had an extensive balcony with wide glass panes of several colours to prevent the aggression of cold winds from the valley which was yawning wide providing us glimpses of the antics of the clouds. The electrical lights of the valley created an illusion of the stars studding the semicircular deep green downs. The glass-

covered balcony was my most enjoyable place where, in my solitude, I could read and build up my rainbow. I read Dr. M.S.Randhawa's *Flowering Trees*, *The Kangra Paintings of Love* and *The Bhosali Paintings of Love*. I had read that Ravana kept Sitaji confined in Lanka underneath the Ashoka trees profusely laden with red flowers, but I had not seen such Ashoka trees. I had felt that it was a mere poetic description. But on reading the description of the Ashoka leaves and flowers in the *Flowering Trees*, I strove a lot to see the tree somewhere. I was lucky to discover such trees at Lucknow where we stayed for sometime in 1964 while returning from Bakshi-ka-Talab, near Lucknow, where we had gone to see the rural development programmes.

The inaugural address was delivered by Shri S.K.Dutta ICS, who had been the Director of the Academy. He offered in his measured speech timely tips to the budding administrators stressing that the *esprit de corps* is the prime requisite in Civil Service, and cautioned us against vainglorious segmentations in Civil Service in which the sense of comradeship gets lost. He referred to a sort of caste system in Civil Service which had bedevilled its solidarity and effectiveness. The pathology to which Mr. Dutta was drawing our attention continues even after more than four decades, rather this sinister phenomenon has become worse.

Whatever time I could steal, I devoted that in the library which was extraordinarily rich. A lot of books on philosophy and literature had been contributed to the library by Dr. A.N.Jha, ICS, who had been the Director of Academy before Mr. Dutta took over the charge. I had met Dr. Jha once, and was greatly impressed by his personality. He was a brother of Dr. Amarnath Jha who had been the Vice Chancellor of the Allahabad University, and then the Chairman of the Bihar Civil Service Commission. Dr. Amarnath Jha was a living legend when I was a student. My teachers made frequent references to his ideas, and he figured in various anecdotes which his eminent students narrated to us. I was shocked when several years later I heard that a substantial portion of the Academy's building, and its library, were destroyed in fire. Now the Academy has been substantially rebuilt and renovated.

At the Income-tax Staff Training College, Nagpur

After a stint of six months at the National Academy of Administration, I joined the IRS (Staff) Training College at Nagpur in December 1964. It was virtually an anticlimax. Now we constituted a small band of probationers residing in ordinary rented accommodation in the Civil Lines area, shorn of all glamour which had characterized our lifestyle at Mussoorie. But we could closely interact, and we succeeded in evolving excellent *esprit de corps*. The thrust in the training at the College was on acquiring proficiency in accounts and tax laws. I found the study of accountancy tough, and I felt I was on a wrong job. I wrote to my father that I intended to go back to the university to go ahead with my interest in creative literature. Soon he wrote back to me an inspiring letter telling me that clear comprehension, and a lot of exercise at solving the problems, could carry me through my crisis. He quoted Lord Krishna in the *Bhagavad-Gita*. Arjuna found the Lord's teachings too tough to be comprehended. He asked him what he could do to get round this difficulty. Krishna told him that the only way to do so was 'by constant practice' with calm and detached mind (the *Bhagavad-Gita* VI. 35):

My father stressed on 'practice' "(अभ्यासः मात्रेण)". I followed his instructions; and I did well. Thereafter this student of creative literature saw how 'accountancy' itself became highly creative (they called it 'creative accountancy')! I found the study of law greatly interesting. I adopted the semasiological approach to find out the meaning of the legal language. Legal language seemed to me nearer to poetry than to prose! Mr. C.C. Ganapathy, the Director, taught us the applied tax laws; and Mr. V.V. Badami, the Deputy Director, taught us the theory of the tax law. They were ex-army officers. We held them in our highest esteem. They helped us develop an insight into the architecture of the Income Tax Law. To say out of context, once Ganapathy Saheb, when he came to know that I had studied literature, asked me who had judged human nature better: Hobbes or Rousseau. Thomas Hobbes had considered the humans inherently acquisitive and selfish, whereas Rousseau considered them inherently good and altruistic. His question was a bolt from the blue. I said: "It was Rousseau". Promptly came his comment: "I bid you to examine your comment after a few years in the Income-tax Department." Days and years passed. I often felt I had become 'Time's fool'. But that question hibernated in my mind: I often asked myself: why did he ask me that question? But my experience in the Department brought about a change in my view. I realised that Rousseau was not right. The Income-tax Department provided me a good opportunity to see how the world went. I could see how Mammon unmasks persons. It is said that in olden days one's valour was tested in the pursuits for wealth and woman. We live in the times when the battles are fought not for a Helen of Troy, or for a Padmavati, but for greed-driven lust for wealth and power.

At Nagpur, I found life easy-going with a plenty of time to listen to the classical music. I liked Jean-Paul Satre's existentialist literature, and devoted much time in reading his literature. He got the 1964 Nobel Prize but declined that. I wrote in the Nagpur Times an article explaining why he might have done that. Life's ephemeral glories did not matter for one who had seen its crudities and baffling conundrums.

Happy days are always felt fast flying. A year passed, and time came to bid goodbye to the Staff Training College to join my post as the Income-tax Officer at Patna. The closing peroration of the Director has remained ever-green. "You have learnt a little here, but your never-failing guide throughout your career will be your brain which you must keep scintillating always. It will help you in responding to all the challenges which would come to you, announced or unannounced."

10

MY FIRST INNINGS AT PATNA : PART-I

England expects that every man will do his duty.

—Lord Nelson's call to the fleet at the battle of Trafalgar.

(i) Ascended the Chariot in 1965 to get down in 1998

I had two stints at the Central Revenue Building at Patna; from 1965-74, then again from 1996-97. It was here that I learnt my work, and gave a good account of myself. After completing my initial training at the Indian Revenue Service (Staff) College at Nagpur (now called the National Academy of Direct Taxes), I went to Laheriasarai to be with my parents for a few days before I took over, at the end of 1965, my assignment as the Income-tax Officer Class I at Patna. In one of the delightful evenings, my father told me in simple language about the *Bhagavad-Gita* which contains Lord Krishna's teachings to Arjuna in the battle-field of the Mahabharata; and also about the *Ashtavakra Gita* which contains the dialogue between the great *rishi* Ashtavakra and the great king of Mithila, Janaka. Summing-up the effect of his short exposition, my father told me that Lord Krishna's *Gita* is an invitation to embark on action, to ascend the chariot; and the *Ashtavakra Gita* is an instruction to descend from the chariot bidding farewell to actions. I wondered why he made such a fleeting exposition of these well-known philosophical texts. But the mystery stood unravelled soon when he said: "A government servant should keep these two *Gitas* in mind. His joining the public service is ascending the chariot of action; his retirement marks the point when he gets down from that chariot." After 45 years of his instruction, I feel he was wholly right.

(ii) My First day in the office

It was the 1965 December. Cold waves carried me and my batch-friend D.K. Roy to the majestic Central Revenue Building at Bailey Road (now called Birchand Patel Road) at Patna. My office room at the Central Revenue Building was good and had rich ambience. Its long and wide glass-pane windows provided occasional respite from the yellow-coloured anaemic files pyramiding on my table. Those files were there to suck my blood for more than 3 decades. There was in my chamber an ornate wooden cupboard with its top overloaded with bundles of old papers and bound registers with torn corners. Some of these had fallen on the floor on all sides. Over the first few days in my office, I felt miserable. My clerks would put up for my approval intricate arithmetical

calculations pertaining to tax-determination, and would frighten me by placing before me fat registers bidding me write figures at times in red, and at times in black. I was never good at calculations, but somehow I could mangle with my commonsense and logic. I made good my deficiency in arithmetical knowledge with what I considered my 'mathematical logic'. The multicoloured pages of the Demand and Collection Register seemed to me a set of disjointed fragments from Van Gogh's paintings. I was often at my wit's end. When I sat inert in despondency with my oars down, and head lost in fog, I felt I heard a voice I did not know from where: '*Aa No Bhadrah Kratavo yantu Viswataha*' ('Let noble thoughts come to us from every side'). I decided to learn all that I needed to know from my clerks, inspectors and other experienced subordinate officials. I learnt a lot from them which equipped me to function without ever being taken to task by my superiors for any fault. I handled greatly complicated cases in which almost all the provisions of the Income-tax Law got involved.

When we joined my post at Patna in 1965, Voluntary Disclosure Scheme was under operation. It was designed to grant an opportunity to disclose untaxed income, or black money. My first official duty was to submit my report on someone's petition for the disclosure of his concealed income to be taxed at the concessional rate. I drew up adverse notes suggesting the rejection of the petition as in my view it did not meet all the conditions of the Disclosure Scheme. But I must admit that I nursed a measure of moral wrath at tax-evasion. I was not happy with the grant of an unfair advantage to turn black money white. In the evening that day, I went to the Commissioner's residence to pay my respect. After making me wait for a little more than an hour on the outer veranda, exposed to bitter winter blast, I was asked to enter his living room. The Commissioner had an imposing personality and was meticulously dressed adhering to the Victorian dress code. Even before I could greet him, he fired at me a strong broadside which made me non-plus. I was amazed at his volcanic eruption. He jetted out: "Do not begin your career on a bad note". I left his residence highly distraught, with tears trickling down. I felt that at the threshold of my career I was so severely judged, and so ruthlessly condemned. A creeping feeling of being sucked into Slough of Despond overtook me. The next day one of my senior colleagues, whom I had told my distress, counselled me to be of sterner stuff to survive in the rough world. On coming to know that I had given an adverse note in a case of someone who mattered, the sagacious officer said, "The VDIS is the flowing Ganges in which all the evaders of taxes are invited to have a dip so that their sin against the society is washed out. It is a lucid period between one phase of greed and the other knocking at the door".

Once, when I entered my chamber on the third floor of the Central Revenue Building, I felt I reached there through a house of mourning. Just by the side of my chamber was the office of the Assistant Collector of Estate Duties. Many widows had come, in the company of their relations, and touts, in order to obtain, the Certificates of Exemption from that officer. Without such Certificates they could not get rights to the estates their husbands had left for them. They were mostly from villages, and were generally guided by touts. The sight of the luckless women, sobbing for hours, was shocking. I prayed to God to put an end to the law of Estate Duty. God heard my prayer. The Estate Duty was abolished in 1985. I thanked V. P. Singh, the Finance Minister, for this good work.

(iii) The Problem of Black-money: the Art of pretending to solve the problem without ever solving it

The dragon of 'black money' had noxious fumes. Its characteristic features were best captured by the former Chief Justice of India, Mr. Wanchoo, in these words:

"It (black money) is, as its name suggests, tainted money—money which is not clean or which has a stigma attached to it Black is colour which is generally associated with evil. While it symbolizes something which violates moral, social or legal norms, it also suggests a veil of secrecy shrouding it. The term 'black money' consequently has both these implications. It not only stands for money earned by violating legal provisions—even social conscience—but also suggests that such money is kept secret and not accounted for. Today the term 'black money' is generally used to denote unaccounted money or concealed income and/or undisclosed wealth, as well as money involved in transactions wholly or partly suppressed."¹

Euphoria that the 1965 Voluntary Disclosure Scheme generated was misplaced. The Scheme of 1951 (the Tyagi Scheme) could unearth only Rs. 70.20 crores of concealed income. The Scheme, conceived under section 24 of the Finance Act (No.2) 1965, could unearth Rs. 145 crores.² My considered view, on the basis of what I had witnessed over three decades and odd years, was that no voluntary disclosure could ever be a purgatorial process. The VDIS 1975 and the VDIS of 1997 unearthed substantially more amount of concealed income³ yet the general attitude towards tax evasion remained the same. It had only some melodramatic effect. Justice Gupta in *R.K Garg v. Union of India* (AIR 1981 SC 2138) pointed out very suggestively:

"I asked the Attorney-General if it was his case that all attempts to unearth black money had failed, and the present scheme was the only course open. His answer was that that was not his case. The affidavits filed on behalf of the Union of India also does not make such a case. Clearly, the impugned Act puts a premium on dishonesty without even a justification of necessity – that the situation in the country left no option."⁴

It is said, the proof of the pudding is in the eating, or *phalenaparichayetey*. When I commenced my service in the Income-tax Department, in 1964, I heard that dealing with the menace of 'black money' was the most pressing of all the challenges. Despite efforts, the magnitude of the problem, posed by the black economy, has grown in later years. If you are interested in knowing reasons for the continuance of this sinister phenomenon, you should better study Chap. 5 of Prof. Arun Kumar's *The Black Money Economy of India*. Reflecting over the extent of the prevailing illegality, manifested in the massive increase in black-money, this distinguished expert aptly states:

"Illegality in society relates to the growth of the black economy. It has grown from about 4% of GDP in 1955-56 to 40% in 1995-96 and possibly 50% by now. In other words, a substantial part of our activity (economic) involves some form of illegality. It has brought into its grip

vast sections of society. This scale of illegality would not have been possible without the ruling classes who are supposed to govern society being a party to it.”

Not surprising that Scott Adams said: “The only way I can go to sleep at night is by imagining a secret cabal of highly competent puppet masters who are handling the important decisions while our elected politicians debate flag burning and the definition of marriage.” And David Rothkopf felt it appropriate to quote it as an epigraph in his *Superclass: The Global Power Elite and the World they are Making*.

(iv) I regret I prosecuted a good man

While at Patna, I had to wade through a truckload of seized papers pertaining to the “Search and Seizure Cases”. I worked hard to make a good criminal case against a deviant company, and its director. Decades after the decision of the Rangoon High Court (reported in the First Volume of the Income-tax Report) convicting an advocate for concealment of income, the Patna District court held the company guilty of criminal breach, and sentenced its Director to a term in jail for concealment of income. But I felt very much distressed as the Director had concealed income for a good cause: to set up an academic institution in a backward area. The end was good, the means was bad. While conducting that criminal case, I came in contact with a great lawyer who was also a great man. He was the great Shri Nageshwar Prasad, a criminal layer of all India fame.

Nageshwar Babu had been a Judge of Patna High Court during the pre-Constitution days. He had become fabulously rich but had never forgotten how he made his ascent from rags to riches. We had a chance meeting. He took interest in me on knowing that I was doing my LL. M. from Patna University. He too had thought of doing his LL. M. but he could spare no time from his busy profession. Most evenings I spent in his chamber learning the art of criminal prosecution. I had the privilege of sitting on his sofa: between us invariably lay the Indian Penal Code bound in old shining leather. He felt that in specific contexts a re-look on the legal provisions was highly profitable as that helped one understand the new shades of meaning. He was a very patient listener. Once finding tedium manifest on my face, he told me softly that a lawyer’s art was to pick up what was relevant in a given case. He advised that a client should not be discouraged from coming out with facts he considers relevant. The lawyer’s work is to pick up facts necessary to build up his case. He was extremely thorough in his preparation, and he took copious notes. Once he told me that the lawyer’s creative process resembled the poet’s, as both see in ‘their vision which later on finds expression through words and acts’. With a vision in his mind a lawyer goes ahead building up his case step by step, brick by brick.

I requested Nageshwar Babu to be the counsel for the Income tax Department to conduct the said prosecution case going on in the Magistrate’s court. First he hesitated in responding to my request. But after a long pause, he accepted my request out of sheer love and affection for me, but on the condition of ‘no fee’ for his work. For two years the trial went on. If my memory is right, this matter was heard over twenty-four dates. Shri Prasad was a hard task master. He made me go through all the Indian and British cases relevant to the issues in that case.

I studied Glanville Williams' *Criminal Law* and some other standard books on the art of cross-examination. I found the volumes of the *State Trials* greatly illuminating and profoundly interesting. I briefed Shri Prasad every evening that preceded the dates for hearing of the case. His presentation of case before the court was masterly. I worked as his *de facto* junior, and visited district criminal court to assist him on all the days the matter came up on the board for hearing.

Then one fine morning (if I remember right, March 31, 1968), he rang me up to tell me that the judgment had been delivered in favour of the Revenue by sentencing the managing director of the accused company to two years rigorous imprisonment. But the accused in that case was not a commercial crook. The man was in his seventies. I agreed with Mr. Prasad that his petition for bail deserved no opposition. I worked for the success of this case with complete dedication without guidance from my bosses. But my decision not to oppose the bail petition was questioned to the point of doubting my integrity. When I told Shri Nageshwar Prasad the wage that I got for my dedicated work, he said in his subdued tone: 'virtue is its own reward'. I was surprised when on the next day I was called by Shri V.S. Narayanan, the Commissioner, in his chamber. After some ominous silence, he asked me to read the letter he had received from Shri Prasad. He had written about certain qualities he noticed in me, which I myself did not know that I ever possessed. He had written in the letter that my instruction to him was most appropriate. I felt relieved.

I found Shri Prasad's art of cross-examination so effective and so nicely structured that I requested him to speak about the art amidst the gathering of the officers. On June 6, 1969 he delivered a short talk in the Central Revenue Building, Patna. I have put its transcript on my website.⁵ It is short but enlightening and thought-provoking.

(v) Assessing the Maharaja and the Raja to income-tax

I held jurisdiction over the tax cases of the Maharajadhiraja Dr. Sir Kameshwar Singh of Darbhanga, Raja Bahadur Kamakhya Naryan Singh of Ramgarh, Maharaja Kamal Singh of Dumraon and the Maharani of the Raj Hathua. The Maharajadhiraja was a person of extra-ordinary composure and poise, and exuded warmth. The Maharaja was a greatly decorated person with K.C.I.E., LL.D., D.LITT, and had been a member of Constituent Assembly (1947-1950) and also a member of the Provisional Parliament (1950-1951). I had the opportunity to meet him in 1960 when he had congratulated and blessed me for my performance at the M.A. examination.

But I enjoyed most working as the Maharaja's Assessing Officer. I found in his records the whole cavalcade of the law and administration of the income-tax from the day their history began in our country. I found that the case records had become richly strewn with legal opinions of some most important Indian and British jurists. But when I became the Raj Darbhanga's Assessing Officer, the Maharaja was no more. He died a few years before. He was found dead in his bath-tub. The reasons of his death were open to speculations of all sorts: divine decree, human machinations or mere death-wish. When I got access to his files, his Will was being probated under the jurisdiction of Calcutta High Court under high pressure claims and counter-claim. Such destiny awaits the Wills of most of the great persons. Two-thirds of the Maharaja's estate went for public charity,

and the remaining one-third was to be used for discharging other legal obligations charged on his estate. As a member of our Constituent Assembly, he contributed to the framing of our Constitution. He had celebrated the work of our Constituent Assembly even in England by hosting a party in London which was noticed and chronicled in the *Romance of Savoy*. He believed that the Rule of Law must be upheld. He got the Zamindari Abolition Act declared *ultra vires* paving the way for the First Constitutional Amendment in 1951. He fought for his legal right to own property, but parted with his property for a good cause with great delight. He was a capitalist *sui generis*.

I recall an event when I was of 8. I went to see the Raj Campus. After loitering for some time, I roamed from temple to temple enjoying *prasada* that I got in the temples I visited. I gazed vacantly on the full-size statue of Maharaja Rameshwar Singh standing under a marble canopy on the pyramidal platform. The statute was an exquisite piece of art with impeccable but highly suggestive waves in the marble. It illustrated what could have been considered the best in the Renaissance art. After much roaming in my vacant mood, I strayed into the adjoining complex of the residential palaces and the Secretariat. I felt that some octopus caught me from behind. When I turned to see what it was, I found a tall terrifying person with rich moustache. He dragged me back shouting: "Not permitted to enter that campus". I returned home morose to tell my mother what had happened. She told me: "Bother not. Time would come when they would invite you into the palaces." My mother's words came true. Time came in 1968 when I inspected the inner campus of the Raj in order to decide its claim for exempting the income of the 'palace complex' from the incidence of income-tax. Under the law, the property used for agricultural operations could not be charged to tax under the Wealth-tax Act. I went inside the palaces, libraries, gardens, and temples. My mother's words kept on floating in my consciousness.

(vi) The Aiyar Commission

The Congress Party, which ruled Bihar over decades, was defeated in the elections held in February, 1967. The rival parties formed a Coalition ministry on March 5, 1967 with Shri Mahamaya Prasad Sinha as the Chief Minister. On March 17, 1967, the Governor, in his address to the Legislature, announced that an inquiry would be made against the conduct of certain ex-ministers of Bihar. Shri Khaleel Ahmad, who was formerly a puisne Judge of Patna High Court and later the Chief Justice of the Orissa High Court, was made a minister in the Coalition Ministry, and was put in the charge of the affairs dealing with the inquiry against the former Congress Ministers. The Patna High Court observed:⁶

"..... he (Shri Khaleel Ahmad) travelled extensively all over India with a view to find out a suitable gentleman who would agree to preside over the Commission of Inquiry. Ultimately Mr. Venkatarama Iyer was persuaded to agree."

Shri Aiyar, a retired Judge of the Supreme Court of India had an established reputation for excellence and integrity. Even those, who faced the Commission of Inquiry, held him in the highest esteem. Shri A.K Sen stated before the Patna High Court, at the commencement of his argument in *K.B. Sahay v. Commission*, that the petitioners had the highest regard for his ability and integrity.

That Commission was constituted by the Governor of Bihar under the Commission of Inquiry Act, 1952. The Commission was appointed⁷ to look into the conduct of the following former Ministers:

1. Shri Krishna Ballabh Sahay, who held the office of Minister, during the periods from 16 April 1946 to 5 May, 1957 and 29 June 1962 to 2 October 1963 and the office of Chief Minister during the Period from 2 October 1963 to 5 March, 1967;
2. Shri Mahesh Prasad Sinha, who held the office of Minister during the periods from 29 April 1952 to 5 May 1957 and 15 March 1962 to 5 March 1967;
3. Shri Satyendra Narayan Sinha, who held the office of Minister during the period from 18 February 1961 to 5 March 1967;
4. Shri Ram Lakhan Yadav, who held the office of Minister during the period from 2 October 1963 to 5 March 1967;
5. Shri Raghavendra Narain Singh, who held the office of Minister of State during the period from 2 October 1963 to 5 March 1967; and
6. Shri Ambika Sharan Singh, who held the office of Deputy Minister during the period from 2 October 1963 and also the Minister of State during the period from 2 October, 1963 to 5 March 1967.

The Notification mentioned that allegations had been made that they “by abusing and exploiting the official position or positions held.... obtained pecuniary and other benefits for [themselves], either in [their] own name or *benami*, and for [their] family, relatives and other persons in whom [they were] interested, and allowed them to obtain, or connived at their obtaining, pecuniary and other benefits and thereby [they], [their] family, relatives and other persons in whom [they were] interested acquired vast properties made illegal gains....” (Singular pronouns made plural by me). It was further alleged that they, during the tenures of their offices, “indulged in corruption, favouritism, abuse of power and other malpractices.

The Commission of Inquiry, headed by Justice Venkatarama Aiyar, was essentially a fact finding body. An inquiry under the Commission of Inquiry Act was not a judicial inquiry. The Commission's orders could not be judicially enforced. The scope of the trial by the Courts of Law and that of the Commission of Inquiry are quite different. It is meant to ascertain facts for which it wielded powers of the Civil Court under the Civil Procedure Code. The Commission's prime mission is to find out facts for the information of the mind of the Government so that appropriate legal action can be set afoot against the persons found guilty of dereliction. It does not function as a court in an adversary proceeding. Its role demands it to adopt an inquisitorial technique. That role required a specific perspective and conscious activism. The Aiyar Commission, in my considered view, did not reach the high water-mark of excellence in adopting the inquisitorial method. The Chagla Commission⁸, which had been appointed on January 17, 1958 for inquiry into certain alleged scams pertaining to the six Mundhra concerns (popularly known as “Life Insurance Corporation Inquiry”), and the Shah Commission⁹, which was appointed on May 28, 1977 to look into the excesses of the infamous Emergency, had used the inquisitorial method with commendable skill and effectiveness. The Aiyar Commission adopted the usual method of admitting affidavit evidences from all those

involved in the matters under inquiry. But in evaluating such materials, the Commission often went wrong for reasons beyond my comprehension.

When the Aiyar Commission was constituted, I was the Income-tax Officer heading Ward A of the Special Circle, Patna. I had a heavy load of the 'search and seizure' cases from different places of Bihar. When the Aiyar Commission was set up, the cases of the six ex-ministers, and some senior I.A.S officers, undergoing inquiry, were centralized under my jurisdiction for proper conduct of investigation by coordinating and interacting with the Commission of Inquiry, and the special unit of the Central Bureau of Investigation under the specific assignment to conduct investigation into the affairs of those ex-ministers and others involved.

The Aiyar Commission had been constituted to derive political mileage, but the choice of the presiding officer indicated that it had not been constituted with any tainted motive, or evil design, to embarrass powerful political rivals. But the politicians involved, did not take the Commission seriously. Their hostility towards the Commission affected the quality of its work. It was surprising to see that on a mere affidavit by one Ramaya, the Commission held that Shri M.P Sinha received bribe of about fifty thousand rupees. The Commission held that one ex-minister had constructed a house, making un-explained investment, when, in fact, what had been constructed by him had not gone even above the foundation level. The Commission could have determined the nature of the deposits aggregating to more than twenty lakhs in a particular Bank account in the name of Shri Krishna Ballabh Sahay if it could have examined the destination of the disbursements from the bank account made just before 1967 General Election. I investigated in the light of all the emerging materials to come to a fair decision. My administrative superiors never interfered with my decisions even where I chose to depart on some points from the views of Justice Aiyar and the Special Unit of the C.B.I. The working conditions provided me joy to work hard.

I found Krishna Ballabh Sahay, who had been the Chief Minister of Bihar from 2.10.1963 to 5.03.1967, a most impressive person and extremely courteous. Whilst a Minister, he had endeared himself to common people by his incessant strivings to bring about the legislation abolishing the Zamindari system. When this law was held *ultra vires*, Pandit Nehru saw to it that the First Constitutional Amendment was brought about. Shri Sahay established his eminence by making Bihar lead in the national task of land reforms. He chose his words with meticulous care, and he could cut short anybody who indulged in beating about the bush. For the first time when he appeared before me he was gasping for breath as he had a severe onset of asthma. As lift was not working in my office, he climbed the three floors in order to be on time. I provided him a cup of coffee and requested him not to run the risk of climbing up when he was not in good health. The small thing I did for him made him happy. Shri Sahay was evidently happy with me despite the inconvenience that I caused to him in exercise of my duties. He never discouraged me, never misguided me, never pressurized me. Shri Radha Mohan Sahaya, his close friend from his childhood days, used to appear with him. Once Radha Mohanji told me, with hesitation of course, that in some context Krishna Ballabh Babu said, "I would like an officer who is a fool; but not one who is a

knave". When Radha Mohan left my room I spent some time in measuring myself whether I was a fool or a knave.

Shri Sahay was a distinguished fund-raiser for the Congress. He was himself a man of simple habits, and was trusted by the high leadership of the party. The Aiyar Commission found that there was a Bank account in which sums more than Rupees Twenty Lakhs had been deposited shortly before 1967 General Election. The deposits were in cash. The Bank account was in Shri Sahay's name. The Commission applied mechanically the principle that apparent was real till the contrary could be proved. And Shri Sahaya had his reasons for not co-operating with the Commission. Shri Sahay told me that in the Congress organisation there was a prevailing practice to deposit party funds in the personal name of some very trusted functionary as it was felt that the deposits in the name of political parties ran the risk of being confiscated by the British Government. The practice which prevailed before the Independence continued in some cases even after that. But the Commission did not accept his plea; and certain criminal cases were filed against him. He never took them seriously. He was sure that he would never be put on trial. He was so sure not because he was free from all blemishes but because the politicians in power would find such trials troublesome for themselves too. What Shri Sahay said came true. Complaint against him hibernated for some time before they became pathetic lost causes. During my second term at Patna, I had investigated into what was known as the JMM Scandal wrought on account of bribe that the then four Members of Parliament of the Jharkhand Mukti Morcha were alleged to have received before the 'No Confidence Motion' against the Government of Shri Narsimha Rao on July 28, 1993. The JMM pleaded that the deposits in the bank accounts were of the party. Ultimately, their story was believed without any credible inquiry. *Quis custodiet ipsos custodes?* ("Who will watch the watchers?").

Shri Mahesh Prasad Sinha was a soft spoken person with genial temper. All sorts of allegations had been made against him. It was said that he feathered his nest with ill-gotten gains. On the basis of an affidavit alone the Commission went to the extent of holding him guilty of taking bribe. In my assessment, most of the allegations were wild. But all these made him suffer inside. Then a morbid day came: I saw from the window of the Central Revenue Building a procession taking someone's dead body for cremation. It was Mahesh Prasad Sinha's. For quite some time I stood, like a statue, with tears in my eyes.

Shri Satyendra Narayan Sinha had not acquired the political stature which his father Shri Anugraha Narayan Sinha had earned for himself. He was soft and suave. Shri Raghavendra Narain Singh and Shri Ambika Sharan Singh were men of common run who came under cloud for no gross faults. Shri Ramlakhan Singh Yadav was terribly aggressive, and was at times feared by many. Allegations of various types were hurled against him. But nothing came out grave enough for which he could have been embarrassed. I cannot forget that one winter evening he had come to my residence unannounced for a social call. As per his version, my illustrious maternal uncle late Kaleshwar Mishra was his friend. He told me how during our country's Freedom Movement he became appreciative of my maternal uncle who had saved Dr. Rajendra Prasad from getting trapped by the British government whilst crossing the Ganges near Parbatta. Yadav was dressed in long robe, and was wearing an imposing improvised pagri. I invited him into the

living room of my one-room apartment. We sat on an old creaking cane chair, beside the firewood burning bright in a big earthen pot. I found him courteous to the core. He neither tempted me nor frightened me. It was a real gentlemanly visit: he maintained the highest standards in his behaviour. The next day I told Shri V.S.Narayanan, the Commissioner of Income-tax, about Shri Yadav's visit at my residence. He asked me whether I was right in welcoming him at my residence when he had official dealings with me. I told him that any other behaviour on my part would have been an act of discourtesy towards a citizen of great public eminence. He heard me, and just smiled.

Most of my time was consumed in conducting investigations into these cases of the VIPs. I was closely associated with the Commission of Inquiry. I was in close touch with the unit of the Central Bureau of Investigation headed by Shri Hingorani, the Deputy Inspector General of Police, ably assisted by Shri Ratan Singh, the Superintendent of Police. The unit of this premier investigation agency worked well under the able guidance of these outstanding officers. We never heard anything adverse against the unit's solidarity, or its commitment to the cause. The unit of the CBI was never a house divided. The officers of the unit co-operated with the Income-tax Department realizing full well that we had a common pursuit.

I dealt with sensitive cases. I played my statutory role to my full satisfaction. I went to various remote places to conduct my investigation. I invoked all my legal powers to ascertain facts. But I must record that in course of all that I did, I never had a sense of fear. My departmental superiors never interfered in the exercise of my duties. I was happy with the administrative culture of the Income-tax Department. It is saddening that things have deteriorated over years. I would write more about it in Chapter 11 entitled 'Patna; my second innings'. But what amazed me all along was the level of decency that the persons indicted by Aiyar Commission had maintained. I moved on my bicycle in different parts of the town even quite late at night without any apprehension. However in my second stint, during 1996-97, when I was the Chief Commissioner of Income-tax for Bihar, I found things had changed for worse. The officers investigating the Fodder Scam cases worked with harrowing sense of fear.

The Aiyar Commission submitted a voluminous report. It indicted the ex-ministers, and also a number of important officers, many of them were the members of the Indian Administrative Service. The officers came in for criticism as they tilted rules to bask in political patronage. The evil alliance between the politicians and the bureaucrats had emerged. They betrayed public trust and damaged public interest. In my view the most important point that the Aiyar Commission had made is to draw our attention to the unhealthy relationship between the political executive and the civil servants. The scams of the recent years are the illustrations of worsening pathology in our democratic polity. The findings of Commissions of Inquiry, held before or after¹⁰ the Aiyar Commission, brought out this point again and again but with no impact on our governance. The refrain in all the reports by the Commissions insofar as this concerns the relationship of the Ministers with the Civil Servants, is the same. As Justice Shah expressed his feelings with deep felt emotions and great insight, I would quote him in *extenso* later in Chapter 12 ('Patna : My Second Innings').

The Aiyar Commission was presided over by a great Judge, but it could not work well. To hold someone a bribe-taker on the ground of someone else's untested affidavit, or to hold someone possessing unexplained wealth in his bank accounts without considering the time of the deposits and the destination of their disbursement, were contrary to the principles of natural justice. Such issues are generally decided on the broad principle of probability. The deposits in the bank account of Shri Sahay were all made just prior to the General Election. Shri Sahay had filed a detailed list of persons to whom payments were made out of the bank account. Those recipients were all VIPs and political heavyweights. The Commission should have summoned those persons to explain how and for what purpose the payments had been received by them. Nobody would have spent his own money that way for a political party. Neither CBI unit thought of exploring facts to ascertain truth, nor did the State of Bihar help the Commission to ascertain facts. Shri Sahay too did not press his point with full seriousness as he considered the Commission just a melodramatic performance in the public domain destined to have no long-term effect. The factors which led the Commission to come to this pass were many: but two of these are thus summarized:

- (i) It was surprising that the Commission missed its prime task: it was to gather primary and secondary facts after monitoring proper investigation (got conducted by investigative agencies, or by its own officers). It adopted rather an adversarial approach typical of the civil court, rather than an inquisitorial approach of a 'fact-finding' tribunal. The outcome was most unfortunate. Neither the operative facts were ascertained for the people to know, and for the Government to take action, nor justice was done to the people undergoing inquiry. It is distressing to note that such an outcome characterized the endeavours of almost all the commissions of inquiry appointed in our country.
- (ii) The persons, whose matters were being examined by the Commission, had serious misgivings about the role of the Commission. The Commission functioned in the climate of hostility. Besides, they felt that the Commission served only the political purpose of the adversary political party. Besides, there were obvious reasons to believe that the politically important persons in Delhi and elsewhere would ensure that no serious prejudice was caused to any of them.

The Commission worked in an environment of political hostility. Even the Press did not conduct investigation to gather facts. All sorts of theories and rumours were spread, and logic ran wild for this or that view. Such situations do not help the proper ascertainment of facts. When such things happen, sound judgment becomes impossible. People are accustomed to think the way Baron Alderson portrays in his instruction to the jury in *Reg. v. Hodge* (1838) 2 Lewin 227) where he said :

"The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and misled itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete." ¹¹

In my considered view, the best model for the working of a commission of inquiry is the Profumo Inquiry Report submitted in England by Lord Denning in 1963 in which facts were investigated to see whether immorality and security-risk marked the affairs of some government functionaries. He completed his inquiry in 49 days. It made an intensive inquiry which included examination of 160 persons. The Report commanded great respect because of its worth. Lord Denning perceived his role with utmost clarity and precision. He says in his *Landmarks in the Law* (Part 13)

“I have often been asked: Which of your cases was the most important? Beyond doubt, the Profumo Inquiry. It was a landmark. It was not a law case. But it had a great deal in common with it. For it was an inquiry to find out the truth.”

(vii) The Moot Court & the Law of the Sea

In 1972, the Patna University sponsored to conduct a Moot Court for selecting two persons for participating in the 1973 Philip International Law Moot Court to be held in America. It was the most prestigious and well known moot court competition in the world. Jessop Philip was a great name in the field of international law. The participants had to draw up memorials to be submitted for the petitioners and the defendants in a hypothetical case bringing to mind the conflicts which the littoral States in the North Sea had faced. The Moot Court simulated the case, which the Government of Neptunius brought before the International Court of Justice in pursuance of Article 40(1) of the Statute of the International Court of Justice, against the Government of Atlantica for adjudication and judicial determination in accordance with international law under Article 38 of the Statute. It involved some intricate questions of international law requiring a measure of judicial creativity and statesmanship on the part of the Court. Under the rules framed by the University, a participant could submit memorials for the petitioner and the respondents both. I submitted my memorials which were adjudged the best by a panel of distinguished examiners.¹² This Moot Court consisted of three Judges. The Judges were Justice A.N Grover,¹³ Chief Justice N. L Untwalia,¹⁴ and Shri G Parthasarthy¹⁵. Participants, mostly members of the Bar, had come from different parts of the country. But none could be sent abroad because our Central Government did not appreciate the University undertaking that project, funded by the US State Department, without seeking government's approval. My participation in the moot court helped me develop my interest in the Law of the Seas. I wrote, in 1973, the dissertation for my LL. M on the Developing Law of Fisheries. I did that under the guidance of Dr. R. C. Hingorani who had made a mark by writing a book on the Law of Extradition. I had strongly pleaded for the constitution of the International Seabed Authority. Summarizing my position, I wrote:

“The International Sea Authority would be in overall control and management of the resources of the seas. The common property of mankind well deserves to be managed by an organization representing mankind. This would have an approval of *jus aequum rule*”

I suggested a multilateral treaty under the U.N. supervision to set up this organization with organs as (i) the Sea Assembly, (ii) the Sea Council, (iii) the

Director General of the Sea Authority, and (iv) the International Sea Court. I was happy that almost two decades after, the International Seabed Authority was set up in 1994, to regulate all mineral related activities in the international seabed region. India is one of its members. In this context, I may mention that I have, felt that now time has come to set up the International Tax Authority to manage equitably the problems of international taxation. I would come to this point in Chapter 16, where I would plead for the establishment of an International Tax Authority (ITA) with global jurisdiction, modelled on the International Seabed Authority (ISA).¹⁶

(viii) India's acme of glory: the emergence of Bangladesh

The great Tulsidas had said; '*Prabhutapai kah mad nahian*' (whose head does not turn after acquiring powers without restraints?). This came true in the ways the Government of Pakistan dealt with the affairs of the East Pakistan, so called after the partition of India. The Government of Pakistan turned tyrannical against its own people living in the East Pakistan. Morbid attempts were hysterically made to destroy the cultural identity of the people of that aggrieved region, often through stealth but quite often with aggressive starkness which no self-respecting people could tolerate. The people there revolted against the tyranny. Hoards of refugees swamped the eastern region of India. As India's stakes were heavy, and as our country had good reasons to empathize with the struggling people of Bangladesh, India took recourse to humanitarian intervention, a ground for valid intervention recognised by Public International Law. The Pakistani armed forces surrendered before Lt. General Jagjit Singh Arora, who held the joint military command of military operations. It was the proudest moment for us to see how at 4.21 p.m. on 16th December 1971, Lt. General Niazi, Commander of the Pakistani forces in Bangladesh, surrendered unconditionally to General Arora at the Decca Race Course ground.¹⁷ When I read a graphic account of this historic event, I felt ecstatic delight. The credit for this glorious event went to Mrs. Indira Gandhi. Our people had good reasons to consider her Goddess Durga. Indira was jubilant. We felt the morbid era of Wajid Ali Shah, about which I would tell you through the story of the *Satranj ka Khiladi* in Chapter 25, had gone.

(ix) The Flood

On my transfer, I went to Bhagalpur to function as the Appellate Assistant Commissioner. The Members of my family remained at Boring Canal Road in Patna. In the evening of August 24, 1975, I heard, on radio, my friend Dr. Jagganath Mishra, who was at that time the Chief Minister of Bihar, saying that a terrible flood had submerged Patna. The government did not know how to respond to the challenge. The city-dwellers found themselves left only at the mercy of God. His words were enough to make people panicky. I left Bhagalpur by road for Patna. I was not sure of reaching my destination as on the way several bridges had been washed away, and roads and tracks at various places had been breached. I could reach the Chirayatad Bridge near Patna railway station. Beyond that, it was impossible to go. But I could engage a brave rickshaw-puller who could reach me somehow on the crossing near the Central Revenue Building at the heart of the town. I reached there, wading through neck-deep water under the continuous shock on seeing many dead bodies and animal carcasses floating in

the swelling water. Water from the Sone, and the Ganges, was furiously swirling and whirling on the main streets of Patna flooding the legislature complex, the High Court, and other institutional areas. Two boats had been provided by the district administration to ferry stranded people, but I found none of these available. I could gather that some VIPs had gone on errands, and had chosen not to return. I had lost all hope to reach my residence to know how my wife and children had fared. I could somehow enter the Central Revenue Building, and I saw it overcrowded with the persons whose shelters had been destroyed. The government found itself helpless. I was told that it could be possible for me to wade through the water from the side of the Rajapur Bridge. Almost in delirium, I reached that place on the bank of the furious Ganges. I was told that I could walk down to my place as the water-depth on the road might not go above my nose. I treaded a few steps when I heard: 'What, if the water goes above your nose?' God knows, who whispered that in my ears. I returned, and sat underneath a tree on the roadside racking my brain for some light.

At the dusk, I saw a tiny boat which had returned after distributing germinated grams to the residents of the marooned areas. The good boatman agreed for Rs. 5 to reach me to my place. I was so hungry that I begged for some grams which I munched while the boat negotiated through the maze of the narrow lanes. I reached my house which was on the first floor. The ground floor had gone all under water. I could land on the first floor from the brim of the boat. I found that everyone was well. My old father had collected good stock of food and drinking water before it could become impossible to do so. Spending a night seemed more gruesome than spending a century of horror. The next day I could somehow arrange a boat to reach the railway station on way to Baidyanath-Deoghar to hold my official camp. I held my appellate jurisdiction over that area.

NOTES AND REFERENCES

- 1 The Taxation Enquiry Committee presided over by the former Chief Justice of India, Mr. Justice Wanchoo.
- 2 H.M. Seervai, *Constitutional Law of India Vol. I* pp 488-489 (4th ed.)
- 3 The Economic Survey 1975-76 said "Under the Voluntary Disclosure of Income and Wealth Ordinance, 1975, total amount disclosed has been provisionally placed at Rs. 1578 crores of which incomes disclosed have amounted to Rs. 744 crores and wealth Rs. 834 crores. Incom-tax and wealth-tax payable respectively on these disclosed amounts are estimated to be Rs. 241 crores and Rs. 7.7 crores respectively, of which Rs. 159 crores of income tax and Rs. 4.2 crores of wealth-tax have been already paid. Beside Rs. 4.9 crores have been invested in specified securities." H. M Seervai, *Constitutional Law of India* by H. M Seervai, 4th ed. p. 489
- 4 AIR SC 2162.
- 5 http://shivakantjha.org/openfile.php?filename=articles/cross_examination.htm
- 6 *K.B Sahay v. Commission of Inquiry* 1968 B.L.J.R 207 at 213
- 7 The Notification S O 255 October 1, 1967.
- 8 Shri M C Chagla, the Chief Justice of the Bombay High Court.
- 9 Shri J. C. Shah, Retired Chief Justice of the Supreme Court of India.
- 10 Shri S.R Das Commission which inquired into the conduct of late Shri Pratap Singh Kairon, Chief Minister of Punjab (1963-64), Shri Rajgopal Iyengar Commission which inquired into the conduct of late Shri Bakshi Ghulam Mohammed, ex-Chief Minister of Jammu & Kashmir (1965-67), Shri Venkatarama Aiyar Commission which inquired into the conduct of certain Minister of Bihar (1967-70), Shri Madholkar Commission which looked into the affairs of Shri Mahamaya Prasad Sinha, Chief Minister of Bihar and other Minister (1968-69), Shri A.N Mulla Commission which looked into the affairs of the Ministers of Kerala-Govindan Nair and T.V Thomas (1969-71), and Shri G.K Mitter Commission who looked into the Kendu leaves purchases in Orissa (1973-74).
- 11 Quoted in *Hanumant v. State of M.P.* AIR 1952 SC 343.
- 12 Dr. R.C. Hingorani, Professor & Dean of the Faculty of Law mentioned in his certificate dated November 25, 1974 : "This is to certify that Shri S.K Jha passed LL.M in 1972 Examination and received first Position in both the parts. His brief for all Indian Moot Court Competition was adjudged to be the best in 1972."
- 13 A Judge of the Supreme Court of India.
- 14 Chief Justice of Patna High Court.
- 15 The Vice Chancellor of the Jawahar Lal Nehru University.
- 16 <http://shivakantjha.org/openfile.php?filename=triplets/triplet-013.htm>
- 17 <http://www.bharat-rakshak.com/1971/Dec16/Art01.htm>

11

MY FIRST INNINGS AT PATNA : PART-II

Some years ago, the then Pope said that silence with which the world witnessed the Hiroshima was culpable and criminal. Let not our children ask the question, 'Where were you when mafia rule brooded over benighted country.'

—N.A. Palkhivala

And the fears of people supported the persistent official policy of silence and denial.

—Thomas Mann, *Death in Venice* p. 63

I

(i) Introduction to this Chapter

The 70s of the last century were the traumatic years both for me, and, for my country. Some of its momentous events were: the Emergency, the JP Movement and the Shah Commission. But that decade was a difficult period in my personal life too. In 1973, my mother died of cardiac arrest. I felt every straw of my life's nest had been blown away; and my supreme sanctuary had gone. I apprehended that my journey through life would become desolate and dreary, and that I would no longer get any place to unwind myself with trust. But it was my father who integrated me emotionally, and rehabilitated me to my work. My father had himself weathered the storms of existence with equanimity. His life brought to my mind those imageries from the *Srimad Bhagavad Mahapurana* in which Lord Krishna is seen playing his flute, standing cross-legged on the hood of the most poisonous snake, Kaliya. By this time I was wrenched by some forebodings of my own end. But what maintained me was my wife whose grace and songs and deeds made me feel that life was worth living, and certain objectives were worth pursuing. My father suffered a cerebral attack in 1977 at Darbhanga. I ran to him. All efforts were made to provide him the best treatment at the premier government hospital. I was shocked to see the state of affairs in the hospital. There was no ECG and Echo Doppler in working condition. They were to be hired by the patients. The pathological tests took a lot of time, and were seldom reliable. Food was poor. Air-conditioning facility was unheard of. Ill-trained nurses did their

best, but their best was seldom enough. My father's condition was so critical that it was not possible to shift him to Patna or Calcutta. We sat beside him simply praying to God. But in Dr. N.P. Mishra, we had a great physician with deep clinical insight and creative imagination to invent new remedies from the resources available. Father could be saved. He lived with me till June 1982 when he passed away at Dhanbad where I was posted as the Inspecting Assistant Commissioner of Income-tax.

(ii) The Emergency

In the Election held to the Lok Sabha in 1971 from Rai Bareilly Smt. Indira Gandhi was declared elected. Shri Raj Narain, who was one of the defeated candidates, challenged her election before the Allahabad High Court, making her respondent no. 1, on grounds, *inter alia*, of alleged misconduct. On June 12, 1975, the High Court held (per Justice J.M.L. Sinha) her election void. It ruled:

“The respondent No. 1, accordingly, stands disqualified for a period of 6 years from the date of this order, as provided in section 8A of the Representation of People Act.”

But the Court stayed the effect of the order for 20 days, or till an appeal was preferred before the Supreme Court, whichever was earlier. Her followers, driven by a host of sycophants near her throne, organized massive rallies, using liberally governmental machinery, even to overawe the judiciary. On June 24, 1975, Justice Krishna Iyer of our Supreme Court granted a conditional stay of the judgment of the Allahabad High Court. She could remain a Member of the Lok Sabha for all purposes but subject to the restrictions prescribed by the Court. Such restrictions were imposed under clause III of the operative order which ran as under:

“The appellant-petitioner, *qua* Lok Sabha Member, will be entitled to sign the Register kept in the House for that purpose and attend the Sessions of the Lok Sabha, but she will neither participate in the proceedings in the Lok Sabha nor vote nor draw remuneration in her capacity as Member of the Lok Sabha.”

No embargo was put on her functioning as the Prime Minister till the permitted period of time. But comprehending the import of the said judicial order, decisions were taken to take drastic steps against the Opposition leaders if they tried to dislodge the Prime Minister. She hardened her attitudes with every passing moment. Several of draconian measures were taken to suppress dissent even by cutting off electricity at 2 a.m. and directing the press not to come out with the morning edition of the newspaper. The Chief Ministers of various States vied with each other resorting to drastic steps to please Mrs. Gandhi. The Emergency, under Art. 352 of the Constitution, was declared in the night of June 25, 1975 on the ground that (to quote from the Presidential Proclamation), ‘a grave emergency exists whereby the security of India is threatened by internal disturbance’. People came to know about it only next day, though its press coverage was only on June 27. The first page of the Times of India on June 27 carried as the headline: ‘State of Emergency declared: several leaders arrested’. It also announced the suspension of Fundamental Rights. False statements were circulated through Press.

For Mrs. Indira Gandhi, the imposition of Emergency was a 'defence mechanism'. For her minor minions and the bureaucrats, the Emergency was a grand time for corruption and abuse of power. Institutions did not give good account of themselves. With dismay, we felt we were up against 'one vast vision of imbecility'. Even the Supreme Court in *ADM Jabalpur Case* failed to sustain our fundamental rights. This lapse on the part of the Court was admitted by it in *Ramdeo Chauhan v. Bani Kant Das* (R.P. No. 1378 of 2009).

(iii) The circumstances in which the emergency was declared

The circumstances under which the Emergency was declared can be best summarized in the words of Justice J. C. Shah expressed in the *Report of the Shah Commission of Inquiry*:

"The Cabinet and the important functionaries of the Government were not only not consulted but were deliberately kept in the dark by Smt. Indira Gandhi. [XV.3].

[T]here is no evidence of circumstances which would warrant the declaration of an emergency. The types of measures such as detentions under MISA and severing electricity connections to the Press, that closely followed in the wake of the declaration of emergency on the night of June 25, 1975, even before the formulation of the rules from which alone authority for these acts would be derived, were motivated by considerations of exigency only. There is no evidence of any break-down of law and order in any part of the country—nor of any apprehension in that behalf; the economic condition was well under control and had in no way deteriorated. There is not even a report of an apprehension of any serious break-down of the law and order situation or deterioration of the economic condition from any public functionary. The public records of the times, secret, confidential or Public and publications in newspapers, speak with unanimity that there was no unusual event or even a tendency in that direction to justify the imposition of emergency. There was no threat to the well-being of the nation from sources external or internal. The conclusion appears in the absence of any evidence given by Smt. Indira Gandhi or anyone else, that the one and the only motivating force for tendering the extraordinary advice to the President to declare an "internal emergency" was the intense political activity generated in the ruling party and the opposition, by the decision of the Allahabad High Court declaring the election of the Prime Minister of the day invalid on the ground of corrupt election practices....." [XV. 5]

(iv) The 'excesses' committed during the Emergency

The portrait of the Emergency was thus drawn-up in the said *Report* with great fidelity and comprehensiveness: to quote a tiny extract from the Shah Commission Inquiry Report:

"With the Press gagged and a resultant blackout of authentic information, arbitrary arrests and detentions went on apace. Effective dissent was smothered, followed by a general erosion of democratic values.

Highhanded and arbitrary actions were carried out with impunity. The nation was initially in a state of shock, and then of stupor, unable to realise the directions and the full implications of actions of the Government and its functionaries. Tyrants sprouted at all levels overnight—tyrants whose claim to authority was largely based on their proximity to the seats of power. The attitude of the general run of the public functionaries was largely characterised by a paralysis of the will to do the right and proper thing. The ethical considerations inherent in public behaviour became generally dim and in many cases beyond the mental grasp of many of the public functionaries. Desire for self-preservation as admitted by a number of public servants at various levels became the sole motivation for their official actions and behaviour. Anxiety to survive at any cost formed the key-note of approach to the problems that came before many of them. The fear generated by the mere threat and without even the actual use of the weapon of detention under MISA became so pervasive that the general run of public servants acted as a willing tools of tyranny. That the primary and not infrequently the sole motivation in the case of a number of public servants who acted unlawfully to the prejudice of the rights of citizens, was the desire for self-preservation — desire for survival, may be regarded as some extenuation of their conduct. Yet, if the nation is to preserve the fundamental values of a democratic society, every person whether a public functionary or private citizen must display a degree of vigilance and willingness to sacrifice. Without the awareness of what is right and a desire to act according to what is right there may be no realization of what is wrong. During the emergency, for many a public functionary the dividing line between right and wrong, moral and immoral, ceased to exist.” [Chapt. XV.1]

(v) The Emergency: my critique

As her misfortune had mainly begun with the judgment of the Allahabad High Court, I studied the relevant decisions to evaluate her response in that most cataclysmic phase of her life. After study and reflections, I came to the view that she was a person who could say in the words of Shakespeare’s *King Lear*, ‘I am a man/More sinn’d against than sinning.’ I have been driven to this view on considering the following crucial factors:

- (i) The judgment of the Allahabad High Court had been delivered almost 4 years after the institution of the case by Raj Narain, who had been defeated in 1971. She was held guilty for the violation of the certain rules of the election procedure, but no charge of bribery was considered proved. The Court failed to discriminate between a moral breach (*malum in se*) and just a technical violation (*malum prohibitum*). She was held guilty of mere technical offence. Besides, she had a point in asserting that such breaches, for which she had been taken to task, had been committed by her adversaries and opponents too. The Supreme Court summarized the reasons of the High Court’s decision thus (AIR 1975 SC 2299) :

“The High Court held that the appellant held herself out as a candidate from 29 December, 1970 and was guilty of having

committed corrupt practice by having obtained the assistance of Gazetted Officers in furtherance of her election prospects. The High Court further found the appellant guilty of corrupt practice committed under Section 123(7) of the Representation of the People Act, 1951 hereinafter referred to as the 1951 Act by having obtained the assistance of Yashpal Kapur a Gazetted Officer for the furtherance of her election prospects.”

- (ii) It is incomprehensible why the Allahabad High Court took hyper-technical view of certain instances of the use of the governmental machinery in her election when to some extent she was entitled to certain facilities as the Prime Minister of the country who had made us proud.
- (iii) When Justice Krishna Iyer passed his order on June 24, he passed an interlocutory provisional order (AIR 1975 SC 1590). Yet it is not clear why her distinguished counsels did not plead before the Supreme Court for reversing the High Court's order for its perversity and legal misdirections. And the country could have been saved from the infamous Emergency if total stay could have been granted, and the appeal posted for an early hearing, which was certainly called for in national interest.
- (iv) On 7 Nov. 1975, the Supreme Court unanimously allowed Smt. Gandhi's appeal; and dismissed Mr. Raj Narain's Cross-appeal (AIR 1975 SC 2299). When a Review Petition against that was moved, it was dismissed (AIR 1977 SC 69), (the Court consisted of A. N. Ray, Chief Justice of India, and H. R. Khanna, K. K. Mathew, M. H. Beg and Y. V. Chandrachud, the Judges). The Court observed:

“It is undoubtedly a feather in the cap of the learned Counsel, who conducted the case before the High Court also, that a case so flimsy as that of his client succeeded in the High Court.”

The Court considered the case against her “flimsy” (lacking plausibility; unconvincing).
- (v) She was made of sterner stuff. She never wished to become a ruthless adventurer but she couldn't have tolerated to be flung unfairly into obscurity.

She is criticized most for not taking cabinet or Parliament into confidence whilst declaring the Emergency. But she might have her reasons. She was not the first amongst the equals in her cabinet. She was the moon amongst the twinkling stars. And she must have known that the First World War was declared by the British King almost entirely at his discretion.¹ We have seen in our own days how the Executive subjected us to the WTO Treaty by signing the Uruguay Round Final Act in 1994 without taking our Parliament or nation into confidence. Such things are not good for democracy, but have happened.

(vi) My Assessment

It is always easy to drag an image from its pedestal because the pursuit of dragging down someone from a high pedestal is most delicious to many. It becomes all the more delicious if the icon to be dragged to dust is one possessing superhuman valour and fortitude. What ailed the administrative system during the Emergency was the emergence the greedy exploiters, and corrupt crooks.

During the darkness of the Emergency the unscrupulous civil servants and the politicians promoted their greed by constantly misinforming Smt. Gandhi, and by egging her on and on to her discomfiture ultimately leading to the General Election 1977. During the Emergency, I was posted as the Appellate Assistant Commissioner at Bhagalpur. I could know much about the things at the grass-roots because one of my relations, late M. K. Jha, was the Deputy Inspector-General of Police there. I had some access to the channels feeding information up in the administration. Candour has a sharp edge: the worldly-wise do not tread on it. I always felt that every step was being taken to misinform Smt. Gandhi. She had an iron will, and had learnt to tread on the high ridge of her life with sovereign majesty, though she seemed to me quite lonely in the crowd: she seemed treading the high ridge through storm and stress almost all alone.

It is a queer irony that the Emergency, which she designed to save herself from the storm, became terribly calamitous for her. Under the claptrap of the sycophants, her eyes got clouded. So sure she had become about her prospect of success at the election that she went to the hustings after announcing a General Election. The election, which she announced to acquire approbation and legitimacy, swept her out of power. The myth that "Indira was India, and India was Indira" was pricked. But she remained undaunted in her adversity. She emerged to acquire an epic stature during this phase. Her capacity to suffer endeared her more and more to our people. When the indiscreet and ramshackle government of the Janata regime subjected her to arrest and humiliation, we felt sympathy for her. The majesty, with which she faced her adversaries, and put across her case to our nation, led people to rethink: they might have gone wrong in assessing her. She was returned to power in 1980 on the massive waves of public support.

But nobody remains the same after a traumatic experience. The Emergency, and its aftermath, was for her a time of travail and trauma. She emerged under the sunshine but she was not the same. She had seen how easily mother Durga could be kicked off her altar. She had seen how persons, who had assured their loyalty to her, were quick to leave her in the lurch. Sycophants always do that. She had seen how the bureaucrats, even though once chosen for loyalty, turned against her. She passed through excoriating phase of loneliness. It was natural for her to find in her son Sanjay Gandhi, a source of inner support, a person on whom she could rely. I felt that after her grand victory she was becoming less and less worldly. She was great; even her tragic traits were great.

She did not have the makings of a dictator. She never behaved with studied ruthlessness of a dictator. She was a good student of history, but failed to learn the lessons that history has taught us several times. Like many mighty persons, she felt she could evade the law of consequences! Never allow the system of governance to go wrong, because in such bad times tiny events become catastrophic and cataclysmic. And once the genie is out of the bottle, it rules. Fali Nariman has aptly portrayed what must have distressed her:

"Indira Gandhi.... had expressed shock and surprise at the total lack of resistance amongst the people to the Emergency. She particularly mentioned.... that she was more amazed at the lack of reaction amongst the intelligentsia!"²

(vii) The JP Movement

While at my school in 1954, I heard that Jayaprakash Narayan (JP for short) dedicated himself wholly to the Vinoba Bhave-led Sarvodaya movement (the movement for social justice and welfare of all) to which the Bhoodan Movement was an integral part. Its ideals were Gandhian, and conformed to the very mission of our Constitution. Jayaprakash Narayan developed his ideas of Sampurnakranti (total revolution) from the premises of the Sarvodaya movement itself.

(viii) The Bihar Movement

Now I come to the Bihar Movement which I had the opportunity to witness. I had the happiness that I could see it unfolding under the leadership of Jayaprakash. The crescendo of this movement aroused people's wrath against the declaration of the Emergency, and Mrs. Gandhi's rule.

The Bihar movement was, in effect, against corruption in administration at the highest levels. The Aiyar Commission's deliberations and their wide reporting in the media made people strongly react against the corruption in the political sphere. Jayaprakash Narayan's call to fight against corruption in public life received a massive public response. The students responded with zeal and passion, as they had done during the 'Quit India Movement' of 1942. I was one of the listeners to him when he addressed, in the Gandhi Maidan at Patna, on 5th of June, 1975. It was a vast ocean of human heads but all at peace. When they cheered and roared in jubilation, the earth seemed to crack, and the sky crumble rent. The programme for 'Total Revolution' had been announced. I wondered how closely the scene resembled the scene of the French Revolution painted by Eugene Delacroix, called 'Liberty Leading the People'. The gathering at the Gandhi Maidan had the Gandhian decorum of the civil disobedience movement. When I think in retrospect, I feel sad that after the phase of the Emergency the high idealism of the 'Total Revolution' was subverted even by some of the well-known followers of JP. The great movement started with a bang but ended with a whimper. But it underscored a good cause, and inspired people to see what was right, and how to seek a remedy by exercising people's power.

(ix) JP Movement against the Emergency

Jayaprakash Narayan worked with extraordinary vigour and astuteness to drive home to Mrs. Gandhi that she had no option but to honour the directions of the Allahabad High Court and the Supreme Court. Meetings and processions made Patna astir with activities in which everyone had become a participant. The climax of the agitation was reached when Jayaprakashji addressed at the Ramlila Ground at New Delhi, with tremendous impact, resonating his plea for a revolution. He quoted the pregnant line from Rashtra Kavi Ramdhari Singh 'Dinkar': "*Singhasan Khaali Karo Ke Janata Aaati Hai*". When I saw the photograph of the scene there, and heard that line from 'Dinkar' being quoted so forcefully, I was thrilled to think how close we stood to 'Faiz' who said:

*Jab zulm-o-sitam ke kohe-garaa
rui ki tarah ud jaayenge.*

[the fog and mist of injustice and tyranny would be
blown away in the air as if they were shreds of cotton wool]

It was a great experience to be at Patna during the period. Jayaprakash was organizing and leading mass movement against the authoritarian rule of Indira Gandhi. With each passing moment, the Government tried to make its brutal authority felt by the people so that the society could be overawed. It was felt that this could be the only way to inhibit people from joining the 'JP band'. While going to the office from my Boring Canal Road residence, and also while returning, I found a fleet of police vehicles continuously on the move. The armed forces patrolled in sensitive areas exhibiting indecently their arms. The pointed bayonets suggested to every passer-by and every onlooker that striking the notes of discordance could only be at heavy cost. Despite all these, a strange revolutionary event kept on recurring every evening for days. From most households emanated the vibrant, sharp and shrill metallic sound produced by striking utensils with spoons. I still have one such utensil which got disfigured on constant beatings. This exercise produced notes which unnerved Indira Gandhi in New Delhi.

Every evening, for about a month, we heard rich gongs coming from most of the houses. They resonated with the ferocity of trumpets in the battle fields. We felt that Krishna was Himself blowing His conch, the *Panchjanya*, in the battle-field of the Mahabharat. This event every evening, for about a month, had an electrifying event. It enhanced and consolidated people's wrath against the tyrannical government.

Peaceful processions were the order of the day. It was extraordinary that those who participated in the movement maintained highest level of discipline. On a particular morning I had gone to the Gandhi Maidan for my morning walk. Lo and behold! a massive procession under the leadership of J.P was moving past the Gandhi Maidan. Each member of the procession had his mouth sealed with a handkerchief, or cotton rag. They were looking like the band of Jain Munies. It brought to mind the best in the Gandhian technique of non-violent mass movement. JP Movement spread far and wide making the Indira Gandhi Government nervous and retaliatory.

It is not the place for giving a graphic account of the events of the JP Movement. But I must write about what I saw from of the top floor of the Central Revenue Building. We all knew that JP was to lead a vast procession of inspired humans towards the Vidhan Sabha. The Government had made massive arrangements so that procession could not advance beyond the intersection of roads in front of the Central Revenue Building. On hearing the roaring waves of slogans. I went up to the terrace where I found all the souls of the building already assembled to see the epic march. When JP reached the intersection of the roads, the police forces behaved most ruthlessly. They went to the extent of beating JP recklessly with their *lathis*. We saw how JP fell down, and was carried underneath a nearby tree. A cot, which was quickly made available there, became his bed, a bed with bare rough texture woven with straw. Most of us rushed down the stairs to see him. It was impossible to go near him because emotionally surcharged crowd had gathered there. The Emergency was terminated in March 21, 1977. The JP Movement made Smt. Gandhi declare fresh election on January 23, 1977. The Janta Party Government was formed at the Centre.

God did not give time to Jayaprakashji to work for long pursuing his agenda for 'Total Revolution'. He passed away in Oct. 1979 at the Jaslok Hospital, Mumbai. His kidney had failed. He died on October 8, 1979.

For 3 days my wife, Veena, was admitted in 1982 at the Jaslok Hospital for acute abdominal ulceration. It was the same room in which Jaya Prakash had stayed. I had enough time to hear from the nurses and the doctors how heroically he suffered till the end. He lived like a hero, struggled like a hero, and died as a hero. Sitting silent on the attendant's sofa in that room, I indulged in mental odyssey: what Jayaprakash Narayan (JP) might have thought, on his sick-bed awaiting his end, about all that he had done over his years? Can anyone say what passed in Krishna's mind when he sat silently under the *peepal* tree in the forest before he left the world ?

(x) The Shah Commission of Inquiry

Anybody who wants to study the level of civic culture and the working of the political institutions in India, must study the Report of the Shah Commission of Inquiry constituted under section 3 of the Commissions of Inquiry Act, 1952. It was headed by Sri J.C Shah, Retired Chief Justice of the Supreme Court of India. This Report is unique as it was drawn up after examining documents and witnesses on a scale never attempted earlier in India or in any other country. I wish every citizen of this Republic studies and reflects on the Commission's Report.

The Commission was required to go into the excesses of the Emergency. The terms of reference of the Commission were divided into five heads³ :

- '(i) subversion of lawful processes and well-established conventions, administrative procedures and practices, abuse of authority, misuse of power, excesses and/or malpractices committed during the period when the Proclamation of Emergency, made on June 25, 1975, under Article 352 of the Constitution was in force, or in days immediately preceding the said Proclamation;
- (ii) misuse of power of arrests or issue of detention orders where such arrests or orders are alleged to have been made on considerations not germane to the purposes of the relevant Acts during the aforesaid period;
- (iii) specific instances of maltreatment of and/or atrocities on persons arrested under DISIR or detained and their relatives and close associates during the aforesaid period;
- (iv) specific instances of compulsion and use of force in the implementation of the family planning programme during the aforesaid period;
- (v) indiscriminate, high-handed or unauthorized demolition of houses, huts, shops, buildings, structures and destruction of property in the name of slum clearance or enforcement of Town Planning or land use schemes, during the aforesaid period.'

The Shah Commission worked with tremendous pace, and extraordinary assertiveness. The way it conducted itself can be considered an all-time model for the commissions of inquiry in our country. The Commission was presided over by a very dynamic and public-spirited person with a clear perception of his statutory role. It was assisted by a band of well-chosen officers. The people in power did not interfere in the working of the Commission.

It was a difficult task to get a copy of the Report. The officer-in-charge of the Publications Division's outlet in Calcutta told me that only a few copies had been supplied which were purchased on the very day of receipt by some buyer. Though the Commission's Third and Final Report was published on August 6, 1978, no action was taken on it by the Janata Party Government which was fast giving evidence of its lack of vision, and nauseating imbecility. The fractious coalition of assorted political elements came to its worst in 1978-79 paving way for Chaudhary Charan Singh to become India's Prime Minister (from 28 July 1979 to 14 January 1980), on Mrs. Gandhi's support from outside! Hence attempts were made to ensure that the Shah Commission Report did not get a wide circulation. But thanks to someone in the Government's Publications Division; I could get a set of the 3 volumes of the Report.

I would highlight only one point which drew my attention because that pertained to the working of the Income-tax Department. It is generally believed that the income tax authorities, being statutory authorities, would, always function in terms of law. The Shah Commission Report examined comprehensively how the powers under section 132 of the Income-tax Act, 1961, were misused in conducting 'searches and seizures' in the cases of the Baroda Rayon Corporation and the Bajaj Group of Company. The persons, who were involved in such acts of the abuse of power, included Shri S R Mehta, the then Chairman of the Central Board of Direct Taxes, and Shri Pranab Mukherjee, the then Minister for Revenue and Banking. After elaborately examining all the relevant facts in Chapter IX of the Report, Justice Shah stated:

"9.23In the face of the overwhelming evidence in support of this view, Shri Harihar Lal's protestations that he had reasons to believe that conditions for invoking Section 132 of the Income Tax Act existed, cannot be accepted. They stem from a reluctance to accept that he had allowed his judgment in the exercise of this extraordinary power to be swayed by extra-legal directions of his superior officer. The Commission is of the view that Shri S. R. Mehta's action in directing Shri Harihar Lal to initiate action under section 132 of the Income Tax Act in this case amounts to subversion of lawful processes and an abuse of authority....

"9.25 On the uncontroverted statement of Shri S. R. Mehta that these papers were handed over to Shri P. K. Mukherjee, Shri P. K. Mukherjee's action in obtaining and retaining seized documents and subsequent failure or omission on his part to return them to the Chairman of the Central Board of Direct Taxes or to any other concerned or duly authorized officers in the Income Tax Department, also amounts to subversion of lawful process and abuse of authority."

(xi) The Fate of the Commission's Report

In the General Observations, set forth in Chapter XXIV of the *Report*, Justice Shah rued the lot of the many earlier Commissions' reports. No meaningful action was taken in the light of such reports. The fate of the Shah Commission was no better. Amrith Lal summarizes what overtook the fate of the Shah Commis-

sion Report under a suggestive heading: 'How they buried Shah Commission report, even without an epitaph'⁴. The Congress Government saw to it that not only no action was taken on the Shah Commission Report, its very existence from public domain was erased. Amrith Lal observes:

"What was perhaps most damaging to the Commission was a judgment from the Delhi Metropolitan Court. The case was whether Indira Gandhi could be prosecuted for not deposing before the Shah Commission. T.P.S. Chawla, a judge of the Patiala House courts... ruled on 12 December, 1979, that "the Commission stepped outside its jurisdiction and lost its power".

Chawla's order seemed to me not correct. The Commission had the powers under the Civil Procedure Code to enforce attendance of any witness for examination on oath. Every Assessing Officer, even of Class II rank, exercises this power for ascertaining facts. To deny this power to the statutory commission of inquiry is to betray ignorance of the basic principles of law. To deny the Commission's competence to enquire into the excesses of the Emergency is the folly of not seeing what was obvious in the notification constituting the Commission. The Commission was a mere fact-finding body based on whose report the law could take its course. In fact, the real reason for ignoring the Shah Commission Report was a complete lack of political will for reasons too obvious to be recounted. The Congress came to power in 1980 for many years, most of the persons indicted by the Commission came back to power.

It is painful to think about what happened to the great endeavours of the Shah Commission. I would like to express my feelings in the words I borrow from William Blake:

Mock on, mock on, Voltaire, Rousseau;
Mock on, mock on; it is all vain!
You throw the sand against the wind,
And the wind blows it back again.

Variating on the words of Shakespeare's Jaques in *As You Like It*, I can do no more than murmur in my aside: so 'hangs the tale' in the Democratic Republic of Bharat. Most often we have reasons to feel, again to borrow from Jaques: 'from hour to hour, we rot and rot'.

NOTES AND REFERENCES

1. "Formally speaking, the war came as though King George V still possessed undiminished the prerogative of Henry VIII. ...The cabinet played no part once it had resolved to defend the neutrality of Belgium.Nor did the cabinet authorize the declaration of war. The parliament of the United Kingdom, though informed of events, did not give formal approval to the government's acts" A.J.P.Taylor, *English History 1914-1945* (The Oxford History) p. 2
2. Fali S. Nariman, *Before Memory Fades* p. 177
3. Chapter IV of the *Report*.
4. <http://www.indianexpress.com/ie/daily/20000704/ina04002.html>

12

PATNA : MY SECOND INNINGS

(The Fodder Scam)

These are peoples that have lost the power of astonishment at their own actions. When they give birth to a fantastic fashion or a foolish law, they do not start or stare at the monster they have brought forth. They have grown used to their own unreason; chaos is their cosmos; and the whirlwind is the breath of their nostrils. These nations are really in danger of going off their heads en masse; of becoming one vast vision of imbecility.....

G. K. Chesterton, 'The Mad Official'

(i) Introduction to this Chapter

I received on 13th September 1996 a marching order transferring me from the post of the Director General of Income-Tax (Exemptions), Calcutta, to Patna as the Chief Commissioner of Income-tax for Bihar, Orissa, Assam, and the North-East. I handed over the charge at Calcutta on 26th September 1996. On reaching Patna I came to know that, on a public interest litigation, the Hon'ble Patna High Court was monitoring investigations into Bihar's Fodder Scam (also called the Animal Husbandry Department Scam). Various agencies were involved in the task. The CBI was supposed to play an effective role in the conduct of investigation. The Patna High Court had impleaded the Income-tax Department requiring it to submit reports on the status of investigation, as done by the Income-tax Department, every time the matter came up for hearing. The High Court had adopted an activist approach. The Chief Commissioner was supposed to supervise the Department's work in this key area, and to ensure the submission of reports on the status of investigation to the High Court. When I reached Patna, I was told that the High Court had expressed displeasure at the performance of the Income-tax Department. I realised that my task was arduous and challenging. I decided to respond to the challenge. I was sure that the Department was capable of giving a good account of itself.

I have painfully noticed that after India became independent, frequent scandals and continuing corruptions have been endemic. Mahatma Gandhi had this apprehension, so he stressed on the building of character, and faith in the values for which we had waged the long Struggle for Independence. Whilst the total abolition of these evils must await higher levels of human evolution, it is surely worrisome when regression and decline in values come to be tolerated,

even appreciated. It was my misfortune to closely watch (i) the Bhopal Gas-leak disaster and our government's response to it; (ii) the imposition of the infamous Emergency; and (iii) Bihar's Fodder Scam. In this Chapter, I intend to write, in brief, about Bihar's Fodder Scam. It is good for us to draw lessons from the Fodder Scam.

(ii). An Overview of the Fodder Scam, and the response of the Government of Bihar

The story of the Fodder Scam deserves to be read with care as it illustrates the degradation of the institutions of our democratic polity. We adopted under our Constitution the Westminster model of the system of governance. Under this system the political institutions are structured on the principles of solidarity and interdependence, checks and balances, and broad functional divisions of powers and functions. Their operations and synergic effects required a general commitment to discharge public duties with honesty, good faith and verve to achieve the constitutional objectives. The story of the Fodder Scam is a morbid account of the abdications of public duties, and the distortions in the system of governance. It also illustrates the syndrome of the indifference of the citizenry of the State to the ills growing apace under the public gaze. I have always felt that the students of democratic polity, wherever they are, should study the factors which had led to this pass in order to derive effective lessons.

The officers of the Animal Husbandry Department, both at the district and the Secretariat levels, colluded with the Treasury Officers, the officers of the Finance Department at the Secretariat level, and drew systematically huge sums of money in excess of the grant against fake allotment orders, vouchers etc. This was done by them with the blessings and support of the high political functionaries. Because of their involvement, it was not possible to investigate into the Scam. The Report No. 2 for the year ended 31 March, 1996, prepared by the CAG (the Comptroller and Auditor General of India) and presented to the State Legislature on March 6, 1997, presented the picture of the excess and fraudulent withdrawals in the Animal Husbandry Department. It highlighted that the excess expenditure of Animal Husbandry Department increased from 21 per cent of its total budget provisions in 1987-88 to 229 per cent in 1994-95. The CAG claimed in its Report that his officers had pointed out to the Government of Bihar a lot of serious irregularities and improprieties in (i) the personnel management in Animal Husbandry Department, (ii) the purchase of feed, fodder, medicines and artificial insemination materials; (iii) the sanction of allotment orders; (iv) the scrutiny and maintenance of vouchers; and (v) the supervision of actions to detect systemic aberrations. The Press also widely reported what went wrong over a long period of time highlighting the State's financial mismanagement.

As the Government of Bihar had paid no heed to the reports by the CAG and the reports in the Press, a 'public interest litigation' (PIL) was initiated before the Patna High Court. The State of Bihar admitted before the Patna High Court, in the case reported as *Sushil Kumar Modi & Ors* [1996 (1) PLJR 561 decided by Justice S.N. Jha & Justice S.J. Mukhopadhyaya], that there had been excess drawals of money beyond the sanctioned grants. The Government of Bihar did not deny that the drawals were fraudulent in nature. It admitted, in its Counter-Affidavit, a gross dereliction of public duty but stated that "as a matter of fact, it is a case of

fraud and forgery and the money fraudulently drawn from the consolidated fund of the State.” According to the State, while it was aware of the excess drawals which was usual in the State Financing, it had no knowledge that the drawals were fraudulent in nature. The Court examined provisions contained in Articles 202 to 206, 266 and 267 of the Constitution of India, and concluded that our “Constitution contemplates expenditure either from the consolidated fund or the contingency fund of the State. The ordinary and the usual procedure is to spend from the consolidated fund. The expenditure from contingency fund is supposed to be a temporary measure to meet unforeseen expenditure. The amount so spent, by way of advance, is to be replenished by supplementary or additional grants...”. The point for consideration before the Court was: whether the procedure prescribed, or contemplated by the Constitution, had been followed: if not, what were the consequences? Whether the consequences were purely fiscal or administrative in nature, or whether they partook a criminal character as well? The factual position was summarized in the judgment: it is worthwhile to mention some of the salient features:

- (i) Huge sums of money, far in excess of the legislative sanction for the services, had been spent in the Animal Husbandry Department over the last so many years. These expenditures, systematically effected by making drawals from the concerned Treasuries, were fraudulent in nature.
- (ii) No legislative sanction in the shape of additional or supplementary grants/appropriations had been accorded to these excess drawals.
- (iii) The State Government was admittedly in know of the excess drawals, yet, no remedial action whatsoever was taken. The Government had failed to show its *bona fide* by taking steps to stop the ongoing drawals and expenditures.
- (iv) The stand of the State Government that excess drawals were usual phenomena, in the circumstances of those cases, could not be accepted. Its plea that it was not aware of the fraudulent nature of the drawals/expenditure until January, 1996 was also not believable.
- (v) Excess drawals and expenditures could not have been made year after year without the tacit support and ‘blessings’ of the high-ups at the Secretariat/ Government level.
- (vi) The State Government gave patronage to the officers of the Animal Husbandry Department who were already under ‘cloud’, and were now made accused. The possibility of the Government influencing the course of investigation by State Police could not be ruled out.
- (vii) Administrative actions taken against the officers were mere eyewash.
- (viii) Investigation done so far appeared to be slipshod and perfunctory.
- (ix) The State police was not well-equipped to make full and proper investigation of the case of the present nature.
- (x) The State Government’s recalcitrance in agreeing to probe by any outside agency, *prima facie*, showed that it wanted to hide facts and shield guilty persons. Earlier in 1990 also, despite the Minister-in-charge suggesting CBI enquiry, the proposal was scuttled on misrepresentation of facts that CBI had declined to take up investigation.
- (xi) The notification dated 19 Feb. 1996, and the appointment of ‘Judicial’ Commission, were attempts, *prima facie*, to pre-empt the CBI from taking

up investigations, and the Court from making positive orders in that regard.

The High Court indicted the State Government in extremely strong words as in its view all those facts, *prima facie*, constituted “gross financial indiscipline verging on fraud on the Constitution and the people”. The Court referred to the famous quote, “Nero fiddled while Rome burnt”. It felt that “it is the legitimate right of the public to know, and feel assured about, that the investigation is done in correct perspectives and that no guilty person will be spared”. The High Court granted the writ under Article 226 of our Constitution making a scathingly caustic comment:

“The people of this State, in different walks of life, have been made to suffer on the specious plea of paucity of funds. The limited funds of the State which could be utilised for the welfare of the people were allowed to be systematically plundered, assuming unparalleled proportions. In such a situation, people naturally have a ‘legitimate expectation’ that the guilty be punished. It is the duty of this Court in writ jurisdiction to see that these legitimate expectations are fulfilled.”

(iii). The Drama of the Absurd: where the Buffalos travelled on the bike.

H. Jane Lehman is said to have used the word ‘buffalo’ in the sense suggesting ‘deception’ or ‘hoodwinking’ when he wrote: “Too often... job seekers have buffaloeed lenders as to their competency and training”. In Bihar, the persons in power could believe that buffalos could be carried on bike! The High Court gives a graphic account of the grotesque drama of the absurd enacted in Bihar:

“The Deputy Accountant General, Bihar vide his letter No.12 dated 5.4.90 after test-check found that the vehicles which were shown in the payment vouchers as having been used for transportation of bulls, heifers, cattle feed etc. were actually car, station wagon, oil tankers, jeep, scooter, which could not have been used for the purpose, suggesting that the payment vouchers were fake and bogus and payments made were fraudulent in nature. The Regional Director, Animal Husbandry, Ranchi, vide his letter No. 4690 dated 31.5.1990 submitted his report to the Secretary of the Department certifying that the livestock had actually been transported to the destination.”

Not even with a cockroach’s brain anybody could believe the buffaloes could move on the backseat of the bikes enjoying the jerks of Bihar roads. Justice Hansaria aptly said in *Shivsagar Tiwary vs Union of India* (1997) that the scams are the products of moribund mind and low moral character. Systematically over years the dishonest knaves, wielding public power, allowed the strategy and stratagem of the fraudsters and tricksters to rule in the Animal Husbandry Department at its various units in the State. This drama of the absurd was enjoyed by the wielders of political power, and the intelligent people of the State tolerated it by maintaining silence, thus becoming *particeps criminis*

(iv). Fraud on our Constitution: “Nero fiddled while Rome burnt”

The Patna High Court in Modi’s Case examined the Fodder Scam at length, and pointed out that it was a terrible fraud on our Constitution: it said—

“All these facts, *prima facie*, constitute gross financial indiscipline verging on a fraud on the Constitution and the people. It is an irony of situation that while employees are not getting their salary on time in this State, writ petitions have been filed for payment of pensions, contractors, bills, lawyers, fee bills, for construction and repairs of roads and bridges, hundreds of crores of rupees were allowed to be swindled. The usual plea of the State in all such matters is paucity of fund. Where all this money in the Animal Husbandry Department came from? That reminds me of the famous quote, “Nero fiddled while Rome burnt”.

The High Court examined the Constitutional provision pertaining to the State Finance, and considered the plea of the State of Government based on Article 205 of the Constitution which contemplates and permits expending the money in excess of the grant. The Court pointed out what went wrong in the system thus:

“There cannot be any doubt, as I have observed above, that the Constitution contemplated and permitted only *bona fide* excess expenditure so as to meet *bona fide* exigencies of situation but what appears from the Appropriation Accounts referred to above is that there were systematic excess drawals of huge sums of money every year, the amount of excess rising every year in yawning proportions. The plea of the State that the excess drawals/expenditure is a usual phenomenon in the State financing in the above mentioned background sounds too hollow and unconvincing.”

It is not that the Government was not knowing the rot that had set in the financial administration of the State. They knew, yet pretended not to know that. The words of T.S. Eliot come to mind:

After such knowledge, what forgiveness? Think now
History has many cunning passages, contrived corridors
And issues, deceives with whispering ambitions,
Guides us by vanities.

Our Constitution erects a structure of power setting forth the ladders enabling some to become the masters of the machine of power we call the State. But it contains a structure of duties also for pursuing the mission that our Constitution prescribes. Whilst the second cannot survive the first, the first can well survive even if the second goes to dust. The Fodder Scam showed the breakdown in the constitutional structure of public duties.

(v) The monitoring of the Cases by the Patna High Court

Never till this day had any High Court monitored an investigation in a case with so much thoroughness and judicial detachment as was done by the Patna High Court in *Modi's Case* popularly known as the Fodder Scam Case. Frivolous objections to the High Court's jurisdiction to monitor the said investigation by the CBI were raised by the State of Bihar. It pleaded that the directions prayed for in the writ petition could be given only by the Supreme Court in exercise of its power under Article 142 of the Constitution (the power of doing complete justice) which

power the High Court did not possess. The High Court dismissed this plea by requiring the Counsel for the State to answer a question:

“We put a pointed question to Mr. P.P. Rao as to whether and what kind of justice is to be done by the High Court in appropriate cases; surely the High Court is not supposed to do incomplete justice or no justice at all.”

This threshold objection by the state was dismissed outright. But the very fact that such a frivolous plea was raised by the Government revealed the rot that had set in our polity. It also indicated the guilty mind at work somewhere not to allow facts to come to light.

It was unique in the history of the income-tax administration that the process, which would culminate in statutory orders, was itself under the judicial supervision. The crux of the judicial monitoring was that we must do our duty as required under the law. It was the traditional function of the court to see that the public authorities exercised their public powers in accordance with law. This had been said so by our Supreme Court in *Union of India vs. Sushil Kumar Modi* [1997 (1) PLJR 53 at 56]. The nature of the procedure of monitoring the investigation by the High Court could be described as the ‘continuing mandamus’ to require performance of the public duty by the Central Bureau of Investigation and the Income-tax Department. Our Supreme Court reiterated this felicitously and crisply in *Vineet Narain & Ors. Vs. Union of India* [1996 (2) 199]. I told my officers that the judicial directions operated on us too: and we were duty bound to carry them out with verve and candour. I told my officers: the police and the income-tax authorities possessed one thing in common. When they function under the law, they are the creatures of the statute under duty to implement the provisions of law in good faith.

But during the High Court’s monitoring of the cases, certain features emerged which tarnished, in my view, the image both of the State Government and the Central Government. Many instances came into public domain to show how the watchers of public cause had not given a good account of themselves. The problem that the Roman poet Juvenal had posed came to our mind: *Quis custodiet ipsos custodes?* (Who will guard the guards themselves?)

With very high hope, the Fodder Scam Cases had been assigned to the CBI, but it emerged that the high-ups in the CBI did all that they could do to delay or subvert the process of the investigation. I had close interactions with the CBI unit at Patna. Whilst Dr. U.N. Biswas, heading the unit, worked with dedication, many others at the higher echelons adopted ways to delay, and thereby frustrate, the process of judicial monitoring of the investigation. I had come in close contact with the CBI in 1960s when it was investigating into matters of the 6 ex-ministers who had been subjected to the Aiyar Commission of Inquiry. Mr. Hingorani, the DIG, and Mr. Rattan Singh did wonderful job then. Now things had changed for worse. I closely observed how the CBI was going ahead with the investigation into the Fodder Scam Cases. The officers of the CBI were never seen to put their heart and soul into the cause of great public importance.

For sometime I had functioned in Calcutta as the Director of Investigation, and then as the Secretary of the Settlement Commission. I knew that many of the scamsters, who had authored the Fodder Scam, had filed Petitions for settlement of their liabilities, and exoneration from possible criminal and civil liabilities for

their legal infractions. It was essential to subject the Commission to the High Court's monitoring jurisdiction. I got a prayer made before the High Court for impleading the Settlement Commission also. The High Court agreed with this submission, and the Court restrained the Settlement Commission from proceeding with any settlement of tax issues in the cases having close nexus with the scam in the Animal Husbandry Department of the Government of Bihar. And on 19 December 1996, the High Court reiterated its said direction. But the outcome of all these endeavours was almost zero. It is well said: 'You can lead a horse to water, but you can't make it drink'!

And the role of the Income-tax Department! The High Court had required the Department to submit reports on the investigation done by the Department whenever the Fodder Scam Case came up before the Court. The officers of the Assessment Wing and the Investigation Wing worked hard with total commitment despite heavy odds. There was a shortage of officers who could be deployed on the work. We tried to persuade the Central Board of Direct Taxes for posting more officers, but nothing was done. Even the High Court expressed anguish over the ways the government functioned, but that comment had no effect. The High Court suggested that the newly created post of the Director of Investigation be filled up immediately. When nothing was done for some time, I went to New Delhi to tell the Revenue Secretary Shri N. K. Singh I.A.S. that if it was not done immediately, he and the Chairman of the Central Board of Direct Taxes would have to answer to the Court by entering their appearance there. Within 10 minutes Shri Jagdish Jha was posted as the Director of Investigation, and I flew to Patna to break this news to the Court. This was the result of personal pleading. The 11 months, which I devoted mainly to exploring the Fodder Scam cases, were most satisfying and frustrating at the same time.

While at Patna, I was advised to obtain security for my protection which I refused. I felt that as I worked without animus, and with due respect for all, I had no reasons to fear. And I was not wrong. But my activism had become too much for those in Delhi who always strove to please Lalooji. I think I must not blame Lalooji. I never heard that he spoke ill of me. He had talked to me on phone. I found him remarkably courteous, soft-spoken, precise and impressive. I wondered how different he seemed from the Laloo about whom we read in the press. I felt he was an artist of excellence: he knew what role was appropriate in which context. But to please him, I may be wrong, certain politicians and civil servants in New Delhi worked. They saw to it that I was shifted from Patna when I had less than half a year to retire. One fine morning in September 1997, I received my transfer order posting me as the Chief Commissioner at New Delhi. Many speculated on the reasons for my exit from Patna, but I remained happy with all that had come to me. How things moved thereafter at Patna would be clear from the exasperation of the High Court with the performance of the Income-tax Department thereafter. After a few months of my transfer to New Delhi from Patna, I was distressed to read that on 20 March 1998 the Department suffered a judicial censure by the Patna High Court (coram: S.N. Jha & S.J. Mukhopadhyaya, JJ.) in words expressing the Court's deep annoyance:

"We record our displeasure with the manner in which the matters are being dealt with by the Income Tax Department. Mr. Rastogi has promised to show better results in the next month. We may observe

that if tangible progress is not made within next month, we will be constrained to make observations against the Department and/or its officials. List these cases for further directions on 24-4-1998. The CBI and the Income Tax Department shall file their respective progress reports as usual." [1998 (2) PLJR 327].

I superannuated in March 1998, and what happened to the Fodder Scam Cases thereafter ceased to be the matter of my concern. I could know about the unfolding of things thereafter from the media. I heard that the investigation was slowed down for political reasons. So the same game, the same strategy, which the politicians are accustomed to play. It was the conjoint Strategy of Stealth and Delay. Delay always works for the benefit of the accused: memory becomes stale, the prosecutor's verve gets diminished or lost, witnesses die, records of criminality get eaten by rats or white ants, and new political friends emerge to save the birds of their own feathers from distress.

What has happened to the cases of the protagonists and the minions of the Fodder Scam is now in the public domain. The Cases are crumbling like the house of cards; and those yet not crumbled are struggling for life at the precipice. Much illicit benefit is being derived from the proverbial fact that the human memory is short. What we keep hearing from time to time makes us laugh and weep: we laugh at ourselves; we shed tears at our destiny. The way litigations in the matter of the Fodder Scam moved, or are moving, illustrates best this Kaliyugi justice about which the *Srimad Bhagavad Puran* tells us (See Chapter 19 of this Memoir).

I do not intend to draw up an account of the morbid state of litigations in the cases against numerous persons charged at various places for criminal or /and civil wrongs. In this Chapter, I have written what troubled me most: the breakdown in the system of constitutional governance in Bihar. It is hoped that the story of the Fodder Scam does not get consigned to oblivion. Jean Anouilh said: "God is on everyone's side and in the last analysis, he is on the side with plenty of money and large armies." [For 'armies' we can read 'power']

All that happened in the Fodder Scam brings to my mind a situation in Beckett's play *Godot* in which nothing happens. Its last lines and stage direction are very suggestive:

'Vladimir: Well? Shall we go?

Estragon: Yes, let's go.

They do not move.

(vi) The concept of Judicial Monitoring: a critique of the concept

What experience and history teach is this— that people and governments never have learnt anything from history, or acted on principles deduced from it.

—Georg Wilhelm Hegel quoted by G.B. Shaw in The Revolutionist's Handbook

I had an opportunity to see the way Patna High Court monitored the Fodder Scam Cases. As the Chief Commissioner of Income-tax for Bihar, Orissa, Assam and the North-East, I was duty-bound to assist the Court. I had to oversee the

performance of the Income-tax Department in that region to ensure that the Fodder Scam Cases were properly investigated, and also to approve the status reports. I had good occasions to reflect on various legal and constitutional issues which cropped up in course of the judicial proceedings before the Court. I closely observed what was being said about it in the media, and in the gathering of well-informed people. As I had good occasion to reflect on the issues pertaining to the Fodder Scam monitoring, I consider it proper to state, with utmost brevity, some of the points which are of great public importance, and may come up for consideration in future.

(a) The objections to the judicial monitoring of the Fodder Scam Cases.

I recall the criticism of the judicial monitoring of the Fodder Scam Cases by the Patna High Court. The politicians in power were all against the activist approach of the High Court as they considered that a veritable trespass on the domain of the Executive. The bureaucrats encored the views of their political masters. A lot of them, especially belonging to the Animal Husbandry Department, were participants and accomplices in the sordid Scam. But the maximum benefits had been reaped by some businessmen without whose complicity the Axis of Evil could not exist, and operate. How such a morbid Triple Alliance worked to plague our polity remained an abiding concern of several Commissions (referred in the Notes & References to Chapter 12) appointed by our Government from time to time. I have quoted in Chapter 12, the deep anguish expressed by Justice Shah: he said:

“One cannot but be struck by the near-unanimity in the observations of the several Commissions on the unhealthy factors governing the relationship between the ministers and the Civil Servants. Yet nothing seems to have been done, at any rate effectively, to set right such of the aspects of these relationships which, prior to the emergency, had contributed to the several developments which came in for indictments by the Commissions.”

Justice Shah found how the “Root of All Evil” during the infamous Emergency was wrought by some top politicians and bureaucrats. But the “Root of All Evil” became more sinisterly prolific when the traders, manufacturers and corporations became most aggressive and dexterous participants to perpetrate grave public wrong. This Triple Entente flourished under an opaque system, and was greatly helped by the professionals of many brands who were always ready to rationalize and justify their acts.

It was most unfortunate that a nexus had developed between the law maker, the law keeper, and the law breaker. The PIL had the effect of bringing to the High Court’s notice the gross remissness on the part of the Government of Bihar, and its administrative agencies as they had failed to provide good governance to the people. The scam not only subverted our Constitution’s provisions, it bred massive corruption that led the authorities to abdicate their legal and constitutional functions. The state of affairs in Bihar revealed the failure of the government to provide good governance, and had the effect of depleting the State’s resources. The circumstances wrought conditions in which people’s fundamental rights under Articles 14

and 21, even 19, had been imperiled, nay, breached. In effect, there was a breakdown in the constitutional government in the State of Bihar.

- (b) The PIL and the reasons which led the High Court to subject the Fodder Scam matters to Judicial Monitoring.

The judgment of High Court adopted a very prudent and pragmatic approach in the monitoring of the Fodder Scam Cases. It noticed an extraordinary situation posing an extraordinary challenge demanding an extraordinary response. This approach is evident from the High Court's observations in *Sushil Kumar Modi & ors. vs The State of Bihar & ors.* [1996 (1) PLJR 561]

"The moot question, in my opinion, is not whether the High Court under Article 226 of the Constitution can give direction and/or entrust the investigation of a pending case to the C.B.I., but as to whether in these cases such an order/direction is required to be made." [para 34]

"There, thus, cannot be any doubt that in appropriate cases the Courts can issue *mandamus* of that nature. It is true that in most of the cases referred to above, orders were passed by the Supreme Court but that, in my opinion, cannot be a stumbling block before the High Court in exercise of its writ jurisdiction. As already stated above, the moot question is whether these are the appropriate cases in which direction should be issued. In *Sampatlal's Case* also it has been observed that such an order can be made on being *prima facies* satisfied that the investigation had either not been proper or adequate." [para 35]

"One of the first and foremost considerations which should carry weight not only with the public functionaries but also the courts is that the Government and its functionaries must not only act but also appear to act in public interest. In my opinion, it is the legitimate right of the public to know, and feel assured about, that the investigation is done in correct perspectives and that no guilty person will be spared." [para 44]

"In such a situation, people naturally have a 'legitimate expectation' that the guilty be punished. It is the duty of this Court in writ jurisdiction to see that these legitimate expectations are fulfilled. It is a fit case, therefore, in which direction should be issued for enquiry and investigation of the entire episode by the Central Bureau of Investigation for the period in question." [para 53]

Often we heard that the judicial monitoring of the Fodder Scam Cases was going counter to the well-known constitutional doctrine of the Separation of powers. It was said that as the wrongs pertained to the realm of administration, and as the Government had itself set up its SIT (Special Investigation Team) to investigate the Scam, the adoption of the procedure of the judicial monitoring of the investigation was unwarranted. But the High Court found that this SIT was a mere melodrama of pretended acts. The High Court castigated this SIT for several reasons. The High Court,

found that one of the members of the SIT was himself “under cloud” Another member was close to “a ruling Janta Dal M.L.A.” The High Court could have itself appointed the worthy members of the SIT, but it chose to monitor the activities, and the pace of investigation being done by various agencies. It was the process of commanding them to do their constitutionally and legally mandated duties.

The High Court by an order dated 11.3.1996 [reported in 1996 (1) PLJR 561] directed the investigation to be entrusted to the Central Bureau of Investigation (CBI) giving it instructions as to what required to be done. The Court directed “the Income-tax Department through the Chief Commissioner of Income-tax, Bihar, to initiate such action as may be considered fit, necessary and expedient under the Income-tax Act, Wealth-tax Act etc. against persons who he reasonably thinks to be involved in the ‘scam’ and possess unaccountable wealth and property, and take the proceedings to their logical conclusions.” The High Court directed that the “State Government would provide all necessary facilities to both the CBI and the Income-tax Department in discharge of their duties pursuant to this order”. The High Court considered the proceeding before the monitoring Court analogous to the proceedings in Writ Petition (Cr.) Nos. 340-343 of 1993 (*Vineet Narain & ors. vs. Union of India & ors.* (AIR 1998 SC 889) and Writ Petition (Civil) Nos. 640 of 1995 (*Anukul Chandra Pradhan vs. Union of India & ors.*)

The High Court rejected the plea of the State that the writ petitions were premature. But it made it clear that the judicial observations “should not be construed as Court’s opinion on the merits of the case in any way, nor they shall be construed as reflection on any individual. The directions as given ... should also not be understood as ‘indictment’ of any individual or individuals; they are intended merely to serve public interest and keep the people’s faith in the system intact.”

In *Union of India & Ors. vs Sushil Kumar Modi & Ors.* [1996] (2) PLJR 218] (SC), the Supreme Court (J.S. Verma, K. Ramaswamy & S.P. Bharucha, JJ.) clarified that the judicial monitoring could continue till the chargesheets were filed in the competent courts, as held in *Vineet Narain v. Union of India*.

- (c) The nature and the ambit of mandamus that determine the reach of the High Court (or of the Supreme Court) in granting the mandamus, or continuing mandamus.

The *raison d’etre* for the judicial intervention to monitor a Case was succinctly set forth by the Supreme Court in *Vineet Narain & Others vs Union Of India & Another* (18 December, 1997). The remedy of “continuing mandamus” was forged to respond effectively to the problems on the judicial anvil. The Supreme Court observed:

‘Merely issuance of a mandamus directing the agencies to perform their task would be futile and, therefore, it was decided to issue directions from time to time and keep the matter pending requiring the agencies to report the progress of investigation so that monitoring by the court could ensure continuance of the investigation.’

While I was at Patna assisting the High Court in carrying out its monitoring of the Fodder Scam Cases, I had occasions to reflect on the propriety of judicial intervention, and the grant of 'continuing Mandamus' directing the government agencies to discharge their public duties as they had not given good account of themselves in discharging their duties. I was of the view that the Court rightly issued the Mandamus to monitor the Fodder Scam matters as even on the conventional view the High Court (and the Supreme Court) possessed the inherent jurisdiction to issue the writ of Mandamus. I considered the issues from two observation-posts:

- (i) the *locus standi* of a public-spirited person to bring to the notice of the court matters of administrative remissness prejudicial to constitutionally protected public interests of great importance; and
- (ii) the constitutional jurisdiction to issue Mandamus to monitor Cases, like the Fodder Scam.

As to the *locus standi* of a citizen, Lord Diplock, in *Inland Revenue Commissioners v. National Federation of Self-Employed and Small Businesses Ltd*¹ [quoted with approval by the Supreme Court of India in *S. P Gupta & Ors. vs. President of India & Ors.*²], had observed

"It would, in my view, be a grave lacuna in our system of public law if a pressure group, like the federation, or even a single public-spirited taxpayer, were prevented by out-dated technical rules of *locus standi* from bringing matter to the attention of the court to vindicate the rule of law and get the unlawful conduct stopped."

*The Inland Revenue Commrs.*³ Case (which was a case of mandamus) put an end to the controversy when it overruled *R. v. Lewisham Union Guardians*³ in which it was held that an applicant for a mandamus "must first of all show that he has a legal specific right to ask for the interference of the Court." Lord Scarman adopted Prof. Wade's observation in his *Administrative Law*, 4th ed. (1977) p. 610 that if *Lewisham Case* were correct, mandamus would lose its public law character by becoming no more than a remedy for a private wrong.⁴

As to the constitutional jurisdiction of the Court to issue Mandamus to monitor Cases, we must examine the jurisdiction of the superior courts under Articles 226 and 32 of our Constitution. Mukharjea J. said in *T.C. Basappa v. T. Nagappa*⁵ that we should "keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law." H. M. Seervai aptly observes: "With his usual perceptiveness, Mukherjea J. realized that the common law in England was constantly adjusting itself to new situations, and at times rediscovering powers which has remained unused."⁶ Hence, it is worthwhile to examine the reach and ambit of Mandamus under the common law jurisprudence. This is justified also because we have broadly adopted the British model of Parliamentary Government. In no uncertain terms, the Court of King's Bench pronounced, in 1616, the great constitutional mission of the court. It was when James I was ruling in England. The Court said :

“to this court belongs authority, not only to correct errors in judicial proceedings, but other errors and misdemeanors extrajudicial, tending to the breach of peace, or oppression of the subjects, or to the raising of faction, controversy, debate or to any manner of misgovernment; so that no wrong or injury, either public or private, can be done, but that it shall be reformed or punished in due course of law.”⁷

Lord Mansfield’s statement of law is still very relevant. Viscount Simonds has observed in *Shaw v. DPP*⁸:

“When LORD MANSFIELD, speaking long after the Star Chamber had been abolished, said (in *R v. Delaval* (1763) 3 Burr at p 1438.) that the Court of King’s Bench was the *custos morum* of the people and had the superintendence of offences *contra bonos mores*, he was asserting, as I now assert, that there is in that court a residual power, where no statute has yet intervened to supersede the common law, to superintend those offences which are prejudicial to the public welfare. Such occasions will be rare, for Parliament has not been slow to legislate when attention has been sufficiently aroused. But gaps remain and will always remain since no one can foresee every way in which the wickedness of man may disrupt the order of society.”

The reach of Mandamus has been examined with thoroughness, under historical perspective, by de Smith in his *Judicial Review of Administrative Actions*. The following propositions can be drawn from his exposition;

- ◆ Our superior courts have the jurisdiction not only to correct errors in judicial proceedings, but also other errors and misdemeanors of misgovernment.
- ◆ Our superior courts are under constitutional duty to provide a remedy against the wickedness of man, unseen by the legislature, having the effect of disrupting the order of society. Mandamus is at once of high governmental importance, and a valuable remedy of last resort for the subject.
- ◆ The ambit and reach of Mandamus (or by that matter of Articles 226 and 32) depend on the provisions of our Constitution, and the role of our courts under our Constitution, and polity.

The ambit of Mandamus stands graphically described in the definition of this term as given in the *Shorter Oxford English Dictionary*:

“Mandamus: any of a number of writs, mandates, etc., issued by the monarch, directing the performance of a certain act. Later, a judicial writ or order issued in the name of the Crown or the government directing an inferior court, a corporation, an officer, etc., to perform a public or statutory duty.”

(d) Nothing turns on the Doctrine of the Separation of Powers.

In my view, the Government of Bihar was right in not invoking the doctrine of the Separation of Powers in support of its plea that the judicial monitoring was an encroachment on the executive domain. The right perspective to examine our Court’s jurisdiction is to examine the provisions of our Constitution. I have discussed some of its assumptions in Chapter 21 (‘Our

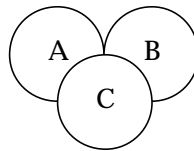
Constitution at Work'). Our Supreme Court aptly said in *Bengal Immunity's Case*⁹, quoting Justice Frankfurter who had said so perceptively:

"....the ultimate touchstone of constitutionality is the Constitution itself and not what we [court] have said about it".

'Sovereignty' inheres in our Constitution, and it is essentially, as Oppenheim says:¹⁰ "a matter of internal constitutional power". Oppenheim, while analyzing what 'Sovereignty' means in the 20th century, observed:

"Sovereignty was, in other words, primarily a matter of internal constitutional power and authority, conceived as the highest, underived power within the state with exclusive competence therein"

Sovereignty of the Republic of India is essentially a matter of constitutional arrangements. What is most important is to see the constitutional arrangements of the constitutionally prescribed duties (functions) of the different organs of the State.



'A' represents the domain of the legislative functions; 'B' of the executive functions; and 'C' of the judicial functions. As the interpretation of law and Constitution, the resolution of disputes, the maintenance of legality and constitutionality affecting the legally protected rights and legitimate interests of the people, and the non-transgressions of the constitutional discipline come within 'C', the superior courts possess the constitutionally granted authority to intersect on 'A' and 'B'. The areas not intersected are analytically wholly of policy formulations, law-making and administration. This diagram is not designed to portray the relationship *inter se* 'A' and 'B' as that depends on shifting political equations, and the emerging events in our nation's political sphere causing different protocols of interactions amongst the political organs (as is usual in the Parliamentary form of government). Under our Constitution, our polity is closely structured: the organs are created with granted powers for discharging prescribed functions. The organs of the State are bidden to act within the province of functions whose frontiers are constitutionally determined.

(e) The irrelevance of invoking the bookish doctrine of the Separation of Powers.

Nothing turns on the doctrine of the Separation of powers, which Locke and Montesquieu had propounded with insight and verve. This was one of the metaphysical notions of political science which was never wholly true in the past, and is nowhere at work in its technical and conceptual purity. They say that the U.S. Constitution is founded on this theory. But now we see that this doctrine does not operate even there on Locke's lines. Analysing Locke's impact on the U.S. Constitution, Bertrand Russell perceptively observes:¹¹

"The country where Locke's principles of the division of powers has found its fullest application is the United States, where the

President and Congress are wholly independent of each other, and the Supreme Court is independent of both. Inadvertently, the Constitution made the Supreme Court a branch of the legislature, since nothing is law if the Supreme Court says it is not. The fact that its powers are nominally only interpretative in reality increases those powers, since it makes it difficult to criticise what are supposed to be purely legal decisions. It says a very great deal for the political sagacity of Americans that this Constitution has only once led to armed conflict."

The U.S. Supreme Court held in *Reid v. Covert* [ILR 24 (1957) p. 549] 'the provisions of certain treaties unconstitutional'. In *Hamdan v. Rumsfeld, Secretary of Defense, et al* (decided by the U.S. Supreme Court on June 29, 2006), the Court's conclusion ultimately rested upon a single ground: Congress 'had not issued' the Executive a "blank check." Cf. *Hamdi v. Rumsfeld*, 542 U.S. 507, 536 (2004) (plurality opinion). In the U.K, the theory of the Separation of power is a functional doctrine rather than strictly compartmentalized division of the sovereign powers. The position in the U.K is thus summarized in *Att-Gen v. BBC* [1980] 3 All ER 161 by Lord Scarman who considered judicial power itself species of sovereign power [of the State]:

".... Though the United Kingdom has no written constitution comparable with that of Australia, both are common law countries, and in both judicial powers is an exercise of sovereign power. I would identify a court in (or 'of') law, i.e. a court of judicature, as a body established by law to exercise either generally or subject to defined limits, the judicial power of the state..."

We have reasons to think that now in the U.K., there is a trend towards concentration of powers between the two departments of the State: legislature and the executive. The Judiciary remains unaffected by this sinister phenomenon. We saw how in *Inland Revenue Comrs. v. National Federation of Self-Employed and Small Businesses Ltd.*¹² the Judiciary controlled the Executive even in matters of the income-tax administration.

It would be futile to criticize the judicial monitoring of the executive actions and inactions by invoking the doctrine the Basic features of our Constitution. Though *Kesavananda v. State of Kerala* (AIR 1973 SC 1461) mentions 'Separation of Powers' as one of the Basic features, it was not decided as a point of law in that Case as there was no occasion to consider and decide the issue. The right perspective for deciding which feature is a basic feature has been provided in the *Election Case* [*Indira Nehru Gandhi v. Raj Narain* (AIR 1975 SC 2299)] : to quote Chandrachud J. —

"(for) determining whether a particular feature of the Constitution is part of its basic structure, one has perforce to examine in each individual case the place of the particular feature in the scheme of our Constitution, its object and purpose, and the consequences of its denial on the integrity of the Constitution as a fundamental instrument of the country's governance."

This sort of exercise is yet to be done. But when we were considering the propriety of judicial monitoring of the Fodder Scam matters, it was more

appropriate to consider the statutory and constitutional duties of the organs of the State, as structured under our Constitution, than to be preoccupied with the theory of Separation of Powers. In fact, under our Constitution, the concept of the 'Separation of Powers' is not at work in its strict conventional sense in which the political theorists of the West had used this concept. One is reminded of Chief Justice Marshall's seminal 1819 dictum that "the Court must never forget that it is a Constitution it is expounding." ¹³

(vii) As I saw the show; and my suggestions

As we learn from experience, so does Judiciary. In the context of *Liversidge v. Anderson*¹⁴, C. K. Allen said:

"In *Liversidge v. Anderson* the majority of the Lords felt the same confidence in the wisdom and moderation of executive officials; there is, apparently, something in the tranquil atmosphere of the House of Lords which stimulates faith in human nature".¹⁵

I found that much of the Court's efforts stood frustrated by the Executive's studied efforts to protect the scamsters and fraudsters. The most effective device to frustrate the judicial endeavours was to resort to a technique I called the Technique of Creative Delay. I have already told you, in the segment (v) above, the benefits which accrue on account of the operation of the technique of Creative Delay. New situations can be created, and ambiguities can be noticed in words. In this context, I would tell you the story of Penelope's web. It illustrates the technique of delay that pays dividend. Penelope had never wished to accept the overtures of her suitor whilst her husband Odysseus was far away. She decided to keep her suitor await her love, but inside she wished to frustrate his overtures. She was waiting for the return of her husband. She adopted the device of melodramatic inaction illustrating what our modern scientists say, the Brownian motion. She promised her suitor to be with him when she completed weaving a winding-sheet for old Laertes. She adopted a strategy. She used "to weave away at her loom in the day-time, and then spend the night in unpicking her last day's work"¹⁶ Her device succeeded. Her husband came after a long time, and they were united. The suitor hoped, and hoped, till his hope stood dashed to ground.

But there are many other ways to keep the melodrama of seeming actions going on. One is not to provide adequate infrastructure on this ground or that so that nothing moves. The Patna High Court had told us in its different orders passed in course of the monitoring of the Fodder Scam how the high-up interfered in the working of proper investigation. Often good officers were embarrassed in many ways. Situations were created when working for public cause could become extremely frustrating and disgusting.

I often felt that the process of judicial monitoring should have continued even after charge-sheets were filed in the courts of competent jurisdiction. The High Courts could exercise its vigil, in exercise of powers under Article 227 of the Constitution, on how the matters went on in the subordinate courts. True, these courts could have themselves kept an effective control on their proceedings. But the history of the court cases relating to the Fodder Scam tells us sad stories. I wish, someday, our superior courts would devise ways to get over such problems. The superior courts have inherent common law jurisdiction to devise ways, and to

forge effective remedies. For protecting our Constitution, judicial creativity is a must. And 'judicial creativity' requires moral courage and vibrant imagination.

(viii). The Plight of the CAG: this glamorous 'Constitutional orphan'

The Accountant General conducted audit of certain Income tax assesses and came to a conclusion that the Income tax Department had failed to grasp the import of materials and information, which had come to its notice in the early nineties in course of searches conducted by the Department. The Income-tax Administration rightly pointed out that information about the Scam was available in the media, and could have been gathered by the agencies of the State Government from the reports available in the public domain. The CAG and the Government of Bihar indulged in the criticism of the Income-tax Department for non-communication of materials which could have helped detect the Fodder Scam much earlier. Much time and energy had been wasted in wordy warfare and exchange of allegations: all mere "words, words, words". They simply tried to pass the buck!

And the CAG and his organization! The Constitution of India prescribes for the CAG a most responsible role. He takes oath in the same form in which the judges of the Supreme Court take that. He is required to uphold the Constitution. Dr. B. R. Ambedkar considered his role no less vital than that of the Judges of the Supreme Court. He was conceived under the Constitution to function as an effective evaluator and critic of the ways the Executive handled finance. He ensures the legislative control on the income and expenditure of the government. While delivering a lecture at the Defense Service Staff College, Wellington Island on 14 November 1964, Sri A. K. Roy, the then Comptroller and Auditor-General of India, stated the functions of his office in these words:

"He himself determines the extent and scope of audit in regard to various types of transactions.... He has absolute discretion in regard to the accounts to be included in his reports to Parliament and the State Legislature and the executive can in no way fetter his discretion in this matter. Unlike the U.S.A. he has no power to settle claims by or against Government, nor has he the power to impose a fine as done by the audit courts of Europe. His audit transcends the mere formal or legal aspects of audit and includes what may be called efficiency-cum-propriety audit."¹⁷

What happened in Bihar illustrates what ailed the institution of this great constitutional authority in whom, on good grounds, the framers of the Constitutions reposed great faith, and from whom they had great expectations. The Accountant General squarely placed the responsibility for the Scam on the Government of Bihar. But Shri Laloo Prasad Yadav, the then Chief Minister, held the Accountant General and his Organization wholly responsible for the Scam as they failed to show vigilance in discharge of their duties.

But it is amazing to see that the CAG possesses no statutory powers to enforce the constitutional obligations of the government functionaries. If the Government of a State non-cooperates, the CAG becomes helpless. A Class II Income tax Officer can exercise the wide powers conferred on the civil court for the purpose of production of evidence and the enforcement of the attendance of witnesses, but

this great Constitutional authority finds himself at his wit's end when some recalcitrant Government Department, or the Government of the State, evades its duty to supply to the officers of the CAG records and documents for discharging their constitutional functions. The Fodder Scam brought to public gaze this sinister situation. The CAG could not complete its audit for several years because of the studied indifference, deliberate defiance, and criminal negligence of the public functionaries of the State of Bihar. The officers of the Accountant General felt themselves driven to the wall.

As the Chief Commissioner of Income Tax, Bihar, I had the painful opportunity to see the constraints under which the officers under the CAG worked. The bureaucrats and the political executive had made them ineffective and effete. During the British days, the Auditor-General was accountable to the Secretary of State for India who, like other ministers, was responsible to the British Parliament. The Auditor-General, then, was responsible only to the Secretary of the State, who worked for the Crown. The writ of the Auditor-General ran effectively as every government authority feared the displeasure of the Secretary of State. Now ground realities have changed making the great office of the CAG a virtual constitutional orphan. This situation has been created by the nexus that exists between the superior bureaucrats and the wielders of political power. Justice J.C. Shah rightly called this nexus, in the famous *Shah Commission Report*, "the root of all evil". The CAG is a sentinel on the *qui vive*. As a watchdog, he watches and reports on the counts of illegality, procedural impropriety, irrationality, and lack of proportionality noticed within the sphere of its scrutiny. This institution is a watchdog, it was unfortunate that the Government of Bihar wanted to see this institution just as a lap-dog, not a hound. Once I asked the Accountant General why did he not propose to the President for the declaration of Emergency when he found the State Government deliberately flouting the constitutional obligations which clearly revealed the break-down in the constitutional system in the State. Under Art. 256(1) of the Constitution, the President could exercise his discretion to declare the emergency on "receipt of report from the Governor of a State or otherwise.....". The idea appealed to him. I heard later that he sent the proposal to this effect to New Delhi but all in vain.

The hiatus between our Constitution's expectations from the Comptroller and Auditor-General and his performance is abysmal. The Third Schedule of our Constitution prescribes an oath to be taken by the CAG to 'uphold the Constitution and the laws'. None should consider that taking the constitutional oath is a mere formality. He is duty-bound to uphold the Constitution. In *Marbury v. Madison*¹⁸, the Chief Justice Marshall refers to the effect of the judge's oath in words which time can never make stale:

"Why does a judge swear to discharge his duties agreeably to the constitution of the United States, if that constitution forms no rule for his government? If such were the real state of things, this is worse than solemn mockery. To prescribe, or to take oath, becomes equally a crime."

(ix) The Legislature that betrayed trust

It was a tragedy that the people's representatives remained indifferent to the ills brewing unashamedly in Bihar. On close observation, it is evident that the

Public Accounts Committee of the Bihar legislature failed in discharging its public duties in the matter of the scrutiny and evaluation of the excess drawals made by the Officers of the Animal Husbandry Department. These serious financial derelictions were in the full knowledge of the Public Accounts Committee; yet it evaded the problems.

The Public Accounts Committee plays a very important constitutional role in the examination of all appropriation accounts. Explaining its role Erskine May observes:

‘The main function of this Committee is to make sure that the Parliamentary grants for each financial year, including supplementary grants, have been applied to the object which Parliament prescribed, and to consider the matter brought to the notice of Parliament in the reports made by the “Comptroller and Auditor-General” as a result of his audit. For this purpose they have the assistance of the Comptroller and Auditor-General. The Committee also scrutinizes the causes which have led to any excesses over parliamentary grants....’¹⁹

In England, the committee of public accounts “has identified fraud and corruption in the Property Services Agency (the body responsible for building and maintaining government property); the need for economies in the cost of H.N.S. supplies; and the grave misuse of public resources in the De Lorean car project.”²⁰ One of the most crucial function of the Public Account Committee is to discover and report the unwarranted excesses “where a department has spent more upon a service in the financial year than the amount granted to it by Parliament.”²¹

During the period the so called Fodder Scam was being fostered for illicit gains, The Bihar’s Public Accounts Committee had as its Chairman an important MLA of the Bhartiya Janata Party. There could not be a worse commentary on the Public Accounts Committee than the fact that it’s Chairman (that too a member of the BJP) had himself become an accused. What a comedown for the great institution! In the Preface to the Report No. 315, drawn up by the Public Account Committee of the Bihar Legislative Assembly and presented to the House in November 2000, Shri Ramdev Verma made some insightful comment. An extract from the Report’s introduction runs as under (I translate his comments from Hindi to English):

“The framers of India’s Constitution have cast an independent responsibility on the Public Accounts Committee to supervise, scrutinize and control the implementation of the budgetary provisions by the executive, judiciary and legislature.. But the history of the last fifty three years shows that the Public Accounts Committee has adopted a negative approach in discharge of the above responsibility. And this has become a matter of concern for us in the matter of the maintenance of the democratic structure.”

In unearthing a Fodder Scam, the Newspapers of Bihar, specially the *Times of India*, did very good work. Sri Sachchidanand Jha kept on writing well-informed articles and reports. I was greatly impressed by the performance of the Press.

(x) The Root of All Evil grew apace

It is seen that the public services in India have registered an abysmal decline after independence. The politicians and the bureaucrats virtually forged an alliance to promote their greed. The Shah Commission considered this to be the very root of all evil. I had occasions to see how deep and morbid this nexus had gone. I was working in close interactions with Shri Venketrama Aiyar Commission of Inquiry about which I have already written something. After referring to the reports of Commissions headed by the Sri S. R Das, Sri Rajgopal Iyengar, Sri Venketrama Aiyar, Sri Madholkar, Sri A. N. Mulla, Sri G.K Mitter, the Shah Commission of Inquiry aptly observed in its *Report*:

“The Commission is not aware of the action taken, if any, in response to these Reports submitted from time to time in regard to the Minister - Civil Servant relationship. The fact, however, remains that the refrain in all these Reports in so far as this concerns the relationship of the Ministers with the civil Servants, is the same. One cannot but be struck by the near-unanimity in the observations of the several Commissions on the unhealthy factors governing the relationship between the ministers and the Civil Servants. Yet nothing seems to have been done, at any rate effectively, to set right such of the aspects of these relationships which, prior to the emergency, had contributed to the several developments which came in for indictments by the Commissions. In the light of this, it may be easy to conclude that what happened during the emergency is merely a tragic culmination of the particular trend that had been identified and condemned from time to time by the Commissions of the past. The Commission owes it to the citizen of India to emphasize that appointments of Commissions by themselves are not enough if the Governments concerned do not follow up and implement at least such of the recommendations as are avowedly accepted by the Government. Unless the Government is prepared to apply the corrective principles in the Minister-Civil Servant relationship effectively and with a determination to produce the desired results at different levels and within the several components of the Government, the agonizing impact of this unfortunate malaise would be felt by the common man in the streets, in the villages, in the factories and in the far distant corners of this vast country.”²²

It is an irony of history that the leaders, who were shaped during the JP Movement, became involved in the infamous Fodder Scam. The J.P Movement, which worked for the alleviation of the fate of the suffering millions, failed to have an impact on the character of the politicians, and the system of governance in the State. It also illustrates the point that it is easy to bring down a government but it is difficult to run a clean and good government.

(xi) My Dismay & the Lessons to be drawn from Bihar's Fodder Scam

So where have we come? The story that I have narrated in this Chapter of my Memoir is the tale of evasion and abdication of duties by the government and its organs and agencies. The Patna High Court bewailed that the “values of public

life are fast declining”. In fact the ‘decline in moral values’, which is the core cause of all scams, is, over the recent decades, the burden of song in various decisions of our courts, including the Supreme Court of India. We read the events of the past with an iron in our soul. Fali Nariman said about the Emergency:

“One of the lessons of the Internal Emergency (of June 1975) was not to rely on constitutional functionaries. These functionaries failed us — ministers of government, members of Parliament, judges of the Supreme Court, even the president of India.”²³

The Fodder Scam, and the response of the authorities to it and towards its protagonists, deserve the same pungent but saddening comment.

(xii) It is time to frame a new law to prevent the nation’s loot.

The Fodder Scam of Bihar, and all other horrendous scams, which we all know, stress the need for a new penal law to respond effectively to the present-day challenges. H. M. Seervai has aptly stated what we all feel at the heart of our heart:

“Ordinary people find it difficult to understand that an assault by Ministers should be made punishable as an offence under the Penal Code but more grievous injuries inflicted by Ministers by abuse of power should escape punishment.”

When the Indian Penal Code came into force in 1862, none thought that India would ever be a free country with its own Constitution establishing a democratic polity. Not even our Constitution-framers could ever think that the great Indian Republic would someday become the Republic of Scams! These morbid realities demand our creative response. Article 20(1) of our Constitution prescribes that no person can be convicted of any offence except for the violation of the law in force at the time of the commission of the act charged as an offence. H. M Seervai rightly suggested:

“It is therefore necessary to make an abuse of power by persons holding public office a substantive offence punishable under the Indian Penal Code..... it would not be unreasonable to provide that if a public officer departed from the rules, procedures or settled practice, resulting in injury to some or an unfair advantage to himself or other persons, a rebuttable presumption should be raised that there was abuse of power.”

After my close observation of the Fodder Scam, the study of the Reports of the various Commissions of Inquiry, and all the Scam Cases we keep on hearing, I consider that Seervai’s suggestions must be immediately accepted in our country. In fact, the IPC requires to be re-written responding to the new realities of times.

(xiii) My visits to Orissa: I touched the Sun’s Chariot, I visited the land where God Vishnu is to appear as Kalki

During my short term as the Chief Commissioner of Income-tax for Bihar, Orissa, Assam and the North-East, I got opportunities to visit Orissa and the North-East to observe their rich cultural traditions and scenic beauty. I am grateful to their people for the cordial warmth they showed towards me and my wife. Constraints of the space of this Memoir do not permit me to give a graphic

account of the things of beauty and joy which we experienced there in abundance. But I must write a few words about my Orissa visit to commemorate my those moments. Hence, the following cryptic comments by way of disjointed assortments;

- (i) My visit to Orissa fulfilled my desire to have a *darshan* of the area which, during the times of Ashoka the Great, had witnessed the great Battle of Kalinga which transformed the imperialist Ashoka into a great pacifist who gave up war, and began working for peace and the promotion of *dhamma* (*dharma*) that the Buddha had preached for the weal of mankind.
- (ii) My visit provided me an opportunity to observe the Sun temple at Konark, one of our world's great wonders, which enabled me to touch the wheel of the Sun's chariot whose wheels (the *chakras*) symbolise and illustrate the Buddha's *dharmachakra*, and Krishna's *sudarshanchakra*. I would reflect on these symbols in Chapters 19 and 20 of this Memoir. I stood near the wheel touching one of its ornate spokes of concentrated beams. I felt how lucky I was that I could touch the Sun's chariot with joy, when in trying even to go near the Sun the wings of Icarus had melted away making that ambitious creature fall!
- (iii) My visit convinced me that Orissa had economically developed as one region with two systems: one of the affluent coastal areas, the other of the interior and western-southern Orissa with its alarming poverty.

I spent a few days at Sambalpur and Berhampur. I interacted with a lot of people. One fine morning a group of people came to my guest house to request me to perform a *yagya* and *pooja*. I felt thrilled that in that holy region I could get an opportunity to play the role which many Mahamahopadhyas and Pandits of my family had played earlier. I performed the ritual in the Vedic tradition, and laid the foundation of the Income-tax Building at Sambalpur. A day after, I laid the foundation stone of the Income-tax Building at Berhampur also.

At Sambalpur, I heard a very interesting story. *The Bhagavat Mahapurana* tells us that the Hindus believe that God Vishnu would come to the world as God Kalki to deliver people from their misery and exploitation. I would tell you something about the heartlessness of the powerful in Chapter 22 of this Memoir by recalling Fyodor Dostoyevsky's *The Brothers Karamazov*. A story goes in the *Mahapurana* that time would surely come when God would come as Kalki, the 10th avatar of Vishnu. The *Mahapurana* tells us that He would appear in the family of a poor Brahmin in 'Shambhala' (the *Srimad-Bhagavatam*.12.2.18). The suffering people believes, as most of us do, in the oft-quoted assurance given by Krishna in the *Bhagavad-Gita* that whenever *dharma* decreases, or is wrecked, and *adharma* becomes triumphant then, Lord Krishna manifests Himself to set the aberrations and injustice right (the *Bhagavad-Gita* IV.7). The people felt sure that that day would certainly come. The words of Faiz Ahmed Faiz came to my mind. He says precisely what Krishna had said in the *Bhagavad-Gita* in the *shloka* just quoted.

The western-southern Orissa, richly populated by the down-trodden tribals and the poor, is most neglected region, and illustrates the greed of the capitalists, and the degradation that has set in our politics. I would revisit this point in Chapter 22 of my Memoir. But here it would be enough to point out what our Supreme Court said, in January 2011, in *Kailas v. State of Maharashtra* (2011) 1 S,C,C, 793 at 802:

“The injustice done to the tribal people of India is shameful chapter in our country’s history. The tribals were called ‘*rakshas*’ (demons), ‘*asuras*’, and what not. They were slaughtered in large numbers, and the survivors and their descendants were degraded, humiliated, and all kinds of atrocities inflicted on them for centuries. They were deprived of their lands, and pushed into forests and hills where they eke out a miserable existence of poverty, illiteracy, disease, etc. And now efforts are being made by some people to deprive them even of their forest and hill land where they are living, and the forest produce on which they survive.”

The ‘*rakshas*’ are those who exploit human beings. Lord Krishna would call such persons ‘demonic’. He describes the traits of the demonic persons in chapter XVI of the *Bhagavad-Gita*. I quote two *shlokas*, as rendered into English, by Dr. S. Radhakrishnan:

‘This today has been gained by me; this desire I shall attain, this is mine and this wealth also shall be mine (in future)’. (Ch. XVI.13)

“Bewildered by many thoughts, entangled in the meshes of delusion and addicted to the gratification of desires, they fall into a foul hell.” (Ch. XVI.16)

NOTES AND REFERENCES

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- 2 AIR 1982 SC 149 P. 190
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- 4 H.M. Seervai, *Constitutional Law of India* Vol. III, p. 1823
- 6 AIR 1954 SC 440
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- 7 *Bagg* (1616), 11 Co. Rep. At 98a, [quoted by W. Friedmann, *Law in a Changing Society*, p. 77]
- 8 [1062] AC 220
- 9 AIR 1955 SC 661, 671 para 13
- 10 Oppenheim's *International Law* 9th Ed Vol I Peace p. 125
- 11 Bertrand Russell, *History of Western Philosophy* p. 616
- 12 (1981) 2 ALL ER 93 at 107 (H L)
- 13 Quoted in Pollack, *Earl Warren: The Judge Who Changed America* 209 (1979)
- 14 (1942) A.C. 206.
- 15 Allen, *Law and Orders* 3rd ed. p. 297
- 16 Toynbee, *A Study of History* Chap. XXII, p. 631
- 17 Quoted by H.M. Seervai, *Constitutional Law of India* p. 2154 (4th ed.)
- 18 2 L Ed 60 (1803)
- 19 May, *Treatise on the Law Privileges Proceedings and Usage of Parliament*, page 653
- 20 O Hood Phillips' *Constitutional and Administrative Law*, Seventh Edition. at- 227
- 21 O Hood Phillips' *Constitutional and Administrative Law*, Seventh Edition. p. 228
- 22 *Shah Commission of Inquiry Report XXIV. 18*
- 23 Fali S. Nariman, *Before Memory Fades* p. 171

13

PLIGHT OF OUR PUBLIC ADMINISTRATION — EXTRACTS FROM THE SHAH COMMISSION OF INQUIRY REPORT

LESSONS NEVER TO BE FORGOTTEN

“The Shah Commission Reports have exposed grave defects in the public life and public services of our country during the Emergency. It can have given Shah J. no pleasure to do so, as his General Observations, with their “simple human message” clearly show. His Reports convey the spirit of the memorable words, “Our country, right or wrong. If right, to keep right, if wrong, to put right.”¹

—H. M. Seervai , *Constitutional Law of India*
(4th ed.) p. 3066

[Note: The Shah Commission Report examined the excesses of the Emergency. Never in the past the public administration had ever been examined with so much thoroughness, as was done by the Shah Commission. The Report turned out unique. It was drawn up by one of the most distinguished judges of our Supreme Court, well-known for his objectiveness and clarity in perception. It was unique as it was drawn up after a sound scrutiny of the primary documents, and after closely examining many of those who were responsible for the excesses of the Emergency (25 June 1975 – 21 March 1977). The Commission could do remarkably good work because the government in power was not interested in obstructing its working by adopting legal and administrative subterfuges. I have already told you that the *Report* came out when the Janata regime was gasping for its last breath, and Mrs. Indira Gandhi was emerging from her political wilderness. The Report vanished from market soon after its publication. Now it is rare. But I had read it closely, and feel that all vigilant citizens must read the *Report*, especially Chapters XV and XXIV which contain the Commission’s valuable ‘General Observations’. As the *Report* is not available in the market, I have compiled some of its observations and comments in this Chapter. I have added appropriate headings to highlight their purport the way I understand them. References to the numbers in the brackets are the references to the Chapters of the *Report*, and the paragraphs therein.]

Extracts from the general observations in the Report of the Shah Commission of Inquiry (1978), Chapters XV & XXIV

1. When RUMOURS ruled

‘Absence of the freedom of the Press and the severity of the censorship rules coupled with *ad hoc* authoritarian oral orders, rendered the channels of communication over the sub-continent choked and polluted. Rumours became the accepted channels of communication..... Censorship of news and the manner in which the media was manipulated, should be a lesson to the Government and to the people that in a vast country like our blanketing of news in the way it was done, has serious repercussions on the lives and thought of the people.’ [15.7]

2. The Plight of the Press

‘The Press has a special responsibility to safeguard the fundamentals of democracy and the rule of law. This responsibility cannot be discharged without vigilance, a measure of denials willingly and altruistically undertaken and courage to accept the consequences of challenging the infringement by the Government of not only the rights of the Press but also of the people. But the freedom of the Press was the second casualty; closely following the incarceration without trial of respected political leaders, who protested against Smt. Gandhi’s attempt to flout the judicial verdict, instead of clearing herself of the impropriety in due course.’ [15.8]

3. The idea to clip the wings of judiciary brooded upon

‘The Commission notes with great concern Shri S.S.Ray’s statement in so far as it concerns the decision taken at an irresponsible level on the night of June 25, 1975 for closing down the courts and cutting off the electricity connections to the Press. What happened in the months following the declaration of the emergency with regard to the High Court Judges appears to have been merely an extension of the idea conceived on the night of the 25th on account of which Shri S.S. Ray had felt very uneasy and had also spoken to Smt. Indira Gandhi before leaving her residence that night. [15.9]

The administration in a democratic society has a special responsibility to ensure that the proceedings of the law courts and the Parliament are available to the people at all times through the Press and other media. But this was sought to be smothered during the period of emergency. The State owes it to the nation to assure that this vital limb of the Government will not be subjected to strains which might even indirectly operate as punitive merely because of pronouncements not to the liking of the executive authority.’ [15.10]

4. Motivated appointments and subversion of public service

‘.... the Commission is of the opinion that a calculated effort was made to place persons in vital positions who were willing to further the

interests of the centre of power in gross violation of established administrative norms and practices. Indisputably every Government must have the right to select its own functionaries, especially for performing duties pertaining to important jobs, but, in doing so, the rules that the Government has framed for making such appointments should not be thrown to the winds. In some of the cases brought before the Commission, the recommendations of the Public Enterprises Selection Board were brushed aside and persons who had been interviewed and not considered fit for appointment by the PSEB were appointed. Important financial institutions such as the Reserve Bank, the State Bank of India and the Punjab National Bank, came to be controlled through postings of men whose selection did not conform to the accepted norms. The conduct of the Chairman, Central Board of Direct Taxes, in certain matters has come to the adverse notice of the Commission. Some of these beneficiaries of Government actions were willing to go along with the power centres, though in the process they had to disregard the accepted norms and practices. These posts are some of the important levers of powers. This is evident from the use to which some of the incumbents of these posts are shown to have been put. The Government having framed the rules governing its conduct cannot normally arrogate to itself the discretion to disregard them, unless there are demonstrably compelling reasons and circumstances, justifying the side-stepping of those rules; and recording the reasons in writing by the functionaries concerned to justify the action if need arises. Selective application of the rules is a direct invitation to indiscipline and arbitrary behaviour in appointments at all levels, with all that it implies. The appointments, terms and tenures of these important functionaries must strictly conform to the statutory requirements; and the Government has a special responsibility to ensure that the financial institutions are not manipulated for unscrupulous operations.' [15.11]

5. The Administration of MISA, and the duty of law enforcing authorities

'The Commission had opportunity to examine in detail the application of the Maintenance of Internal Security Act in relation to the various categories of persons including acknowledged national leaders, members of banned and not banned organisations and political leaders, students, teachers, trade union leaders, lawyers, juveniles, respected writers, journalists and ordinary criminals — in short, a broad spectrum of cases of persons drawn from almost every walk of life. Forging of records, fabrication of grounds for detentions, ante-dating of detention orders, the callousness with which the request of the detenus for revocation of orders of detention or even parole were ignored — in short, the manner in which a large majority of these persons were incarcerated for the only fault, namely, dissent or suspected dissent from the views of the centres of power, should be a warning to every thinking man as to how an Act initially intended to serve an extremely limited purpose to deal with the misdeeds of a special category of

persons can be given such a wide and comprehensive application so as to embrace all sections of the population to penalise dissent.' [15.12]
 'The Commission views with anguish the evidence of patent collusion between the police and the Magistracy in denying the citizens their basic freedoms by arrests and detentions on grounds which were now admitted to be non-existent or deliberately invented. Even when the slender legal remedies were attempted to be resorted to by the aggrieved citizens, these were considered sufficient provocation for incarcerating them on fabricated or non-existent grounds.' [15.13]

'Attention must be invited to the large-scale fabrication of records that followed every illegal action including arrests and detentions by the police and the Magistracy. The consequential entries in the chain of records of the Police Stations and offices of the Police and the Magistrates have become a part of the permanent records which may come to be consulted in future with the inevitable pit-falls.' [15.14]

'On occasions, the Magistracy which is set up as a bulwark against the onslaught of arbitrary or unlawful execution of law and expected to function with independence and judicial restraint, was found seriously wanting, and willing to pander to the whims of the centres of power. Even the cream of the talent of the country in the administrative field often collapsed at the slightest pressure.' [15.15]

'The Commission invites the Government's attention pointedly to the manner in which the Police was used and allowed themselves to be used for purposes some of which were, to say the least, questionable. Some Police officers behaved as though they are not accountable at all to any public authority. The decision to arrest and release certain persons were entirely on political considerations which were intended to be favourable to the ruling party. Employing the police to the advantage of any political party is a sure source of subverting the rule of law. The Government must seriously consider the feasibility and the desirability of insulating the Police from the politics of the country and employing it scrupulously on duties for which alone it is by law intended. The policemen must also be made to realise that politicking by them is outside the sphere of their domain and the Government would take a very serious view of it.' [15.16]

'In this context the Commission can do no better than quote from one of the speeches of Shri Robert Mark, the ex-Chief Commissioner of Police, London. Its relevance for the Police of our country is self-evident. Shri Robert Mark says :—

“Our authority under the law is strictly defined and we are personally liable for the consequences whenever we invoke it. We play no part in determining guilt or punishment and our accountability to the courts both criminal and civil, to local police authorities, to Parliament and to public opinion is unsurpassed anywhere else in the world. In the legal and constitutional framework in which society requires us to enforce the laws enacted by its elected representatives, the most essential weap-

ons in our armoury are not firearms, water cannon, tear gas or rubber bullets, but the confidence and support of the people on whose behalf we act. That confidence and support depends not only on the factors I have already mentioned but on our personal and collective integrity and in particular on our long tradition of constitutional freedom from political interference in our operational role. Notwithstanding the heavy responsibilities for the policing of England and Wales given to the Home Secretary by the 1964 Police Act, it is important for you to understand that the police are not the servants of the Government at any level. We do not act at the behest of a minister or any political party, not even the party in government. We act on behalf of the people as a whole and the powers we exercise cannot be restricted or widened by anyone, save Parliament alone. It is this which above all else determines our relationship with the public, especially in relation to the maintenance of public order, and allows us to operate reasonably effectively with minimal numbers, limited powers and by the avoidance of force, or at least with the use only of such force as will be approved by the courts and by public opinion."

"To sum the position up for you in easily understandable and practical terms, a chief officer of police will always give the most careful consideration to any views or representations he may receive from his police authority, be it Home Secretary or police committee, on any issue affecting enforcement of the law, whether public order or anything else, but in England and Wales it is generally for him and him alone to decide what operational action to take and to answer for the consequences. In the case of the Commissioner of Police of the Metropolis his exercise of those responsibilities will no doubt be all the more scrupulous in that he alone of all chief police officers enjoys no security of tenure and that subject to parliamentary approval, he may be removed by the Home Secretary."

"I emphasise this because whilst the police place great importance on their constitutional freedom the significance of their accountability should not be overlooked as a counter-balance to any improper use of it." [15.17]

'The Commission feels that what applies to the Police applies in equal measure to the Services as a whole. The politician who uses a public servant for purely political purposes and the public servant who allows himself to be so used are both debasing themselves and doing a signal disservice to the country. [15.18]

6. Moral component in public administration

It is necessary to emphasise, even at the risk of sounding pedantic, that the moral component must take its legitimate and rightful place in every decision-

making process by the public functionary. The following quotation from Walt Lippman has great relevance for the public functionaries generally and to those who were called upon to function in the days of emergency :—

“Those in high places are more than the administrators of Government bureaux. They are the custodians of a nation’s ideals, of the beliefs it cherishes, of its permanent hopes, of the faith which makes the nation out of a mere aggregation of individuals. They are unfaithful to their trust when by word and example they promote a spirit that is complacent, evasive and acquisitive.” [15.19]

7. The derelictions of the civil servants in discharge of their public duties

‘It may not be that the number of senior officials at important places doing the wrong things has increased. But what certainly can be sensed to the point of certainty is that there is a general and wider acceptance of the officials who indulge in short-circuiting of administrative procedures, level jumpings in chains of command, and non-conformity to standard administrative norms and values. It is the absence of service sanctions and the non-critical and an almost supine acceptance of the wrong doings of the members of the services by the general run of officials which spurs others to swell the ranks of the wrong-doers.....Imaginary fear of possible and probable consequences for doing the right things have done more havoc than the known consequences that actually may have followed the performance of duties on the right lines by the Government servants. One must realise that even during the emergency there were several functionaries in the Government who stood up for what was right though the examples under this category were more in evidence among the lower functionaries than among the higher echelons.’ [15.20]

8. The story of demolitions

‘Apart from the legal facade fraudulently created under the cover of which large-scale and indiscriminate demolition were carried out in Delhi, there is the poignant story of a vast majority of the demolitions carried out by the authorities which were attended by a complete disregard for the human suffering of persons in very humble walks of life to whom the demolition of their houses meant complete ruination and in some cases the loss of a life-time’s savings. The Commission hopes that the Government will take immediate steps to remedy the wrongs and also to ensure that the conditions in the resettlement colonies are rendered safe, clean and convenient, considering the colossal nature of the job involved, unless the Government gives the job top priority and sets up an agency equipped with the necessary staff, resources and the decision-making powers, there may be little hope of a satisfactory solution, assuaging the misery caused to several lakhs of affected individuals in the immediate future. The job needs to be taken up on priority footing and the usual ‘red-tape’ dispensed with

if the Government is to carry conviction with the affected people about its purposeful intentions.' [15.21]

'It was disconcerting for the Commission to note that some of the demolitions were carried out at the instance of and to pander to the whims of Shri Sanjay Gandhi who was not answerable to anybody and who held no position whatever in the administrative scheme. Tragic stories regarding the doings of Shri Sanjay Gandhi in the matter of demolitions, pressurising the District Magistrate of Delhi and the other magistrates to own up a firing order in the Turkman Gate area in the face of the pleadings of the concerned magistrate about his not having issued the said firing order have been unfolded in the course of evidence before the Commission. Even arrests of respectable citizens were carried out at the instance of Shri Sanjay Gandhi. The Commission had probed the case of the Boeing deal to see how the financial projections of the Boeing deal were shown to people who were not at all concerned with the matter. The Government has a special responsibility to ensure that extra-constitutional centres of power are not allowed to grow, and if and when located, to snuff them out ruthlessly. As the Commission had occasion to observe, in the final analysis this country will be governed well or ill by the competence and character of the Government officers. If they are content to be mere tools and willing to lend themselves to questionable objectives, there will never be a dearth of unscrupulous operators. There is no substitute for a vigilant, enquiring and enlightened public opinion which keeps a close watch on the doings of the public servants.' [15.22]

9. The conditions in the jails of our country

'The conditions in the jails of our country, as disclosed in the course of the evidence of some of the witnesses who had personal experience, make a very painful reading. The Commission expects to put out a separate Chapter on the conditions in the jails in the country as a whole after a visit to some of the important jails by some of the senior officers attached to the Commission and on the basis of the replies of the State Governments to the questionnaire issued by the Commission. In the meantime, however, the Commission suggests to the Government to make a review of the conditions in the jails insofar as these concern the inmates. With regard to the political detenus the Commission finds it necessary to emphasise that preventive detention is not intended to be a punitive detention. Preventive detention is only intended to impose the minimum restraint on the individuals detained consistent with the objective effectively to prevent the persons detained from acting in a manner prejudicial to the security of the State or to the maintenance of law and order. It would be misuse of power for the authorities to heap on such detenus needless disabilities. In this connection the Commission must point out specifically the manner in which a number of student detenus were denied permission to take their annual examinations — a step which, apart from the illegality involved, exposed the authorities concerned to the charge of being completely oblivious to

the objectives of preventive detention. The Commission trusts that specific instructions will be issued emphasising that detainees must be treated with dignity and respect due to them, the restraints imposed upon them will be minimal and consistent only with ensuring the safety of the State or interests of law and order and that student detainees will be permitted to take their periodical examinations and the authorities will extend the requisite facilities. Similarly, for female detainees, special provisions should be made for housing them and for extending to them appropriate conveniences.' [15. 23]

10. The way the Government departments functioned : the CBDT & CBI

'Certain departments and organisations of the Government have understandably and necessarily to work under cover of a degree of secrecy. Functioning of some of the departments/organisations which have come to the notice of the Commission during its hearing are the Income Tax Department, Intelligence Bureau, Central Bureau of Investigation and the Enforcement Directorate. Because of the special nature of their functions and operations there is a greater necessity to ensure that their activities do not ever go wrong so as to affect the life, liberty and reputation of the individual citizen. The fairness and objectivity with which these organisations function would, in the ultimate analysis, depend upon the extent to which the higher executives of these organisations are allowed to function freely, fearlessly and independently and at the same time ensuring their accountability to statutorily constituted bodies. These executives should normally have fixed tenures, if necessary, to keep them above pressures and temptations. The Commission feels that the practice of continuing in service as heads of the Organisations retired officers on short-term renewable basis is a pernicious practice and often a source of serious abuse of authority. It is the responsibility of the Government to ensure that such organisations are led by strong, competent and self-respecting individuals who are known for their appreciation of values and their concern for the interests of the country and its citizens. Lesser men as heads of such organisations which play a vital role in the life of the nation, would only be a disaster.' [15.24]

'The Commission has viewed with concern some of the secret operations of the Intelligence Bureau and the complete absence of in-built constraints subject to which they function. The Commission had the opportunity to go through the records of the "Hearings before the Select Committee to Study Governmental Operations with respect to Intelligence Activities of the United States Senate, 1975". Senator Tower, Vice-Chairman of the Committee, making his opening statement in this Committee, observed :

"It is my view that there comes a point when the people's right to know must of necessity be subordinated to the people's right to be secure, to the extent that a sophisticated and effective intelligence—gathering capability makes them secure."

.....

The Commission does not suggest that a system developed in another country should be transplanted without appropriate amendments in our country. Each country has to evolve its own methods so as to suit its own primary and peculiar needs. Here it is only sought to emphasise that for the effective and objective functioning of the intelligence agencies, their activities and achievements should be suitably overseen and evaluated by responsible forums composed of persons specially selected for their integrity and sense of public duty and functioning independently of the intelligence agencies. The one and the only overriding consideration in suggesting this has been the overall interest of the nation and its citizens.' [15. 25 & 26]

11. The degradation in civic culture, and the flawed role perception

'....Arbitrariness and reckless disregard of the rights of others and the consequent misery, which characterized a number of actions of the different public servants over a period of nearly 19 months, terrorised the citizens resulting in a complete loss of faith of the people in the fairness and objectivity of the Administration generally...'. [24.1]

'The commission has also come across officers who having committed excesses at the behest of others — politicians or higher administrative authorities—have sought to defend patently indefensible conduct by suggesting that they had acted in good faith and in due compliance with the provisions of the MISA. Some of these officers did apparently a series of wrong things, being powerless to resist the pressures in the prevailing conditions and being afraid then of the consequences, if they were not to do what the politicians or higher authorities expected or ordered them to do. They have now sought to justify their wrong conduct again presumably because of the fear of consequences. These officers, who could not do the right thing during emergency by resisting illegal pressures, did not do the right thing even after the withdrawal of the emergency. Not only that they made no attempt to atone for their past infirmity, they have in fact made vain attempts to justify their conduct. They could not display courage to face the truth then; they have not the character to face the truth now and to own up their past wrongs.' [24.4]

'....In a number of cases, officials were almost anticipating the wishes of those in authority, however illegal, immoral and incongruous with the basic tenets of administration, such conduct on their part may have been....' [24.7]

'Exhortations have in the past often been addressed by political leaders that public functionaries must be committed servants of the Government. These have in no small measure been responsible for some of the serious consequences that had followed certain steps taken by the Government servants during the emergency. The commitment of a public functionary is, however to the duties of his office, their due performance with an accent on their ethical content, and not to the ideologies, political or otherwise, of the politicians who admin-

ister the affairs of the State. Commitment by the public servants, therefore means only and entirely, commitment to the policy and programmes of the Government insofar as the policy and programmes are in conformity with the fundamentals of the Constitution. Anything beyond these fundamentals should be construed to mean as falling outside the scope and the purview of the commitment. The nation has given to itself a democratic form of Government and the administrative setup must function in a manner fulfilling the demands of that form of the Government in the context of our developing society. Public servants of the different departments have responsibilities, special and peculiar to their respective functions and charter of duties, and the orientation of these responsibilities must be to the programme of social and economic change set out by the Government, but within the constraints of the rule of law in a democratic society....'[24.12]

12. Abuse of powers by persons nearer the seats of power

'The Commission has viewed with concern the evidence relating to the enormous power that was wielded by the lower functionaries like Shri R.K. Dhawan, Shri R.C Mehtani, Shri Navin Chawla and some others. It is necessary for the Government to appreciate the need for defining the various powers and functions of the several lower functionaries who are in close proximity to the seats of power. The Commission views the development in this regard with great concern, for power came to be exercised by some of these lower functionaries without the requisite authority and accountability that goes with it. Power and responsibility must generally go together.....'[24.14]

13. What our nation expects from our public servants

'As borne out by the records of the Government and the depositions of several responsible Government servants, dishonesty and falsehood became almost a way of official life during the emergency. As Robert Frost said, "most of the change we think we see in life is due to truth being in or out of favour". If administrative machinery in our country is to be rendered safe for our children, the services must give a better account of themselves by standing up for the basic values of an honest and efficient administration. That alone can resurrect the people's lost faith once again in our Services. If a democratic heritage is to be left for future generations, we should want the truth again to be enshrined in its legitimate place in the social, economic and political scheme of things in our country. There is nothing unattainable or profound in this. It is a simple human message.' [24.19]

NOTES AND REFERENCES

1. Carl Schurz, addressing the United States Congress in 1872

14

MY YEARS AT NAGPUR

“A calm and cool man, with intelligent eyes and serenity writ large on his face. An Income Tax Commissioner, a lecturer, an advocate, a voracious reader, a man who compares God with a calm pose tablet, who can speak for hours on any subject under the sun, his desk scattered with books on various topics, ranging from on various topics, ranging from City of Joy to Shri Aurobindo’s Upanishads.”

—The Nagpur Times, Nagpur, May 13, 1992

In the 22nd year of my service I was promoted to the rank of Commissioner of Income Tax. I was transferred from Kolkata to Nagpur. I worked there as Commissioner of Income Tax (Appeals) till the middle of 1988, and then as Commissioner of Income Tax, Vidarbha till May 1992. I spent almost six years at Nagpur, also known as the ‘Orange City’ because its rich orange orchards produced a plenty of the best quality oranges. Nagpur is the principal place in the region, known from the ancient times as Vidarbha.

After joining my post at Nagpur, we went to the nearby town of Amravati to worship Goddess Girja Devi, who had been the deity of Rukumini, the daughter of Bhishmaka, the King of ancient Vidarbha. Her brother wanted her to marry the mighty King Sishupal whereas her father wished Krishna to be his son-in-law. She was in love with Krishna. She sent a message to Krishna expressing her wish to marry Him. Krishna came to Vidarbha and carried her off whilst all remained mere onlookers. Krishna found this work convenient when she went out of her father’s palace to worship Goddess Girja Devi, ‘Amravati’ means paradise: in fact it was paradise. Its beautiful temple is the Amba Mata temple. The *Srimad Bhagavad Mahapurna* tells us a lot of interesting stories about Rukumini. While I was in the campus of the temple, the whole past turned alive in my mind.

I had completed only four years during my term in Kolkata and so I was not mentally ready to shift from that place. My son and two daughters were studying at college. I was not in a position to leave them in Kolkata. I made a trip to New Delhi to make my submissions before the persons who mattered. But I was not accommodated. I felt that the milk of human kindness had gone dry. But at Amravati, I realised that what had happened to me was good. I could get several opportunities to visit the temple, and to recall what I had read in the *Mahapurana*. After worshipping the deity, I went to a nearby hillock called Ramatek. It is said that Shri Rama had come there while passing through the forest area. It is said that

Kalidas, while observing the roaming clouds in the sky from the Ramatek hill, composed his *Meghdootam*. There is a lovely Kalidas memorial on the Ramatek hill. We spent that night at the forest guest house of the Nagzira forest. Two things happened which I cannot forget : first, the old watchman narrated the story of Rukuminiharan (the way Krishna carried off Rukumini) interspersed with couplets and rustic songs saturated with deep feelings of devotion, second, while on way to Nagpur, just before exiting the forest, we saw at a distance of ten meters an imperious tiger crossing the road. We stopped our car, and stood motionless till the great beast had gone. It had just ignored us.

I had an excellent time in the campus of the Academy for a year. To be amongst the young boys and girls was refreshing and rejuvenating. I delivered many lectures to them, and established a bond of cordiality which has remained evergreen. The campus had Nature's bounty. Morning walk, and evening stroll did well to my health, and healed my stress-strained mind. The vast garden and the sprawling complex had their beauty enhanced by the sprightly faces of young boys and girls often playing, often loitering, often working at this or that, and often seen in deep romance without coyness. They had uncanny insight into the failings of the Administration, and had the boldness to state what they felt despite their administrators' efforts to subject them to the Procrustean bed of bureaucratic discipline.

After a year's stay at the Academy, I shifted to some rented accommodation in the Sadar area. One afternoon I took my children to show them the Sitabuldi fort. They had a lot of interest in seeing historical places. The Sitabuldi fort had been constructed by the Bhonsale Kings of Nagpur just before the famous Third Anglo-Maratha War. The Bhonsales lost the battle of Sitabuldi on the 27th November 1817: it was fought between the Marathas and the East India Company. Sir Thomas Hislop was the most distinguished commander leading the forces of the East India Company in the said War. After his name, Nagpur has the well-known Hislop College where my youngest daughter Anju studied for her B.Sc degree. I discovered many places of historical interest, but the constraints of this Memoir do not permit me to explore what I felt about them.

Dr. Ambedkar: A man turned into an icon

I came to know that on October 14, 1956 Dr.B.R.Ambedkar, and 75,000 of his followers, got converted to Buddhism in a specially-erected Pandal at Shraddhanand Peth, a mohulla at Nagpur. The 83-year old Mahasthaveer Chandramaani of Burma, and his four Bhikhus, administered the oath of the new religion to Dr.Ambedkar and his wife. Dr. Ambedkar administered the oath to his followers. His followers became known as the Neo-Buddhists. While at Nagpur I visited Shraddhanand Peth several times hoping to catch some spiritual sensations and light, but these remained denied to me.

Dr. Ambedkar had his reasons to criticise Hinduism. "Dr. Ambedkar, addressing his followers, said: he was discarding the Hindu religion as it looked down upon men of his caste, and treated them with discrimination. He would no longer venerate the Hindu Gods nor would he perform any religious pujas."¹ I felt that the great man went too far in his newfound zeal. He could have avoided his wrath had his quest been wholly spiritual. His incessant wrathful criticism was itself a subtle variant of *himsa* (violence). But when all is said, he was great.

Dr. Ambedkar had a meteoric rise, and obtained well-deserved recognition as a jurist of the highest order. His worth was acknowledged by our Constituent Assembly at work to frame the constitution for free India. He was the Chairman of the Drafting Committee, and was undoubtedly a major player in the framing of our Constitution. Many consider him a modern Manu.² I doubt if he would have liked to be called 'the modern Manu'. It seems, he did not go deep into the Hindu Jurisprudence, and had a lot of inhibitions as to the Hindu religion for political and social reasons. Our Constitution evidences a large scale borrowings. An opportunity was missed to evolve our own 'Indic Jurisprudence'. Often he is called the 'father of our Constitution'. But such metaphors are never apt. They confuse, rather than illuminate. The quest for Constitution's paternity or maternity is futile. Our Constitution was a collaborative product in which a lot of borrowed ideas had been integrated to serve the needs of our polity. Dr. Ambedkar never arrogated to himself the distinction of being the author of the Constitution. The man of his calibre and perspicacity could never cease to be humble, especially where the matter was between his conscience and truth.

While I sat as the Commissioner of Income Tax (Appeals), I always felt that Dr. Ambedkar, from his photograph tucked on the wall, kept me under his constant vigil. Working under his full view, I felt saddled with an enormous sense of responsibility. When I became the Commissioner of Income Tax (Administration), I found that on the wall, behind my back, was an imposing photograph of Dr. Ambedkar which had been inaugurated by my predecessor-in-office several years back. Every year, on Dr. Ambedkar's Jayanti, a throng of office functionaries would assemble to offer floral tribute to Dr. Ambedkar. It was the customary duty of the Commissioner to solemnly garland him and to offer roses and marigolds to him in recognition of his outstanding services to our nation. After this colourful event in the chamber of the Commissioner, the officers and the officials used to assemble in the first floor hall of the Aayakar Bhavan. Lots of speakers would speak on the various aspects of Dr. Ambedkar's work stressing his great relevance to resolve the contemporary problems. Towards the end, it was for me, as the Commissioner, to say something about him. As I was accustomed to enjoy speaking (perhaps I was in love with my own voice), and as I had admiration for the great 'Ambedkar phenomenon', I used to speak at length which the listeners enjoyed, or suffered. So over years I heard a plethora of ideas about Dr. Ambedkar expressed at different fora. I had many occasions to move from place to place in my far-flung jurisdiction; and I saw Dr. Ambedkar's statues dotting the landscape of the rural and urban Maharashtra. I noticed the people's attitudes of deep veneration towards him.

While at Nagpur, I enjoyed reading Dr. Dhananjay Keer's biography of Dr. Ambedkar. Keer's *Dr. Ambedkar Life and Missions* is an outstanding work. Dr. Ambedkar's contributions have thus been crisply summarised in a sentence in the preface to the book :

"Ambedkar's eternal search for knowledge, his incredible industry and his unflinching aim with which he raised himself from dust to doyen, from the life of a social leper to the position of a constitution-maker, and his heroic struggles for raising the down-trodden to human dignity will constitute a golden chapter in the history of this nation and in the history of human freedom as well."

Dr. Keer's book includes chapters on "War with Gandhi", "Verdict on Hinduism", "On federation and Pakistan", "A Modern Manu", "Shadow of Buddhism" and "Revival of Buddhism". In the chapter on "Old Age", Keer writes (at p.478): "Ambedkar did not accept the *Geeta* at all. To him it was an irresponsible book on ethics, a compromise of all errors." To me this was just a reactionary response by someone so involved in his mundane cause that he failed to see the wood for the trees. He read the *Geeta* to promote his thesis; and here he went wrong. All the ideas for which he stood, and which he found in Buddhism, are obvious in the *Geeta*. It is unfortunate that he missed them. The *Varnaashrama* system does not produce casteism. Casteism is a feature which sprang *ab extra* in our society on account of extraneous socio-political reasons. Perhaps Dr. Ambedkar would not have gone that far if he had not aimed at solidifying his folk to turn them into a powerful engine in the political life of the country.

I read Arun Shourie's *Worshipping False Gods*, which came out in 1997. Shourie examined Ambedkar as a Freedom Fighter, a social reformer, and the reasons for calling him the Manu of our times. Shourie deserves congratulations for writing this well-documented treatise. He is sore at the fact that whilst Ambedkar is "deified", other great benefactors are getting pushed away from focus. Shourie's book tends to become iconoclastic. In my considered view, Dhananjay Keer and Arun Shourie are right in their own distinct ways. The former was portraying Dr. Ambedkar as he was appearing to a vast bulk of Indian society. His ideas and deeds were turned into a trajectory of thoughts in which his personality was projected in a new light enriched with new embellishments. In short, he emerged as a myth capable of becoming more powerful, more effective than Dr. Ambedkar as he was in his flesh and blood. Arun Shourie establishes his conclusions on the evidences of concrete facts gathered under the cold process of research. This approach is not the approach by which the myth is made, or an expanded metaphor is projected with rich layers of meaning capable of guiding some targeted people.

I have no grouse against those whose mythopoeic imagination finds a fertile field in Dr. Ambedkar. If he evolves into a symbol of great ideals to guide and lead our common people he would surely continue to have great relevance in our country. Richards Chase in *The Quest for Myth* observes: "Poetry and myth..... out of the same human needs, represent the same kind of symbolic structure, succeed in investing experience with the same kind of awe and magical wonder, and perform the same cathartic function." ³ A personality, endowed with mythic dimensions, is capable of developing in the mind of persons in diverse directions, with diverse dimensions in the ever changing contexts of life.

What I am pointing out would be evident if someone compares the psyche of Dr. Ambedkar with that of Rabindranath Tagore, or Mahatma Gandhi. Buddhism could not have been revived the way he sought to revive it. He reacted against what he called Hinduism. He missed a fundamental point that *dharma* admits of no reaction. The Hindu religious institutions and the Shastras deserved re-structuring and new interpretation to remove the dross that had overlaid them over centuries making many of their ideas and institutions anachronistic. Such things must happen periodically. Occasional pruning and use of broomstick are essential. We have seen in our own lifetime how many times we have amended our recently framed Constitution. This is the way the world goes.

I hold Dr. Ambedkar in the highest esteem but I will love to admire him as a great man, rather than as a deity or a myth.

A visit to the Wardha Ashrama:

On holidays, I often went to Wardha and Paunar, nearly 50 kms away from Nagpur. Gandhiji had established the Wardha Ashrama where some momentous decisions had been taken during the Freedom Movement. The mud-built houses are still maintained. The things at the Ashrama call to mind Mahatma Gandhi's lifestyle which has still some educative value for us. The gems of his ideas can be found written on several boards which one can read with great profit. I have quoted two of Mahatma Gandhi's edicts in the Book I of this Memoir, one in Chapter 3 (the Seven Social Sins), and the other in Chapter 4 (the instructions on the right food, and the right way of eating).

I was greatly impressed by the 'Geetai Mandir' at Wardha where on the erect rock slabs all the *shlokas* of the *Gita* had been inscribed. It was a great experience to read all the *shlokas* of the *Gita* inscribed on the ochre rocks. The rocks thus erected, became imagery of great power. (See in Chapter 27, the photograph of Veenapani reading the inscriptions on the slabs erected at the Geetai Mandir at Wardha). The Paunar Ashrama was the Ashrama of Acharya Vinoba Bhave (1895-1982) who was the archpriest of the Bhoodan Movement. I had participated in that movement when I was a student at my school at Darbhanga. At Paunar Ashrama, I could experience some spiritual vibrations. Its past came alive before my mind's eye. I purchased there a lot of books written by Gandhiji and Vinobaji. It was a great experience to read Vinoba Bhave's *Geetai* which is his translation of the *Bhagavad-Gita* in Marathi. Shri Gautam Bajaj guided me to see the activities of the Ashrama and arranged for a meeting with Vinobaji's younger brother Vokavaji. It was greatly satisfying to see that the tradition set by Gandhi and Vinoba was yet not dead. I enjoyed herbal tea; and was charmed by the beautiful cows which made good responses to calls. Someone asked me what I had felt when Vinobaji had appreciated the Emergency that Srimati Gandhi had imposed on us. It was difficult to answer this question as it had elicited diverse responses. I had my point of view. The Emergency was the product of circumstances. Vinobaji had his reasons to appreciate the Emergency as some positive gains could have ensued even from it. The fact that things took sinister turn during the Emergency he failed to visualize. I asked an elderly gentleman to know whether the presence of Gandhi and Vinobaji had any impact on the life of the people of the Wardha region. I was dismayed to find that even here Gandhi's ideas had been forgotten.

Shivaji: my hero

Every year the Shivaji Jayanti was celebrated with fanfare. At the Ayaakar Bhawan officers and the officials would assemble in the conference hall to pay tribute to the great man. In the chamber of the Chief Commissioner of Income Tax, Pune, a grand bronze image of Shivaji had been placed on an imposing teak pedestal.

From the boyhood days I read a lot about Shivaji, and had the highest admiration for this great son of our motherland. While at Nagpur, I had many occasions to think about him.

I would mention one point of contemporary relevance. Shivaji behaved neither like Akbar trying to manufacture a synthetic religious potion for the health of his people, nor like Aurangzeb with monomaniac zest for a particular religion to dominate India's plural society. Shivaji remained an orthodox Hindu, and he subjected himself to the discipline of religious norms. But he considered all religions worthy of great reverence. He maintained the highest level of character in personal life, and was always ready to receive and appreciate good ideas irrespective of the sources they came from. It is strange irony of our history that Shivaji's ideas were forgotten in the centuries after him causing much distortions and distress in our society.

My lectures and academic involvements

During the period I was at Nagpur, I remained associated with Nagpur University in various capacities. I delivered certain lectures on law; and for several years I was a Member of the Board of Examiners for its LL.M Examination. I was a paper-setter and examiner for General Principles of Taxation Law. I enjoyed my association with the University. It enabled me to remain abreast with the changes in the academic world of law. I found the three-day national colloquium on "Perspectives on the New International Law", organised by the University, of great contemporary relevance. Wide range of issues relating to law and policy were discussed. I was one of the members of the Steering Committee set up by the University under the Chairmanship of Dr. M.A. Chansarkar, the Vice-Chancellor. My approach in the field of International Economic Laws, was founded on certain assumptions well described in broad terms by Judge Manfred Lachs of the International Court of Justice in the *North Sea Continental Selfcases* (I.C.J 1969, 3 at 222):

"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."⁴

On December 2, 1991, I had the distinction of delivering a key-note address on Rabindranath Tagore's Nobel Prize winning book *Geetanjali*, at the function organised by the Centre for Literary Interaction and Creativity, to mark the Tagore Day Function at the University Convocation Hall. Appreciating my lecture the *Hitavada* commented: "Mr. Jha further said that Tagore strove throughout his life to promote a feeling of International brotherhood. He (Tagore) wanted modern scientific approach to human management. Mr. Jha said adding that *Geetanjali* was not a mere collection of devotional poems but it explores his self." Mr. B.L. Majumdar commented the following in his letter addressed to the Editor of the *Hitavada*, published on December 18, 1991:

"Inaugurated by Dr. P.L. Bhandarkar, the VC, the 'Centre for Literary Interaction and Creativity' took off to a flying start when on its Tagore Day function in the Convocation Hall, Mr. S.K. Jha, the chief guest, gave a brilliant talk on the universal appeal of the cosmic views of the

Upanishads, so effortlessly blended by Tagore in the timeless poems of *Geetanjali*. As one goes through these poems again and again, Tagore appears like a mystic bard unfolding his soul in search of perfection, truth and ultimate spiritual emancipation with total submission to that eternal source of cosmic energy. Mr. Jha certainly illuminated the audience on this aspect with a candid, refreshing approach”

My Lecture at the Judicial Officers Training Institute

I was invited on August 13, 1992 to deliver a lecture on “Linguistic Analysis and Interpretation of Statute” at the Judicial Officers Training Institute, Civil Lines, Nagpur. A number of Judicial Officers were present in the Seminar. I quoted from Richards and Ogden’s *The Meaning of Meaning* (at p. 207) : “A communication or language transaction is a use of symbols in such a way that acts of reference occur in the hearer which are similar in all relevant respects to those which are symbolised by them in the speaker.” I analysed the factors which intervene to cause diverse responses to the problems awaiting solutions. I discussed the broad divisions of meaning of any verbal expression under four aspects : (i) Sense, (ii) Feeling, (iii) Tone, and (iv) Intention. I told them that the import of legal provisions could be gathered reasonably well through the technique of linguistic analysis.

As the Commissioner of Income-tax

I functioned for about two years as Commissioner of Income Tax (Appeals). I always felt that for proper discharge of statutory duty the right perception of the statutory role is essential. The prime pursuit under the Tax laws is to determine the right quantum of tax payable by a taxpayer. This is the task which every assessing officer undertakes. And this is the task which abides throughout the appellate process also. The Income Tax Appellate Tribunal decides issues of facts finally. Only on the points of law appeal lies to the High Court. The powers of the Commissioner of Income Tax (Appeals) are similar to the powers of the Assessing Officers. The courts have spelt out his powers and duties. The finest observation that brings out the role of the Appellate Authority, was made by Lord Hewart, CJ in *Rex v Special Commissioner of Income Tax (ex parte Elmhirst)* (1935) 20 TC 381, 384. What he said can be broken into the following propositions:

- (I) The right determination of the quantum of tax in a given case is not merely or primarily in the interest of a specific individual but is in the interest of the general body of the taxpayers.
- (II) The determination of the right incidence of taxation is in the performance of public duties.
- (III) The duty cast on the Assessing Officers and the Appellate Authorities is to see what the true assessment ought to be.
- (IV) The process of the right determination of tax is a public process directed to public ends.
- (V) The public process of the correct determination of tax cannot be stopped at the option or whim of the Appellant.

The proceedings under the Civil Procedure Code are adversarial whereas the tax-law proceedings are inquisitorial. Analytically speaking there is no *lis* under the tax laws.

When I became the administrative Commissioner, I had the difficult task of dealing with the rival Unions of the employees. The peace of the administration was at times disturbed by their activities. By some freak of circumstances, two Unions were formed there: one patronised by the Congress and the other by the Communist Party. These affiliations made them combative towards each other, each trying to wean away the followers of the other. They fought amongst themselves for supremacy. The poor Commissioner could not escape being caught in the crossfire. Even tiny issues were turned into tremendous problems to shake heaven and earth. I, however, was fortunate to find them accommodative, and amenable to peaceful settlement of disputes.. My strictness and their co-operation ensured peace, though attempts to hurl at me the missiles of anonymous letters never ceased; but these had no effect.

My days as the administrative Commissioner were peaceful. The Department scaled new heights in its performance. The officers maintained cordiality, and were highly motivated. In his *John Bull's Other Island*, Bernard Shaw said:

“There are two qualities in the world: efficiency and inefficiency; and only two sorts of people: the efficient and the inefficient.”

I was lucky to get a band of efficient officers to administer the Income-tax Law in the vast region of Vidarbha. But at times, I felt they were more considerate and kind towards me than what I deserved. They knew that I had suffered the heart-ailment, and, perhaps, they thought that they must avoid cruelty to this animal!

The Aayakar Bhavan at Nagpur had a beautiful campus, and the building was remarkably clean. The taxpayers and the tax gatherers alike maintained the discipline of not smoking in the campus. I took interest in gardening. Thick velvety grass grew in the lawn. The lawn, asymmetrical in design, bordered on rich meadows with variegated flowers. The tall dense green trees cast shadows on parts of the lawn. Many hours I spent on the lush green lawn looking at the flowers. I had planted in the campus half a dozen almond saplings. The saplings in their gratefulness to me grew fast, to everyone's amazement, and bore fruits which I could enjoy before I left Nagpur in 1992. Wherever it was possible to plant trees, I saw to it that the trees were planted. The officials and the members of the Bar joined in the *shramada* to turn the campus into the garden of Eden. My wife planted several *neem* trees. Once, almost after a decade, I went to Nagpur on way to Akola to appear in a court there as the Department's witness. I went to the Aayakar Bhavan when there was none else in the campus except the guard. I sat under the rich shade of a *neem* tree. I could hear the music that its leaves played for me. Those were the moments of my heavenly repose. I still see it before my mind's eye, and then I lapse into an ecstasy.

Facing allegations with Lord Krishna in my mind

Many things happened while in service, but they do not deserve to be noted. But I would mention one which distressed me a lot. This agonising experience I bore with patience, as Krishna had done in the 'Syamantaka' episode which *Srimad Bhagavad Mahapurana* narrates. First, I would tell you what that episode was in which Krishna stood charged with stealing a precious gem called Syamantaka, and then I would tell you, in brief, the allegations which some knave spun against me out *ex nihilo* (out of nothing) subjecting me to anguish.

The story in the *Purana* goes thus: Satrajit could please the Sun God who rewarded him with a gem which had solar radiance. It could produce a lot of gold every day, and also ensured peace and prosperity. He returned to Dwarika wearing the gem whose radiance dazzled all those who saw him wearing that. Krishna knew what the gem could do, and how Satrajit had obtained that. As the gem could generate a lot of gold every day, and bring the boon of peace and prosperity to the people, Krishna advised Satrajit to donate the gem to the King of the realm for the people's welfare. But Satrajit refused to do so because he wanted vast wealth and immense power for himself alone. One day his brother, Prasenjit, flaunted the gem on his body, and went out into some forest for hunting; but he never returned because he had been killed in the forest. In Dwarika, people speculated wildly at the fate of Satrajit's brother, and came to believe that he might have been killed by Krishna as he alone had shown much interest in the gem. Canard was spread that Krishna killed Satrajit's brother to steal the gem. This rumour grew so wild that even some of Krishna's queens believed that. Krishna was terribly embarrassed. To be doubted by own close relations is extremely bitter and biting.

To vindicate his honour Krishna strove to know what had happened to Prasenjit, and the gem. He went to the forest where he discovered that Satrajit's brother had been killed, and the gem had been acquired by the powerful bear of the *Ramayana* eminence, Jambvaan, who presented that to his daughter, Jambavati, young and still unmarried. The *Bhagavad Mahapurana* tells us how Krishna could notice the gem, and how he fought with Jambavaan. From Krishna's invincibility Jambavaan could know that his adversary was Rama Himself in a new *avataar*. So he surrendered, and became suppliant. Krishna obtained the gem, and also Jambavati who became one of his eminent wives. He returned to the King's court at Dwarika, and handed over the gem to Satrajit in the full view of all those present. Thus Krishna could establish his innocence. Everybody realised that it was a folly to cast an aspersion on Krishna.

I was quite depressed on returning from Chennai in October 1989 after my cardiac angioplasty necessitated on account of my heart-attack which I had suffered on the treadmill while undergoing cardiac exercise on August 15, 1989. One day while flipping through a bundle of complaint papers against the officers of that region, I noticed a letter hibernating in the bundle of papers, which shocked me. Someone had written to the Central Board of Direct Taxes that he had paid certain amount by way of bribe to certain officers including myself. I called the Assessing Officer and his Inspecting Assistant Commissioner who held jurisdiction over the complainant's case; and handed over to them that letter of allegations. They said they knew about that. They had already investigated into the allegations and found them false. They had examined on oath the person who had purported to sign the letter of the allegation, and had compared the handwriting on the letter with the handwriting of the person said to have written that. They had noticed that the photocopy of the letter of allegations sent to the CBDT bore some evident indicators to prove its spuriousness: the name of place and date at the top, and signature towards the end were written in English with a pointed pen, whilst the content was written in different ink, with a less pointed pen, and in imperfect Hindi scribbled with an immature hand. They had discovered that this was a

strategy of the informer to pressurise the Department to extract heavy amounts by way of reward for having helped the Investigation Wing with some information against his master. In granting this reward the Commissioner's role was merely to issue a cheque for the amount recommended by the Director of Investigation, a co-ordinate authority. But the informer, in pursuit of his greed, turned oblivious to this fact. As the informer was the taxpayer's accountant, who had turned hostile, he had in his possession some letter-heads duly signed by his master to be used by this 'trusted' accountant wherever, in course of the trade, spread in the far-flung area, situations demanded receipts to be issued for the master's commercial purposes. He used one such a paper for his forgery, and sent its photocopy to the Central Board of Direct Taxes, but later denied to possess its original. The Income-tax Department had seized many such signed, but otherwise plain letter-heads, in course of the search it had conducted in the premises of the said accountant's master. I felt I must go deep into the matter. And like Krishna I set out to discover truth. I called the informer to my chamber along with his son. I even called those two senior officers who had handled the matter. I put my tape-recorder on in my drawer, concealed from their gaze, to record what they had to say. But the old man needed no persuasion to tell his facts. I found him a senile babbler. He came out with ease. He said that the only way to get money by way of reward was to frighten the officers by adopting such ways. He got the allegations scribbled on his master's letterhead, and sent its photocopy to the Board. Later, I drew up a report to the Board narrating everything of relevance, and I appended with that the typescript of the said recorded tape. There the matter rested when I left for Kolkata on my transfer to join the Settlement Commission as its Director of Investigation. I did not hear anything about it thereafter. The episode was forgotten but it left a continuing pang for me to suffer. I recalled Shakespeare's Iago who could easily 'turn virtue into pitch', as he could "make the net/That shall enmesh them all".

When I ascended Sri Rama's arrow to come back amidst you all

On August 15, 1989, I suffered from a massive heart-attack while exercising at the Stage III on the treadmill at Dr. Mahorkar's Avanti Heart Clinic at Ramadashpeth at Nagpur. On being struck, I felt I was sinking into a deep dark bottomless well. Hours passed. I didn't know whether I rolled down, like a pebble hurled down into the bottomless dark pit, or I had disintegrated into molecules to get merged in darkness. But I felt I was moving slowly upwards on an arrow of a beam turning faster and faster as it ascended up. Moments came when I realised I was on bed with a lot of electrical instruments around me, and a string of electrodes attached to my body. I found myself caged in with wires. I felt I had moved up from darkness to light ascending on Sri Rama's arrow.

Concluding Reflections

At the end of my term at Nagpur in 1992, I found myself in the state of feelings which brought back to my mind Charles Dickens' novel *A Tale of Two Cities* (1859), especially its opening line : "It was the best of times, it was the worst of times..." At Nagpur, I experienced what could be the best in my life, and what could be the worst in it. My heart cracked both literally and metaphorically. I had joys of great

MY YEARS AT NAGPUR

intensity. I had distresses which could be borne best in silence. If life gives me a chance, I would express such feelings only in some fiction or poetry. One's autobiography is written with candour, but, as my primary school teacher had said : 'Total candour can be only between oneself and one's God'.

NOTES AND REFERENCES

1. *The Times of India* October 15, 1956.
2. Vide Chapter XXI "A Modern Manu" in *Dr. Ambedkar Life and Mission* by Dhananjay Keer published by Popular Prakashan, Bombay.
3. *The Quest for Myth* quoted in William K. Wimsatt and Clanth Brooks in *Literary Criticism* on p.711.
4. Quoted in *Introduction to International Law* by J. G. Starke (Tenth Edition) pg.178.

15

MY PHASES IN CALCUTTA, NOW KOLKATA

I had three phases in Kolkata the first from 1976-79 when I functioned there as the Appellate Assistant Commissioner, from 1982-86 when I worked as a Senior Authorised Representative before the Calcutta Benches of the Income Tax Appellate Tribunal, and from 1992-96 when I worked on various assignments, viz. the Commissioner of Income Tax, the Director of Investigation, and then, the Secretary in the Settlement Commission, and, on promotion, as the Director General of Income-tax (Exemption) having all India Jurisdiction.

(i) On witnessing the *Barbadhu*

For a month I stayed with Shri Jadunath Prasad at Jodhpur Park in south Calcutta. I heard from him words of high appreciation for the Bengali Theatre. I never thought that the first play which I had seen was so controversial. It was called 'Barbadhu', and was being performed at some theatre in old Calcutta (now Kolkata). The conservative Bengalis considered the play obscene and unworthy for gentlemen to visit that. The boys and girls were prohibited from seeing it. Yet they invented ways and means to see the theatre. The 'Barbadhu' meant a 'whore' that played the role of a wife. I would tell you first its story.

A rich man of Calcutta went for a change to Hazaribagh. Such visitors were known at Hazaribagh, a hill station now in the State of Jharkhand, as the 'changers'. Those days a lot of persons used to spend a month at Hazaribagh enjoying its scenic beauty and its salubrious climate. He engaged a young beautiful woman from Sonagachhi (a red-light area) to play the role of his wife while he stayed at Hazaribagh. The lady, while there, played the role of wife with remarkable perfection. She wore sari with wide red border, and bore at her forehead a deep vermilion mark. The parting of her hair had a prominent deep red vermilion line skilfully engineered to taper off underneath her glossy thick long hair. Her earlobes carried earrings with shining 22 carat gold inverted lotus dangling exquisitely and modestly while she interacted with the wives of the other changers in her impeccably perfect style. Her superb black curls ruffled on her wheatish cheeks, and she wore a bashful modest demeanour. She was moderately built and her whole body was shapely. Nature had made her at its leisure. Her voice was rhythmic and melodious. Through her gestures and sound mutations, she expressed her romantic expressions with the mastery of a superb artist. After sometime, she was getting gnawed realising that the 'contracted

period' was waning with each passing day. The core situation of the play was her inner transformation through her inner crisis. In playing her role as a *Kulabadhu* (housewife), she underwent a change at the deepest level of her personality. In her private moments, she felt deeply anguished apprehending that on the expiry of the period of contract she would have no option but to become again a trading-ware at the mart of flesh at Sonagachhi. The dramatist had portrayed with great aesthetic fidelity how an avalanche of excoriating distress crushed her. Her gradual evolution from the delighting whore to a dedicated housewife had brought her to a precipice: her inner fire had rid her of her dross: she had become one of pure gold! This crisis in her inner self had been well portrayed in the drama.

Barbadhu became in my mind a metaphor. It illustrated how great change is brought about in one's psyche by one's role performance. Once while having a stroll in the park on Ritichie Road, I met a Bengali gentleman, who had been an eminent Chief Justice of the Calcutta High Court. Some context emerged for me to tell him that I had seen *Barbadhu* twice. He cast on me a crooked and inquisitorial glance expressing his obvious displeasure. His subdued displeasure turned into evident wrath when, in my reckless bravado, I told him that I learnt an important principle of jurisprudence from that play. I stressed on how an institution could shape a person, and condition one's sensibility. But I have never forgotten his sneering look. Didn't T.S. Eliot say in Four 'Quartets'?

Human kind

Cannot bear very much reality.

(ii) My assignments at Kolkata

Before I reached Kolkata in 1976, my reputation had already travelled there. I was painted as a creature without "service mentality". Later, I discovered that "service mentality" was a mixture of small competence, little learning, more of sycophancy and a lot of the art of go-getting. They had transferred me thrice before I reported there for the first time. I felt I had become a fragile beach ball being tossed from side to side. While such changes appeared to me routine, there were others who read in them things which reflected unkindly on me. Some were kind enough to advise me to grow more worldly-wise.

I was posted to function as the Assistant Commissioner of Income-tax (Appeals) at the Poddar Court, a kilometre ahead of the Dalhousie Square, just close to the central circular park, in the corner of which stood ignored the marble statue of Maharaja Lakshmeshwar Singh of Darbhanga, which had been superbly sculpted by Edward Onslow Ford. Every day for half a year, I boarded a minibus at Gariahat to get down at the Dalhousie square to walk down to the Poddar Court.

For about two years I functioned as the Assistant Commissioner of Income-tax looking after, on behalf of all the Commissioners of the West Bengal, the litigations going on at the Calcutta High Court and the Supreme Court. It was very strenuous time for me to keep watch over the avalanche of litigations which tended to proliferate in the Income-tax Department with every passing year. Several factors seemed to be responsible for this frustrating situation: (i) the taxpayers develop speculative interests in litigations to win somewhere somehow; (ii) the Income-tax officials have their own good reasons not to take responsibility for decisions as they feared that someone someday might question

the propriety of not litigating further; (iii) the tax-practitioners find it enormously advantageous to drag litigations raising even the same issues in various new garbs to delay, drag or confuse the issues at the anvil; and (iv) most judges find tax cases too taxing to be firmly pursued, the principles of tax jurisprudence too complex to be well understood in order to be well stated in their judgments.

**(iii) As the Department's Senior Representative
before the Income-tax Appellate Tribunal**

My second phase was for about 4 years from 1982 to 86. During the period I functioned as a Senior Authorised Representative before the Calcutta Benches of the Income Tax Tribunal. The office of the Tribunal was located at Acharya J.C. Bose Road, at the distance of about one kilometre from my official residence at 21, Ritchie Road, opposite St. Lawrence High School in South Calcutta.

We had excellent relationship with the members of the Tribunal. No unpleasant situation ever occurred, and the harmony between the Bench and the Bar was never spoilt. I remember an occasion when a Junior Authorised Representative lost his temper because some intemperate comments were made by a counsel on the opposite side. We had an excellent Tea Club which functioned during the lunch-break. Mr. Y. Upadhyaya, Senior Vice-President of the Tribunal dropped in for a cup of tea. But his main purpose was to counsel the Authorised Representatives not to lose mental poise even when provocation was grave. He said: there was no wisdom in doing anything which affected the secretion of certain hormones of the thyroid and adrenal glands. His counselling had a salutary effect. I wholly approved of his ideas. I fortified my point with what Boris Pasternak had said in *Dr. Zivago*:

“Your health is bound to be affected if, day after day, you say the opposite of what you feel, if you grovel before what you dislike and rejoice at what brings you nothing but misfortune. Our nervous system isn't just a fiction; it's a part of our physical body, and our soul exists in space, and is inside us, like the teeth in our mouth. It can't be forever violated with impunity.¹

While functioning as a Senior Authorised Representative I was greatly impressed by Dr. Debiprosad Pal and Shri N.A. Palkhivala. Dr. Pal was frequently appearing before the benches of the Tribunal, but Palkhivala had come only thrice while I was there.

Dr. Pal² is a jurist of high distinction. I had studied his *State Sovereignty at the Cross-Roads*. It had earned him the degree of the Doctor of Literature from the University of Calcutta. The Board of his Examiners consisted of Prof. Quincy Wright of Chicago University, Prof. Hans Kelsen of the University of California and Prof. C.A.W. Manning of London School of Economics. Dr. Pal would have emerged an outstanding academic jurist but he chose the pedestrian legal profession, mainly taxation law, as his province. His forte was exposition of legal principles. Shri N.A. Palkhivala was an outstanding constitutional lawyer and a master of the Laws of Taxation. Anybody who wants to master the fundamentals of the Tax laws must study with care *Kanga and Palkhivala's Income Tax*. I commenced my study of this book at the IRS (Staff) College, Nagpur in 1965. When Palkhivala was India's Ambassador to the United States, it came out in the Press that he helped the old mother of the then U.S President to put on her shoe

which had slipped off while she was climbing steps. Some adverse comments were made on him on the ground that by his conduct he showed a measure of servility unbecoming of this country's Ambassador. I got a new light on that episode on observing what I saw in the Appellate Tribunal whilst the Tribunal was at work. Once Shri Palkhivala was arguing a case before a Bench of the Tribunal. The Department's case was being represented by a Senior Advocate. I was assisting him from the second row of the chairs earmarked for the lawyers and the tax-practitioners. When our Advocate was arguing before the Tribunal, his pen fell down. I didn't mark it but Shri Palkhivala observed it. He picked up the pen, and placed it on the lectern. I noticed from behind what had happened. This revealed Shri Palkhivala: a man of great humility. I could remember my childhood days when we were taught to maintain the attitude of reverence towards books, and writing instruments.

The Income Tax Appellate Tribunal is the most important Tribunal in our country; and it had earned a stable reputation over the decades of its functioning. Both in its role and in its competence, it resembles the institution of the Special Commissioners under the U.K Income Tax Law. In fact, it has an edge over the U.K. institution as it is more tilted towards the court procedure. This Tribunal virtually became the role-model for other Tribunals which came to be set up in our country. As it functions under the Ministry of Law, it is supposed to be free from the policy bias, and also from any pressurizing influence of the Ministry of Finance.

By the Constitution (42nd Amendment) Act 1976, Part XIVA was inserted into the Constitution of India. This Part, entitled "Tribunals", contemplates setting up of Administrative Tribunals (Article 323A) and Tribunals for other matters (Article 323B). I was never impressed by the rationale of that Part XIVA Tribunals. I was unhappy with that as the provisions originated in the desire of the executive to reduce the jurisdiction of the High Court. If all the Tribunals contemplated by Part XIVA are set up, the High Courts would become the courts of residuary matters only. The Shah Commission has referred to the sinister attempts, during the Emergency, to close down the High Courts!

Whilst functioning as the Income-tax Department's Authorised Representative, I felt that our country needed a body to supervise our Tribunals at work. It could be like the United Kingdom's Council on Tribunals. Sir Oliver Franks was appointed by the Lord Chancellor to report on Administrative Tribunals and Inquiries at work in the United Kingdom. The Report was published in 1957. It laid down three extremely salutary principles for the functioning of the tribunals: (1) that statutory tribunals are not mere appendages of the executive, but are independent bodies; (2) that they are, or should be, essentially instruments of adjudication; and (3) that the indispensable characteristics of an adjudicating body are openness, fairness, and impartiality.³ For appropriate functioning of the tribunals, the Franks Committee suggested the setting up of a Council on Tribunals. The Franks Committee made this what Sir Allen considers "the most imaginative recommendation of the Report". The Council described its own functions and limitations in these words:

"It is our task to act as a watchdog for the ordinary citizen and to see that he gets fair play. We have no say in the issues to be decided, nor can we overrule the decisions that are made. Our duty is to supervise

procedure, so as to ensure that tribunals and inquiries fulfil their purpose of always giving a fair hearing and do nothing which can offend the ordinary citizen's sense of justice. We can draw attention to any case where we think that these standards have not been observed, and we can comment on regulations intended to be made by Government Departments. Although our powers are purely advisory, there is thus much that we can do to make sure that mistakes are not repeated, that difficult questions receive study and that regulations conform to the principles of fair procedure laid down by the Franks Committee in 1957.”⁴

The Income Tax Tribunal has functioned well but things can be better if closer supervision of its functioning is institutionalised. At present, there is hardly any supervision of the working of the different benches of the Income Tax Appellate Tribunal. The role that the President or the Vice-President plays is routine and peripheral. Instances have kept on coming in public domain which can shake our confidence in the integrity and efficiency of this great Tribunal. Such things have become grossly manifest in some recent decisions when certain Benches were managed by getting members thereon whose integrity did not inspire confidence. Besides, at times it may turn out that an erroneous decision pleases both the sides: the Department and the taxpayer alike. The Council on Tribunals, if constituted in our country, would provide an effective remedy against these evils.

The Idea of the Tax Court on the US model floated

The idea of setting up the Tax Court on the U.S. model was considered by our Government. I was always critical of this idea because that was shaped by the factors exclusive to the U.S. tradition and the Constitution. I was in favour of a body under Article 247 of the Constitution rather than that under Part XIVA of the Constitution. ‘Article 247 body’ would be a court in strict sense, whereas the Part XIVA body would just be an administrative tribunal. Under that Article of our Constitution, our Parliament has power to establish certain additional courts for the better administration of laws made by Parliament or of any existing law with respect to a matter enumerated in the Union List of our Constitution. All courts are Tribunals but all Tribunals are not courts. I explained my position to Shri Jaswant Singhji when he was the Finance Minister: to quote from my letter⁵ —

“If the idea is to set up a tribunal under Part XIV-A of the Constitution of India, it is not worth doing. Part XIV-A was inserted in the Constitution by the Constitution (Forty-second Amendment) Act, with effect from 3.1.1977. It was conceived as integral to the strategy evolved during the infamous Emergency to emaciate the High Courts of the various dimensions of its jurisdiction with an obvious design to make the great courts, the successors of the King’s Bench, merely the courts of residuary jurisdiction. You may re-read for light paras 5.47 and 5.48 of the Shah Commission Report showing that on July 25, 1975 the locking up of the High Court had been considered. Let us not take a stride on a path advancing towards goals so ignoble.”

A Conspiracy against the High Court fails: the Rule of Law prevails

I had written a comprehensive letter to Jaswant Singhji who had been the Minister of Finance during the NDA regime (1998-2004). But the lobbyists and the pressure groups worked to get the National Tax Tribunal Act, 2005 enacted during the UPA regime. My detailed letter under reference can be perused at http://shivakantjha.org/openfile.php?filename=articles/ntt_nogood.htm. Its constitutional validity was challenged. Journeying through the litigious process, the matter reached our Supreme Court whose Constitution Bench has held, on 25 September 2014, the National Tax Tribunal Act as unconstitutional. All's well that ends well. Main reasons for holding the Act unconstitutional were thus stated in *Madras Bar Association v. Union of India & Another* (Transferred Case No.(C) No. 150 of 2006 : 2014-TIOL-82-SC-MIC-CB)

- “(iii) The “basic structure” of the Constitution will stand violated, if while enacting legislation pertaining to transfer of judicial power, Parliament does not ensure, that the newly created court/tribunal, conforms with the salient characteristics and standards, of the court sought to be substituted.
- (iv) Constitutional conventions, pertaining to constitutions styled on the Westminster model, will also stand breached, if while enacting legislation, pertaining to transfer of judicial power, conventions and salient characteristics of the court sought to be replaced, are not incorporated in the court/tribunal sought to be created.”

(iv) My academic interest & the Calcutta University

(a) As an Examiner for the LL. M. Examination

I developed contacts with the eminent teachers in the faculty of Law of the Calcutta University. Dr. M.L. Upadhyaya, the Dean of the faculty of the Law of the University, associated me with several academic activities. I had studied International Law, specially the Law of Seas. I had written my dissertation on the Maritime Resources. The Patna University appointed me in 1977 an examiner for the revaluation the answer books pertaining to Public International Law. I had deep interest in Mohammedan Law. Mr. Zillani, who was my Commissioner of Income Tax, even called me Maulavi Jha. The Calcutta University appointed me a Member of Board of Examiners to function as paper-setter and examiner for the Mohammedan Law for the LL. M. Examination. I studied with a lot of interest and insight a lot of standard books on the Mohammedan law. I was impressed by the genius of the Mohammedan Law to adjust itself with the changing needs of times. It is unfortunate that the self-perpetuating interests of the fundamentalists obstruct the creativity of the Mohammedan Jurisprudence in our times.

(b) Dr. T.B. Smith

Some brilliant jurists came to Calcutta to deliver the celebrated Tagore Law lectures. I heard Dr. T. B. Smith who had been a member of the Scottish Law Commission and a Professor at the Edinburgh University. His lectures were published under the title *Property Problems in Sale*⁶. I met his wife, Ann, who was extremely amiable and well-informed about our culture and country. She had spent her childhood days in India where her father was in service as a civilian. Dr.

Smith began his first lecture with a personal note of immense joy. He said that precisely at that time of the day Sir Zelman Cowen was taking over as the Governor-General of Australia. Cowen and Smith had studied together, and were great friends.

Dr. Smith examined critically from the viewpoint of comparative lawyer, a wide range of practical problems of great importance. His listeners were advocates, academicians and the judges of various courts including the High Court. His sixth lecture was on the "Protection of good faith purchasers: the ground surveyed". Dr. Smith examined various sophisticated solutions to the problems cropping up in that area. He dwelt on the problems pertaining to the dishonest purchasers, and was in search of some better solutions. I could recall something of relevance to the issues under his consideration, which I had studied years back in our ancient Hindu Jurisprudence. I stood up, and told him what the ancient Indian jurist had thought about such issues. He heard me with interest. When his lecture was over, he came near me and asked me if I could spend some time with him discussing the topic. I was overjoyed at this great honour. I drew up a note on the topic and called on him next day in the VIP guest house of the Ramakrishna Mission Institute of Culture at Golapark in South Calcutta where he was staying. The eminent jurist showed a lot of interest in Hindu Jurisprudence on account of its richness and original thoughts. Two days after, when he had delivered his last lecture in the series, he came near me, and said: "I felt revising some of my ideas expressed in my lectures in the light of the solutions given by the ancient Hindu jurists, but as the manuscript was to be handed over to the publishers, I could only mention the point in the footnote." When the book came out, I found a footnote at page 149 of the book where he had mentioned: "Hindu Jurisprudence has evolved sophisticated solutions regarding the effect of purchase from a person who is not the owner." He referred to P.N. Sen's *Hindu Jurisprudence*, and made a reference to me.

Several evenings I spent with Dr. Smith at the Ramakrishna Mission Institute of Culture. I asked Dr. Smith about the prospect of entrenched Fundamental Rights in the United Kingdom. He told me that a lot of jurists had pleaded for such rights to be spelt out and constitutionally entrenched. After some pause, he put a counter question to me: "What happened to the Fundamental Rights in India during the Emergency?" Again after a longer pause, he said that the existence of sound Democracy could alone be the supreme guarantee for the enjoyment of basic Rights. One evening Dr. Smith asked me questions about our Constitution. He asked me to tell him what I considered the core questions of great practical importance in the Indian Democratic Republic. I replied with utmost brevity, but some of his comments kept me brooding over them for all these years. I would summarise what I had told him in the Chapter on 'Our Constitution at work' in the Book III of this Memoir.

(c) Dr. Bernard Schwartz

In January 1984, Dr. Bernard Schwartz delivered at the Syndicate Room of the Calcutta University a series of seven lectures as a Tagore Law Lecturer on *Some Makers of American Law*⁷. He was the Webb Professor of Law at New York University, and was also made a Tagore Law Professor at the University of Calcutta. The lectures were intended as an American counterpart of the Tagore

Law Lectures delivered by Sir William Holdsworth in 1937-38, under the title, *Some Makers of English Law*. I have closely observed the decisions of our Courts where the American cases are frequently cited. It is dangerous to refer to the American cases without knowing the history of American Law, and their specific contexts. The American judges have shown strong commitments to their philosophical trends, but mostly under the shadow cast by the Big Business. Unless we have good reasons to share their ideas, it is not proper to cite their decisions indiscriminately. But the liberal activist judicial approach of our courts, mainly in human right matters, is surely under debt to Chief Justice Warren. Dr. Schwartz observes:

“The period Warren (1891-1974) sat in the Supreme Court’s central chair turned out to be “the most innovative and explosive era in American constitutional law” since the days of Chief Justice Marshall.”⁸

Dr. Schwartz’s lectures were to help us to develop our insight into the matter of using the American decisions in the Indian context. Amongst the recent American Judges, it was Warren who deservedly had the greatest impact on our Supreme Court. Dr. Schwartz very aptly observes:

“Chief Justice Warren led the movement to remake American law in the image of the evolving society. Of course, Warren’s greatness, like that of Marshall himself, consisted of more than his “being there.” The cases decided by Marshall were great because he made them great. All of them could have been decided in crabbed legalistic ways that would have made them unknown today, except to the curious student of the law’s arcana. The same is true of the great cases decided by the Warren Court”⁹.

Our Supreme Court explored the activists dimensions of the Right to Equality in *Maneka Gandhi v. Union* (AIR 1978 SC 597), *R.D. Shetty v. Airport Authority* (AIR 1979 SC 1628) *Ajay Hasia v. Khalid Mujid* (AIR 1981 SC 487) adopting the approach considered appropriate by Chief Justice Warren who, as Dr. Schwartz puts it, did more than any other judge in American history to ensure that the law, to say in W.H. Auden’s phrase, “found the notion of equality.” Warren’s activist approach had been opposed strongly by Justice Frankfurter.

(d) Dr. Rene David

Dr. Rene David’s Tagore Law Lectures¹⁰, on the comparative and evaluative exposition of English law and French law, provided a rich feast of ideas which in many crucial segments are of greatest importance to the Indian lawyers. He, in his lectures, explained to us the main principles of *droit administratif* as operative in France. H.M. Seervai has beautifully summarized some key principles of the French administrative law in his *Constitutional Law of India* at pages. 3057-3060 (4th edition). I would draw on his exposition to highlight some of them in Chapter 17 of this Memoir.

In the Third and *Final Report* of Shah Commission, Justice Shah suggested (*vide para 24.16*) that we should consider the adoption of *droit administratif*. Earlier in *M.P. v. Bharat Singh* (AIR 1967 SC 1170), he had referred to Dicey’s view on *droit administratif vis-a-vis* the rule of law, and he observed: “We adopted under our

Constitution not the continental system but the British system under which the rule of law prevails.”

I considered it my great luck that during my first phase in Calcutta I heard three eminent Tagore Law Professors speaking on topics of greatest importance. They continued the great tradition that the earlier Tagore Law Professors had set up: persons so eminent as Sir Frederick Pollock, Sir William Holdsworth, Dean Roscoe Pound, Justice William O. Douglas, Sir Carlton Allen, Lord McNair, Professor W.W. Willoughby, and Sir Percy Winfield.

(v) Reflections on Calcutta

During the first phase, I lived in the Central Government Officers Quarters at Purnadas Road in South Kolkata close to the Vivekanand Park on the other side of which there is the famous Dhakuria lake. For years I had my morning and evening walk in the inner circle of the lake. The lush green area has a lot of massive trees whose branches, twigs and leaves sprawl expansively. As I was a regular walker there, I made a lot of friends, and had moments of sweet chit-chats for hours. The area presented interesting spectacles. Old men and women sat in small groups sharing their common experiences and lending support to each other in moments of life's sufferings and frustrations. It was a common sight to see someone in the groups reading the *Geeta*, or some passages from the writings of Chaitanya or Ramakrishna. Many young boys and girls were seen busy initiating and maturing their romance under the lush trees many of which provided exclusive bowers. For hours I sat on the concrete benches just gazing at the waters gently tossed by wind, or looking at the various stages in which the lotus buds bloomed into flowers and then, in the evening, they withdrew their petals unto themselves, often imprisoning inside the unwittingly trapped black bees.

Kolkata is a lovely city. Initially one may dislike it but with the passage of time it casts its spell. If one is at a loss to know which way to go, one can safely ask a girl or a lady, without hesitation, for right direction. And she would stop and guide you wearing sweet and amiable expressions. In this matter, Delhi is unlike Calcutta. It is extremely risky to make such a query here. In most cases one may not get a reply. If it comes at all, that would be with cocked eyebrows and noxious frown with an inquisitorial glance. Calcutta has a culture of its own. In Delhi, the pen-pushers, and the waves of humans coming from different parts, have not helped the growth of an organic and integral culture. The people of Kolkata have an excellent aesthetic sense. Even the slogan shouting, and the roadside speeches had exhilarating ideas, well expressed through flourish and rhythm. The city was remarkable for its musical concerts, and many other artistic pursuits. While returning from office in evening, I had opportunities to hear sweet music that came from almost every house. V. G. Jog, the great violinist, resided in the Purnadas Road where we resided from 1976-1979. We were frequently visiting his house to listen to his excellent classical music on violin.

In Chapter 25 of this Memoir I would tell you under the caption of '*Satranj Ke Khiladi*' how Wajid Ali Shah, the fifth King of Oudh (from February 1847 to February 1856), had ruled: he ruled not his land but he swam and sank in the gathering of the dancing girls composing gazals and playing chess displaying his

well-fed and well-embellished aromatic body having no intrinsic worth. The terms of the treaty, that he had made with the East India Company, made him imbecile and servile, and he turned into a creature sans any sense of pride in self. His kingdom was annexed by the British, and he was sent on exile, with humiliation, to Kolkata to die there in September 1887. He was happy to be in exile in Kolkata where he enjoyed the life of luxury in the company of women and wine. The Company granted him pension of Rs. 12 lakhs which was enough those days to live life that way. He was happy in his lascivious murk and filth. You can contrast his ways with those of the Maharani Laxmibai of Jhansi who was fighting for the freedom of her country till she died on 17 June 1858. In short, we have, thus, two models of life. He chose the way which is dear to the pleasure-seeking fools. She chose the way of patriotic dignity and sacrifice which make one great, and the country proud. Our people, while responding to the challenges of the present-day economic globalization promoting consumerist-hedonist culture, have the option to choose between the ways of Wajid Ali and of the Rani of Jhansi (or Gandhi). Who should be our role-model, Wajid Ali or Laxmi Bai?

Kolkata was a city of festivals and festivity whose climax is reached during the Durga Puja (or Pooja), an annual worship of Goddess Durga which spreads over nine or ten days. I had seen how elaborately this Puja was performed in my family. It was done in accordance with the Tantric tradition. Every day at the end of the Puja, my father loudly recited the Durgasaptasati. The Puja commenced on the Mahalaya day. Over all the years I can recall, I got up at 4 a.m. to hear the recitation of the *Mahishasurmardini* by Birendra Krishna Bhadra and Pankaj Kumar Mullick on the All India Radio. The way Bhadra recited made the medium itself a message. His cadence and tone revealed what he felt at heart. I still remember the beautiful songs and *kirtans* which frequently punctuated his recitation. In our village we had a Durga Mandir wherein every year beautiful clay images of Durga, Lakshmi and Saraswati were made following detailed Tantric rituals.

I saw eight such Durga Pujas over the eight years of my stay in Kolkata. For four years I resided at 16 Dover Lane, near Gariahat in the South Kolkata. Just adjacent to our gate, the people of that locality used to organise an impressive Durga Puja. We could participate in most of the rituals every day. I could see the ocean of the visitors to the place, especially in the evenings. The images were in the traditional protocol, and the rituals were performed with meticulous details. Hundreds of Pandals were put up at different places in Kolkata, each bedecked with light, flowers and coloured foliages, mainly of Ashoka, mango and banana. Over the years, I visited most of the Pandals to see the deities, and to see how the pujas were performed. It seemed to me that for the most people the Durga Puja had become more of a carnival, than a mere sacred festival.

Once I went to see the Durga Puja at Shovabazar Rajbari in North Calcutta. I was told that it had the oldest history in Calcutta. Its history went back to the Battle of Plassey (1757)! I was amazed to hear its story. I was told that the Durga Puja was organized in the Rajbari (the royal house) of Nabakrishna Deb to celebrate the occasion of the victory of Lord Clive in the Battle of Plassey which wrecked the power of Nawab Sirajud-Daulah, and ensured the fast expansion of the imperial power of the East India Company in our country.

It is possible to see some distinct phases and forms in the worship of Goddess Durga in the history of the Durga Puja in Calcutta. These can be shortly stated thus:

- (i) The traditional Durga Puja is performed in accordance with the *Durgasaptasati* which is from the *Devimahatmya* of the *Sri Markandeya Purana*. It tells us how the forces represented by gods failed to fare well in the war they waged with mighty demons. On their collective supplications, Devi Durga manifested Herself out of the focused energy of all the great gods. She Herself, and also Her own variants, like Chamunda and Kali, destroyed the demons. Thus, they established the sovereignty of the forces of good in the cosmic creation. This holy text is recited, in most households, everyday during the Durga Puja.
- (ii) The Puja is also done illustrating the *Krittibas Ramayana* which tells us that Rama invoked and worshipped Durga while going to fight Ravana.¹¹ The great Hindi poet, Surya Kant Tripathi 'Nirala', celebrated this in his famous poem, '*Rama ki Shakti Puja*'.
- (iii) The tradition of the Puja, as described in *Anandmath*, is still alive. With our First War of Independence in 1857, a new assertive sensibility grew amongst our people. The sacrifice done by our revolutionaries helped us to evolve a confident worldview which flowered in the form of our Struggle for Independence. It was under this ethos that *Anandmath*, written by Bankim Chandra Chatterji, was published in 1882. It portrays Bharat-Mata with three faces: Jagaddhatri (the upholder of the universe), Kali (the ferocious destroyer of the forces of evil), and Durga (the deity which sustains, destroys and protects without ever ceasing to be kind and merciful): these are three facets of Shakti.
- (iv) But now we see new trends in the Durga Puja. This reflects the culture of commercial advertisement which is being promoted by the vested interests in this phase of Economic Globalization. Under this market-ruled economic globalization, the image of Bharat-Mata, as conceived in *Anandmath*, stands battered and ignored. In this phase of commercial exploitation, even the Durga Puja is being made market-friendly. The so-called 'theme puja' illustrates this approach. We must arrest these noxious trends. We must not allow our religious and cultural images and ideas to be exploited for commercial, or any other extraneous, purposes.

(vi) Hare Krishna: my visit to Krishannagar and Mayapuri

I visited, in 1993, Krishnanagar, Nadia, and Mayapuri. I held the statutory jurisdiction over those areas as the Commissioner of Income-tax-X. This trip was most enjoyable and informative. It gave me a great opportunity to reflect on many things very close to my heart. In this small segment of this Chapter, I would touch only certain points which came to my mind in course of my visit.

At Krishnanagar, I visited a locality, called Ghurni, where beautiful statuettes and figurines of clay were made by the artists carrying on their traditional profession of the clay artists. I found them severely poverty-stricken, yet satisfied and happy. We purchased a number of their creations of clay.

From Krishnanagar we went to Navadwip where the great Chaitanya was born. The Vaishnavas consider him Lord Krishna Himself. We went to Mayapuri

to stay at the headquarters of the International Society for Krishna Consciousness (ISKCON). Once upon a time Navadwip was a well-known centre of learning. Mayapuri, adjacent to Navadwip, is on the bank of the holy Ganges. It is a place of pilgrimage for the followers of Gaudiya Vaishnavism. I visited various beautiful temples, and heard several songs of our great Vidyapati being mellifluously sung to our delight. Some of these songs were deeply amorous and romantic. But after listening to them there, and observing how the listeners responded to such stimuli, I felt that the songs, which I had myself sung several times, acquired new meaning rich with deep spiritual sensations. The time I spent there was greatly enriching. We participated in all the rituals, and heard learned discourses on the *Srimad Bhagavatam*. We stayed at the Guest House of the ISKCON, and observed how the devotees lived there, and what they thought about things in their evolving 'Krishna consciousness'. We got up at 4 a.m. to assemble, for Bhajans and worship in the big hall with an elevated marble platform whereon the beautiful marble images of Radha and Krishna had been placed. They recited the *mahamantra* which could lift them up to the higher levels of spiritual attainments: they called it the 'Krishna consciousness'. The *mahamantra* ran thus:

‘Hare Krishna Hare Krishna, Krishna Krishna Hare Hare
Hare Rama Hare Rama, Rama Rama Hare Hare’

Krishna is the richest and most suggestive cultural construct in our nation's cultural oeuvre. It is unique that all that is the best in our traditions and thoughts are at their best only in Krishna Katha (the story of Krishna).

I had the good luck to hear the music which had been played by George Harrison, the English rock guitarist, who had a great access to our Indian cultural and mystical thoughts. I had a good opportunity to reflect on Krishna at Mayapur. I would come back to the ideas of Krishna in the Book III of my Memoir in the Chapter on 'My Reflections on Krishna & the Galaxy of the Great' (Chapter 20).

NOTES AND REFERENCES

- 1 I find that Norman Cousins has quoted this in his *Anatomy of an Illness as Perceived by the Patient* p. 65 (Bantam Books, New York).
- 2 Dr. Debiprosad Pal, M.A., LL.M., D.Litt., LL.D., Senior Advocate.
- 3 Sir C.K. Allen, *Law in the Making* Pg. 594, Oxford, London.
- 4 *Law in the Making* p. 598.
- 5 http://shivakantjha.org/openfile.php?filename=articles/ntt_nogood.htm
- 6 *Property Problem in Sale* by T.B. Smith Q.C., D.C.L., LL.D., F.B.A., F.R.S.E published by Sweet and Maxwell, London and Eastern Law House, Calcutta. (1978) Dr. Smith was an advocate and a Barrister-at-Law of Gray's Inn. He was the Professor of Civil Law at the University of Edinburgh and was the Commissioner in the Scottish Law Commission.
- 7 *Some Makers of American Law* by Bernard Schwartz Ph.D., LL.D. (Cantab.) Doctorate d'Universite (Paris) Edwin D. Webb Professor of Law, New York University School of Law published by Ajoy Law House, S.C. Sarkar & Sons Private Ltd. Calcutta.
- 8 Bernard Schwartz, *Some Makers of American Law* p. 124.
- 9 Bernard Schwartz, *Some Makers of American Law* p. 145.
- 10 *English Law and French law* by Rene David, Honorary Professor at the Universities of Paris, Grenoble, and Aix-en Provence; Honorary Master of the Bench, Middle Temple Inn. The book was published by London Stevens & Sons and Eastern Law House Calcutta in 1980.
- 11 See the image at <http://en.wikipedia.org/wiki/File:Akal-Bodhan.JPG>

16

MY REFLECTIONS ON THE INCOME-TAX LAW

It is said that tax systems reflect the values of a society.

Stiglitz, *Free Fall* p. 181

Here another great constant in economic life: as between grave ultimate disaster and conserving reforms that might avoid it, the former is frequently preferred.

Professor Galbraith

(1) Introductory comments

This Chapter and the next constitute a veritable potpourri of my ideas which developed in my mind over more than the three decades when I was a member of the Indian Revenue Service. I have called these Chapters as '*My Reflections*'. I am assertively present through them as a participative witness. These would surely not be so emotionally evocative as was Edmund Burke's *Reflections on the Revolution in France* (1789), but would surely provide you some ideas to reflect on the income-tax law as it has been administered in our country.

There are good reasons to think that the attitudes to tax law and its administration are determined by the dominant socio-economic ideas in changing times. The history of the western societies shows that the attitudes towards 'taxation' have generally been shaped by the dominant attitudes towards 'property'. But it is not possible to summarise them in this Memoir. In the history of income-tax, from the years of William Pitt in the *fin de siècle* of the 18th century to the neoliberalism of our times, it is clear that the attitudes towards 'taxation' have been shaped by the dominant interests in a political society. There was a time when Oliver Wendell Holmes could rebuke his Secretary who had exclaimed: "Didn't you hate to pay taxes!", with his hot response: "No, young feller, I like to pay taxes. With them I buy civilization." I was aghast at the Government of India's attitudes towards 'taxation', as reflected in the arguments advanced by our Government's Attorney-General Mr. Sorabjee before the Supreme Court in *Azadi Bachao's Case* [(2003) 263 ITR 706: AIR 2004 SC 1107]. His position can be gathered from what he himself wrote in his article dated 12 Oct. 2003 published in the *Indian Express*:

“Thank God there is no patriotic duty to pay taxes which can be legitimately avoided unless, like the great Justice Holmes, one enjoys paying taxes, sharing his anachronistic belief that it is the price for the purchase of civilization. Tax practitioners and consultants would face serious problems if Justice Holmes is taken seriously.”

The barbed tone reveals the neo-liberal ideas to which our government has allowed itself to be converted in the years after 1990s: the era, euphemistically called the era of ‘opening up’, when we are witnessing the GDP moving up, corruption increasing, values shrinking, and our Constitution shrivelling.

(ii) Taxation reflects values of a society, & attitudes towards ‘property’

The present-day neo-liberal economic thinking holds rabid Lockean views¹ about ‘property’, which, bereft of all deceptive rigmarole, means that the government exists for the preservation of ‘property’. We would surely find people who would better lose their life than their money, easier still to lose their soul than their property! Hubert Monroe is absolutely correct in saying: “The system introduced at the start of the nineteenth century shows every sign of being with us at the end of the twentieth”.

I think it would help you to acquire a right perspective on the laws of taxation, statutory and also as judicially interpreted, if you keep in your mind the following changing views and shifting scenarios:

- (i) Our ancient Indian thinking considered ‘property’ a thing under social trust for the welfare of people. Greed was considered a sin. I would refer to our classical attitudes towards ‘property’ in the Book III of this Memoir in the Chapter on ‘My Reflections on Krishna & the Galaxy of the Great’. Ideas pertaining the imposition of just system of ‘taxation’ have been stated in the *Rig-Veda*, the *Mahabharata*, Chanakya and our classics.
- (ii) But during the medieval India, the Turko-Afghan and the Mughal rulers, who had once been the cruel Turkish invaders, ruled us as the heartless imperialists for several centuries. They had embraced Islam for political reasons, not because they shared Islam’s high democratic and egalitarian values. For them, ‘taxation’ was the most effective source for enriching the treasury of the emperors. The tax-gatherers had only the emperors to please, and to line up their own pockets. People, hated ‘taxation’ and the tax-gatherers. The historians have told us how the extortionate tax-gatherers brought the government itself into disrepute. Whatever was gathered through taxation became the emperors’ property available for use or misuse. I have called this model of economy, that the medieval India’s autocrats built, the ‘Taj Mahal Economy’ to which I would come again in Chapter 25 of this Memoir.
- (iii) What I called the ‘Taj Mahal Economy’ is again in our sight these days. ‘The fault, dear Brutus, is not in our stars, / But in ourselves, that we are underlings’ (Shakespeare in *Julius Caesar*). Whilst our nation’s common people (pejoratively dubbed by the economists as the *aam aadmi*) are reeling under severe price rise, and are starving, our government has no compunction in raising taxes, and reducing subsidies to push up prices of the essential goods. The recently held Commonwealth Games illustrates the present-day ‘Taj Mahal Economy’.

- (iv) It would be proper to illustrate how the present-day neo-liberal ethos has shaped the taxation policies. After 1991, we pampered and tolerated for diverse motives, not all honourable, the waves of foreign investors to frolic and play on our stock-market to reap profits, and to let them go out of the country without any let or hindrance. The watchers of our national interest allowed our tax treaties to be massively misused. Not only what was obvious was not being seen, steps were taken through administrative omissions and commissions to exclude transparency almost wholly. The climax of knavery was reached when the Indo-Mauritius Double Taxation Convention was allowed, with full knowledge of all those who mattered, to be turned into a Noah's ark for all the swindlers and masqueraders from different lands to fatten themselves with gains on the Indian Stock Market. The IMF taught us that if a red-carpet welcome was not given to foreign capital, it might go, never to return. Capital gains taxes, were cut down so that unearned super profits could be reaped through speculation. The American model and theory inspired us. Bertrand Russell perceptively said: "In the advanced countries, practice inspires theory; in the others, theory inspires practice."²

Popular, but perverse, attitudes towards taxation law

I can say that the attitudes towards taxation, which the ghosts held in W.S. Gilbert's comic opera *Ruddigore*; or, *The Witch's Curse*, are even now strongly shared by many. This is the mind-set which considers the evasion of taxes no crime. Almost a century after William Pitt, W.S. Gilbert portrayed in this opera, how common people looked at the breaches of income-tax obligations. Sir Ruthven Murgatroyd, Bad Baronet of Ruddigore, was cross examined by his ghostly ancestors who had obliged his descendants to commit a crime a day? That conversation is profoundly suggestive:

"Rob. Really : I've committed a crime punctually every day.

Sir, Rod : Let us inquire into this Monday?

Rob : Monday was Bank Holiday

Sir Rod : True, Tuesday

Rob : On Tuesday I made a false income tax return.

All : Ha! Ha!

1st Ghost : That's nothing.

2nd Ghost : Nothing at all.

3rd Ghost : Everybody does that.

4th Ghost : It's expected of you."

This is how the ghosts thought of the "evasion of taxes". If the ghosts can be so creative in accounting and the art of concealment, why shouldn't the living beings be enterprising in tax evasion. I had enjoyed this opera whilst a student at C.M. College. I had never thought that my destiny would drive me to see this real melodrama for more than thirty years as a member of the Indian Revenue Service!

(iii) How the British Judges fared when they came to have the tryst with the Income-tax Law

As the structure of the present income-tax law continues broadly the same as it was when it had been enacted in England during the Napoleonic Wars, the judicial approaches to the construction of its provisions have, with rare exceptions, remained fossilized, and largely stereotyped. In England the Judges could make their presence felt on the law of income-tax only from 1874. How did they respond to this new challenge? To quote Monroe again³:

“As was said of the lion in the case of “Albert and the Lion” you could see that the judge did not like it. Here was a topic of which few, if any, judges had professional experience, though all no doubt had disagreeable personal experience. The topic was entirely statutory,and apparently lacking in any discernible principles. What could a judge do but fall back on the words of so much of the statutory code as was brought to his attention.”

How did the Judges fare, when construing the Income-tax Act? It reveals itself best in the ways the judges formulated the norms to govern the principles of statutory construction. More than 140 years have gone when Lord Cairns formulated the norms governing the construction of the statute in *Partington v. Attorney-General*⁴. The House of Lords decided certain issues which pertained to the law of probate duty. The issue did not relate to the law of taxation. What he said has become *locus classicus*:

“As I understand the principle of all fiscal legislation, it is this: If the person sought to be taxed comes within the letter of the law he must be taxed, however great hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be.”

The only rationale for such assertive formulation in such a wide sweep was the sanctity of ‘property’ rights. Lord Cairns himself brought out the rationale of his thesis. He said in *Pryce v. Monmouthshire Canel and Railway Co.*⁵

“The cases which have decided that taxing Acts are to be construed with strictness and that no payment is to be extracted from the subject which is not clearly and unequivocally required by the Act of Parliament to be made, probably meant little more than this, that, in as much as there was not any *a priori* liability in a subject to pay any particular tax, nor any antecedent relationship between the taxpayer and the taxing authority could be brought to bear on the construction of the Act, and, therefore, the taxpayer had a right to stand upon a literal construction of the words used whatever might be the consequence.”

It is difficult to understand why this literalist construction was preferred to the technique of discovering reasonable meaning. He must have been familiar with the idea set forth in Chapter 8 of Blackstone’s *Commentaries*, edited by Edward Christian, which said:

“It is considered a rule of construction of revenue acts, in ambiguous cases, to lean in favour of the revenue. This rule is agreeable to good policy and

public interest; but, beyond that, which may be regarded as established law, no one can ever be said to have an undue advantage in our courts.”

And in 1899 in *Styles v. Treasurer of Middle Temple*, Justice Willis commented :

“I quite agree that every tax, if it is to be supported at all, must be found within the clear language of an Act of the Parliament, but I myself rather disposed to repudiate the notion of there being any artificial distinction between the rules to be applied to a taxing act and the rules to be applied to any other act. I do not think such artificial distinctions ever can help anybody in arriving at the true meaning of word.”

(iv) The British courts adopt a new salutary perspective

But many eminent Judges of later times preferred the technique of purposive interpretation in the determination of meaning, a method which our *Mimansa* had developed and applied in ancient times. It took years for justice-oriented and welfare-mandated attitudes to develop to acquire judicial recognition. In *IRC v. Federation of Self-Employed*⁶, Lord Scarman explained the nature of the income-tax law, and pointed out the duties of the authorities administering the income-tax law. The following propositions follow from Lord Scarman's exposition in this decision by the House of Lords:

- (i) In dealing with the affairs of tax payers the principles of fairness should operate.
- (ii) The duty to collect ‘every part of inland revenue’ is a duty not owed exclusively to the Crown. It is a legal duty owed by the Revenue to the general body of the taxpayers without discrimination.
- (iii) The duty of the Revenue is to “consider as one of several arising within the complex comprised in the care and management of a tax, every part of which it is their duty, if they can, to collect”.
- (iv) The success of tax avoidance scheme increases, *pro tanto*, the load on the shoulders of the great body of good citizens.
- (v) To produce a sense of justice is an important objective of taxation policy.
- (vi) The courts have a role, long established in the Public Law. There cannot be ‘the retreat of the courts from this field of public law merely because the duties imposed on the Revenue are complex and call for management decisions in which discretion must play a significant role.’

In England this approach got a brilliant illustration in *Furniss v. Dawson*⁷ which the House of Lords decided indicating in clear words that the elaborate schemes designed to minimize tax liability might in future be at the risk of being set aside at the instance of Revenue.⁸ As usual the corporate world and its hired experts were ferociously up against that decision. It was only the maturity of the British polity that helped government not to bend, break, or succumb to pressures, overt or covert. I wish our courts adopt Lord Scarman's creative approach in deciding our tax cases so that the public interest is amply protected.

II

CERTAIN CHANGES IN THE STATUTE OF THE INCOME-TAX SUGGESTED

The Income Tax Act has become so complex that most often comprehension of many of its provisions becomes an exercise in utter frustration. Fundamental principles of the Income Tax Law are simple. Various statutory provisions are either illustrations thereof, or overriding thereon, or deviations therefrom. Many matters touching economic management, extraneous to the basic scheme of tax law, have been inserted in the tax-law when they could have been managed through separate enactments. The income-tax law tends to become bafflingly complex on account of the incorporation of the intricate concepts of property jurisprudence, criminal law, corporate jurisprudence, civil law and also on account of new commercial and financial products and inventions which have proliferated in recent years. This is time to think of a new morphology of the tax law, and to provide it a purposive coherence in plain English. Some points of importance are these.

(a) Apt illustrations to the legal provisions may be incorporated in the statute

H.W. Fowler, in the preface to the second edition of the *Concise Oxford Dictionary*, said: “define and your reader gets a silhouette; illustrate and he has it in the round”. ‘In the round’ is a figurative expression which Fowler himself defined to mean: “with all the features etc. fully shown, all things considered”. The Radcliffe Royal Commission struck a note of optimism. After much reflections, it made two salutary suggestions hoping that these would go a lot towards the simplification of the tax law. The Commission said with candour:

“We do not feel satisfied that it is impossible to introduce greater clarity and concision into drafting of income tax legislation. The point is so often a matter of public criticism, and for more than a generation it has been a subject of judicial complaint....We remain under the impression that the possibilities of an improved technique are not exhausted and some advance could still be made in the way of clarity.”

Two suggestions can be put forth for serious consideration : these are-

- (a) to provide illustrations in the statute itself throwing light on the meaning of its complex provisions; and
- (b) to recast the statute focusing more on the statement of principles, leaving many matters for the judges to decide on the general principles of justice (as is done in many civil law countries).

Illustrations have helped us to understand the provisions in many important statutes: viz. Indian Contract Act, 1872, and the Indian Evidence Act. “Illustrations are”, says Mulla in his work on the *Transfer Property Act* (7th Edn.) “the practical application of the written law and make nothing law which would not be law without them.” Mulla aptly cites a case from the *Straits Settlement* (*Mohomed v. Yeoh*⁹), in which the Privy Council said:

“The great usefulness of the illustrations which have, although not part of the sections, been expressly furnished by the Legislature as helpful in the working and application of the statute should not be thus impaired.”

Our own Supreme Court has taken an analogous position in *Jhumma Masjidv. Kodimaniandra Deviah* AIR 1962 SC 847.

But till illustrations are introduced in the Income-tax Act, 1961, better-drawn leaflets and booklets deserve to be issued to help tax-payers to help them to get out of the labyrinths of the income-tax statute.

(b) ‘Legislation in detail be abandoned, and replaced by legislation setting forth principles’

The above expressive heading tries to express what Lord Denning aptly said in his *The Closing Chapter* (at p. 112):

“Legislation in detail has been found by experience to be self-defeating. It leads to statutory provisions which are so complicated as to be obscure and unintelligible. When this happens, it offends the fundamental principle that a statute should be so expressed as to be readily understood by those who are affected by it. legislation in detail should be abandoned and replaced by legislation in principle. By this I mean that our statutes should expound principles in clear language and should leave the details, where necessary, to be worked out by some other means or in some other way.”

Lord Denning thinks that the gaps in the legislation could be filled by the judicial creativity. We have no reason to distrust that process. I have always felt that the Judges can be trusted to play this role well. Lord Denning has put this point felicitously: “They developed the common law in that way. They be trusted, likewise, with the statute law.”

(c) The linguistic and thematic structure of the Income-tax Law

A periodic review of the Income-tax Act is always desirable. A comprehensive study of the income-tax law requires a study of its broad structure, which is simple. The Act is structured on the following protocol:

<i>Protasis (the clause expressing condition)</i>	<i>Apodosis (the consequent clause)</i>
‘If’ clause	‘then’ clause
If a particular legally protected interest is breached, or its prescribed conditions are violated	Then a particular consequence would follow as a matter of course which may involve declaration <i>simpliciter</i> , or punitive or compensatory actions.

In fact, there must be “if-then” (protasis-apodosis) relationship involved in a given legal provision. Besides being couched in the “if-then” relationship, the legal provisions are of various types needing differential treatment. They are the charging provisions, the machinery provisions; and the exculpating, ameliorative or exempting provisions. The present Income-tax Act is rich in provisions belonging to all these categories.

I remember when I was asked by someone quite well versed in the income-tax law: “Can’t we frame single sentence Income-tax Act?” I said off the cuff:

“Why not? We may say:

Income at the rate prescribed in the annual Finance Act (or in the schedule annexed to it) shall be charged on the real income (accruing, arising or received) of every person.”

Often I felt that if that were to happen, this law would work better. The word “income” would mean what it means “in a sense which no commercial man would misunderstand”. This is what our Supreme Court said in *Calcutta Co Ltd v. CIT* (37 ITR 1, 9); and in scores of other Cases. My comment may seem extreme, but it invites you to reflect on the points suggested.

(d) Plain English would help

Right from the days, when I read as an undergraduate H W Fowler’s *King’s English*, and Gower’s *Plain English*, I fell in love with Plain English, though in the years I served the Income-tax Department, I failed to live up to that standard. But I had my many moments when I was nonplussed by the gobbledegook of the tax law. We all must have seen a spider having its last laugh caught in the gossamer-web that it itself created. Both the tax-gatherers and the tax-payers have often lost their ways in the labyrinthine statutory provisions: where once one is in, one doesn’t know how to get out of it. Lord Renton pointed out in his peroration at the end of his opening speech in the House of Lords, which Lord Denning has quoted in his *The Closing Chapter* (at p. 112) with approval:

“If our Acts of Parliament cannot be understood even by clever experts it not only brings the law into contempt, it brings Parliament into contempt. It is disservice to our democracy; it weakens the rights of the individual; it eases the way for wrongdoers and it places honest, humble people at the mercy of the state. In the name of reason and justice, let’s get it straight!

And then goes Lord Denning: “To my mind, the one way to get it straight is for Parliament to use plain, simple language expressing principles, and for the judges to fill in the gaps in statutes as to do what good sense requires.” High ideal might virtually be a quest for some El Dorado, but even a little advance towards the objective will spare us of much of our drudgery.

(e) Suggestion for constituting certain Committees for ongoing reforms

I have all along felt that there should be two permanent committees, one of our Parliament and the other of our eminent experts, to study and suggest measures for administrative and legislative steps in the matter of the tax law and its administration.

Considering the factors contributing to the complexity of the tax law, H.H. Monroe, who had the experience of having worked as the Presiding Special Commissioner in the United Kingdom, and had wide experience as a leading member of the British Tax Bar, suggests:

“Given goodwill, co-operation and a readiness to accept something short of perfection, measures to improve the existing law and such additions to it as are on mature reflection really necessary should not be difficult to achieve.

Parliamentary procedures seem to hold the key; some sort of permanent committee, with experienced and expert assistance, to review existing and future legislation not just in relation to its content but in relation to its form seem to offer a practical expedient worth a try. Is the will lacking? Should we all shout together? We might be heard."

His rhetorical question must be answered: "YES".

It would be good if our Parliament establishes a Permanent Committee on Taxation on the analogy of the Committee on Treaties in Australia, and Canada. *Ad hoc* Parliamentary committee is not good enough. I may state that my study of our Parliamentary practice and procedure, with the *Parliamentary Practice of Erskine May* as my manual, has led me to conclude that our Parliamentary system of Committees, including those on Petitions, have not worked well in our country for reasons not appropriate for being examined here in this autobiographical Memoir.

The draft of the Income-tax Act, 1961 had been drawn up by an expert Committee consisting of P. Satyanarayan Rao, G.N. Joshi, N.A. Palkhivala, under the Chairmanship of M.C. Setalvad. They had drawn up the 12th Report of the First Law Commission (1958). In framing the Act, much was drawn from the Direct Taxes Administration Enquiry Committee Report (1959). These Reports were comprehensive enough to give us full ideas of the problems which Commissions and the Committees had considered. We knew that their authors were great masters of jurisprudence, possessed internationally recognized professional calibre, and integrity, and had wisdom and sagacity rarely noticed these days. Perish the thought, the Government must not give an impression that things are being engineered through stealth for ulterior purposes (which might include the unworthy practice of 'outsourcing' the drafting of the law to those who have their own interests to promote.).

III

The Role of Parliament in 'Taxation': and its *raison d'être*

The most distressing point I have noticed, both as a member of the Indian Revenue Service for more than three decades, and as an Advocate for more than a decade at the High Court and the Supreme Court, is the general non-realization of the great constitutional fact that 'taxation' is, apart from being a method to raise resources, a most powerful way to subject the executive government to an effective democratic control through Parliament. *The New Encyclopedia Britannica*¹⁰ aptly observed:

"The limits to the right of the public authority to impose taxes are set by the power that is qualified to do so under constitutional law. The historical origins of this principle are identical with those of political liberty and representative government – the right of the citizens." ¹¹

The nature and relevance of the Parliamentary control on 'taxation' generally, and the 'direct taxes' in particular, has been thus brought out by Hood Phillips¹²:

"It was supposed to have been settled by Magna Carta and by legislation in the reigns of Edward I and Edward III that taxation beyond the levying of customary feudal aids required the consent of Parliament. One of the

central themes of English constitutional history was the gaining of control of taxation and national finance in general by Parliament, and in particular the Commons; for this control meant that the King was not able to govern for more than short periods without summoning Parliament, and Parliament could insist on grievances being remedied before it granted the King supply. This applied at least to direct taxation.....¹³

In England even tax treaties are done only after getting Parliamentary approval. In England there is a system under which Parliamentary supremacy over the exercise of the executive power of treaty-making is maintained in the following two ways:

- (a) by providing that a tax agreement is to be made only in terms of the law; and
- (b) by providing that no tax treaty can be made without a Resolution by the House of Commons which has the exclusive control over taxation.

Parliamentary control on taxation is considered so important that in the major countries of the world the tax treaties (I mean, Double Taxation Avoidance Agreements), are done only with Parliamentary approval¹⁴. Over all the decades I served as a member of the Indian Revenue Service, I have found that, in our country, Parliamentary control on 'taxation' is seldom effective. Legislative provisions are enacted without meaningful deliberations in Parliament: they are mechanically enacted. I would reflect on our Parliament at work in the Book III.

It is distressing to see that the effective control of the Parliament through 'taxation' has waned despite our Constitution's provisions under Article 265 which excludes the imposition of tax (also by implication, the exemption from tax) without the authority of law.

Now one *reductio ad absurdum*. A close watch of the events show us how a new model for gathering resources for the Government is becoming available. It may be possible someday even to do away with Direct Taxes all together. It is possible to think that it would be enough to gather resources from the Indirect Taxes where the billionaires and the beggars are hit alike, and also from the grant of concessions, franchises, and by imposing charges for the rights to use the national resources. If in the process water resources are exhausted, riverbeds can be leased or auctioned. Already there is a move afoot to tax ground-water. Many new variants can be found or invented. Why not pollute 'air', or allow others to pollute it? If that happens, some MNCs would come to sell balloons with oxygenated air for people to buy in order to exist. The Government might become the beneficiaries of such corporate depredations by becoming their facilitators. And I heard a bird twitter from a bush: When all these are exhausted, human beings, not employable in the market, can become commodities for trade (see David Riesman's *The Lonely Crowd*), for which licence could be sold to some MNCs! This last idea is absurd, but we have seen many absurd things happening in the present-day Economic Globalisation. Like Cassandra, I am trying to see things yet in the womb of time: but I would be the happiest person if history proves me wrong in thinking this way.

Changing Judicial Perception of tax-evasion situations

On general overview of the judicial trends in the tax matters at our Supreme Court, I have perceived broadly three phases, each characterised by distinct features, though divergent tendencies often merge with shifting measure of emphasis. The phases can thus be identified:

- (i) The Phase I: when the Right to Property was still a Fundamental Right, *i.e.* up to 1978;
- (ii) The Phase II: when the organs of the State strove to carry out their Constitutional mission of socialism and egalitarianism; and
- (iii) The Phase III: when law and justice are supposed to be 'market-friendly' as it is conceived and interpreted under the neoliberal paradigm of the present-day Economic Globalization.

The Phase I broadly pertains to the period when we still had the fundamental right to hold 'property'. During that period the judicial attitudes towards taxation resembled the conventional British attitudes towards taxation. It was based on the assumption that tax-payers had no social obligation, and was free to arrange their affairs if they could do so without offending the law. An excellent exposition of the characteristic features of this approach has been made by H. H. Monroe in one of his Hamlyn Lectures:

"If social attitudes to evasion are tolerant, judicial attitudes to avoidance are ambiguous. Inevitably one judge will emphasize the citizen's right to arrange his affairs within permitted legal limits to avoid the incidence of tax.¹⁵ Another will be critical of the expenditure of so much ingenuity and expertise in a pursuit so devoid of public benefit.¹⁶ Yet a third will find the artificial pretences involved in many schemes worthy of censure.¹⁷ Inevitably metaphors are introduced into the discussion of policy and of individual cases: "There is a certain fascination in being one of the referees of a match between a well-advised taxpayer and the equally well-advised Commissioners of Inland Revenue, conducted under the rules which govern tax avoidance. These rules are complex, the moves are sophisticated, and the stakes are high."¹⁸ There can be few other branches of the law where the interaction of interests between community and individual is regarded as no more than a game."

The Phase II reached the apogee of its verve in the early 1980s when an excellent account of judicial creativity and activism was given by some of our most creative and activist judges: to mention the five who constituted a fraternity: they were Krishna Iyer, Bhagawati, Desai, Chinnappa Reddy, and later Justice Thakar. This approach, to the extent related to 'taxation', found the finest expression in the Constitution Bench judgment in *McDowell*¹⁹, where Justice Reddy observed, (to which all other four Judges agreed):

"The evil consequences of tax avoidance are manifold.... In our view, the proper way to construe a taxing statute, while considering a device to avoid tax, is not to ask whether the provisions should be construed literally or liberally, nor whether the transaction is not unreal and not prohibited by the statute, but whether the transaction is a device to avoid tax, and whether the transaction is such that the judicial process may accord its approval to it."

Justice Reddy approved the view of the activist Judges of the U.K. who felt that there could be situations where the judiciary could provide better remedies than the legislature. Lord Scarman observed in *Furnis v. Dawson*²⁰:

“Difficult though the task may be for judges, it is one which is beyond the power of the blunt instrument of legislation. Whatever a statute may provide, it has to be interpreted and applied by the courts; and ultimately it will prove to be in this area of judge-made law that our elusive journey’s end will be found.”

The Phase III is characterized by the narrowing of judicial role in this phase of globalization fostering the neoliberal economic paradigm. Two features, dear to the proponents of neoliberalism, are manifesting themselves in judicial approaches of our Supreme Court: these are²¹ —

- (i) the agenda to roll-back State activism in welfare measures, and aggressive cutback in the activities of government; and
- (ii) the Government, through its policies, must be market-friendly, and it must ensure the promotion of the interests of big corporations which work by establishing a symbiotic relationship between the government and the business.

Writing about *A.D.M. Jabalpur v. Shivkant Shukla*, some experts observed: “The judgment can be best described, in the words of C.K. Allen, as the contribution of the Supreme Court to the emergency”²². With greatest humility, I feel that *Azadi Bachao Andolan*, about which I would tell you in detail in Chapter 23 of this Memoir, can be considered our Supreme Court’s contribution to the Market Economy in this phase of Economic globalisation.

The justification for the annual Finance Act

I have often noticed how our Executive government considered the practice of enacting the Annual Finance Acts an irksome custom, best if done away with. But the rationale of the Annual Finance Act always impressed me as a powerful device to control the Executive. The Executive must come every year before Parliament seeking authorization to raise taxes. If it ever succeeds in getting a perpetual authority to raise taxes without coming to Parliament, it can easily turn despotic as was King James of England, or Chancellor Bismarck of Germany.

Besides, I always thought that what was needed most was transparency in the process. It would be good if the proposals of statutory changes and the budget proposals are placed in the public domain for well-informed discussion. There is nothing to lose, but everything to gain. I endorse fully the suggestion which emerged in the seminar on the ‘Present State of Tax Statute Law’ held in England in 1967. It was held under the chairmanship of Lord Scarman. One of the suggestions that emerged from it was:²³

“.....that the possibility of modifying the existing rules as to budget secrecy might be explored with a view to promoting discussion and consultation on the technical and legal aspects of tax legislation before it comes to Parliament.”

Stiglitz has graphically stated the unwholesome reasons which make the opaque system work. It is the time to realize that “Sunshine is the strongest antiseptic.”

IV

SOME SUGGESTIONS FOR CONSIDERATION

(a) **U.N. Multilateral Convention on Tax Treaties:**

Long back, before he became the Judge of the International Court of Justice, Dr. Nagendra Singh had told me to take up as the subject of my doctoral research “the feasibility of a multinational convention for the avoidance of double taxation”. I too felt the need for such a convention in our globalised economy on the model of the conventions on the Law of the Seas. It would be good to substitute the bilateral regime of tax treaties by a comprehensive multilateral treaty regime articulating the appropriate governing norms in conformity with international law, and also without transgressing the constitutional restraints on the treaty-making power of the Executive which cannot go counter to our Constitution even at the international plane. I suggest this for my readers to think about.

(b) **The idea of constituting International Tax Authority (ITA)**

A lot of concern has been expressed to arrest and stop the massive tax evasions, the theft of economic resources, the parking of ill-gotten gains outside by crafting sinister devices through the tax havens and offshore financial centres spread over the world around. The beneficiaries of this morbid opaque system resist/evade transparency. The extent of the damage done to the nation is massive. The gruesome extent of such money, stashed elsewhere, and generated through the opaque system, is now widely known. What is needed is an effective step to stem this evil. Some steps have been taken by some assertive governments, and an articulated schedule of action is now in place after the G-20 Economic Summit recently held in London. It is obvious that the steps contemplated to be taken are neither adequate, nor fully effective. But it is good that something has been done to end this evil. What is saddening is that the Government of India maintained its silence, or at best merely lent some inaudible murmurs to the chorus of protest against such dark areas which the rogue financial system has developed.

The points, which deserve our attention most, are how to devise an effective and vigilant system to stop the abuses aforementioned. It is time to establish an International Tax Authority (ITA) with global jurisdiction. Mere agreements to exchange information are not enough unless there is a strong political will to compel the derelict jurisdictions to become transparent. How can such agreements help us to achieve our objectives, when the legal regime of several tax havens makes them impervious and unresponsive? What information the tax havens can supply when they do not believe in gathering comprehensive information about the real residence of the corporations got incorporated in such jurisdictions, and the beneficial ownership of wealth and income the corporations hold and earn? It seems the appropriate way would be to set up the International Economic Surveillance Authority and the International Tax Authority under the U.N. system.

This Authority can be set up through the provisions of an International Multilateral Tax Convention drawn up under the U.N. mandate. It can be structurally modelled on the International Seabed Authority (ISA) constituted under the United Nations Convention on the Law of the Sea. The ISA was

established 'to organize and control all mineral-related activities in the international seabed area beyond the limits of national jurisdiction' holding income thereof for promoting international welfare the details of which need not be set out here.

The ITA can be granted, through a convention, the authority to levy and collect the following taxes:

- (i) Levy of tax, as once suggested by James Tobin in 1970s, on transactions in the currency market (this species of tax can be called 'transaction tax') [this will dampen exchange rate volatility, and would take care of many other pathological manifestations of the present-day financial system].
- (ii) Levy of tax on all transnational transactions including in the ken of taxation the levy of tax on the income of non-residents, and corporations incorporated outside the territory, whether directly or through subsidiaries.
- (iii) To exercise exclusive tax jurisdiction on the cyberspace income-generating spaces, and wealth amassing vaults.

The ITA may consist of an Assembly of all states signatories to the Convention; a Council consisting of 5 executive members, elected by the members of the Assembly to function as the apex executive agency of the ITA ; a Tribunal designed to work as a court of law whose orders can operate effectively even under the domestic jurisdictions. The ITA may be granted competence to appeal to the International Court of Justice which may be given jurisdiction on all States coming within the province of the charge of international taxation under the proposed convention. If a particular State is non-cooperative, various ameliorative or punitive measures can be suggested by the ITA to the specified UN authority/agency, for necessary actions (which may even involve a reference to the Security Council).

The earnings from international taxation can go to the Consolidated Fund of the ITA out of which resources can be used for various purposes of global welfare including these:

- (i) to finance all international organizations including the United Nations but excluding those to be specifically excluded on policy considerations (such as the WTO or IMF) ;
- (ii) to grant resources for international humanitarian operations, and poverty alleviations;
- (iii) to maintain a fund to meet some unprecedented crisis caused by nature's wrath, or on account of gross institutional failures;
- (iv) to assist through various ways in the creation of better conditions of living for the poor world over;

I may hasten to mention that the suggested Convention would not be just a new version of a double taxation avoidance convention. This should be comprehensive convention superseding all tax conventions. This would be an inevitable legal consequence if the ITA becomes integral to the U.N system. Article 103 of the Charter of the U.N. says: "In the event of a conflict between the obligations of the members of the U.N. under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail". I may mention that once a Convention is operative, all the authorities under domestic jurisdictions will be bound by its decisions.

(c) **'Democratic Deficit' in framing tax treaties must be removed**

Lack of transparency delights the unscrupulous most. It manifests itself in our Treaty-making power. Our Government had written to the Secretary General of the UNO that in India the treaty-making is an executive act, which was not subject to the constitutional restraints. But, the Delhi High Court has struck a different note. It held that treaty-making powers are under the restraints of the Basic Structure doctrine of our Constitution, and also under other binding constitutional limitations. I would come to this aspect of the matter in Chapter 21 of Book III of this Memoir.

(d) **Our Government's 'knowledge deficit'**

Our Government cannot afford to suffer from 'knowledge deficit' in the field of International Law. In course of the PILs I conducted before the Delhi High Court and the Supreme Court, I was shocked by the 'knowledge deficit' that our Government displayed. I would mention the following three points:

- (i) I have just told you how contrary to the terms of our Constitution, our Government wrote to the Secretary General of the UNO what is wholly wrong. It communicated the UNO²⁴ :
 "Parliament has not made any laws so far on the subject, and, until it does so, the President's power to enter into treaties (which is after all an executive act) remains unfettered by any "internal constitutional restrictions."
 I intend to examine this topic in some other book. I have referred it merely to underscore the Government's poverty of knowledge. The worst demonstration of this deficit, was the way it saddled our nation with the obligations under the WTO Treaty, and the Agreements framed under its umbrella. If you are interested to know how it happened, you may go through *The Report of the Peoples' Commission on GATT* by V.R. Krishna Iyer, O. Chinnappa Reddy, D.A. Desai and Rajinder Sachar, and my *Final Act of WTO: Abuse of Treaty Making Power*²⁵
- (ii) The ignorance of the government becomes a disaster for the nation. This is proved, to our embarrassment, by the decision of the House of Lords in *Government of India v. Taylor* (27 ITR 356 HL)]. It was an appeal by the Ministry of Finance, Government of India; and this decision is a monument of our administrative incompetence and lack of the knowledge of International Public Law. Our Government deservedly courted a judicial rebuff that the public law of the foreign States is not given effect outside their jurisdictions. Under the established principles of International Law, neither the foreign public law nor the public acts of the foreign authorities can be given effect²⁶ in domestic jurisdictions. This doctrine is based on the principle of territorial sovereignty which is treated sacrosanct in the present-day public international law. Only through the specific terms of treaties this rule of customary public international law can be modified.
- (iii) We are now passing through a phase when great vigilance and knowledge are required as we are interacting with global experts at various fora of international litigations or negotiations. I had occasions to watch our eminent lawyers and eminent judges dealing with the issues of Public International Law. I found them all suffer from 'knowledge deficit' India cannot go ahead with this sort of 'knowledge deficit'. There was a time when Mr. M.C. Setalvad, the then Attorney General of India, was frank

enough to tell our Government that for proper presentation of a case before the World Court, experts like Professor Guggenheim and Soskice, deserved to be engaged, because he had his limitations in the field of international law. The way our cases have been represented before the Disputes Settlement Body of the WTO, and the way International Law issues were presented before our courts in the PILs, which I had filed and conducted, make our government's 'knowledge deficit' alarmingly shocking.

I was glad that my pursuits before the Delhi High Court and the Supreme Court in conducting the PIL litigations led our government to realize that its officers, even its law officers, suffered from 'knowledge deficit' in the matters pertaining to international taxation. This realization had a positive effect. The government did a good job by setting up the Directorate of International Taxation under the Director-General of International Taxation. I hope this Directorate would not only be able to handle matters of international taxation within our domestic jurisdiction, but would also be competent to present our cases when the Direct Taxes issues come up before the foreign fora.

Wherever I could, I told the leaders of the academic world to improve the standards of the teaching of international law. There was a time when our lawyers and the judges had not much to do with the intricate issues of international public law. Most of them found its study irrelevant to their professional work. But now we live in a different world. This phase of Economic Globalisation has altered our perspective. We must develop our knowledge and skills in public international law, and the art and craft of conducting litigations at foreign fora. But we must not forget our Constitution, and the restraints to which it subjects all the organs of the State. On Sept. 18, 2010, I addressed the students and the faculty members of the National Law University at Jodhpur. I told them about the challenges we are facing at international fora, and also in our domestic courts. I requested the University to do something in the matter to improve the standards of the teaching of international law, and international litigations.

I would also suggest to the Income-tax Department to set up an integrated course for the advanced study of international public law in the spheres of international taxation, commerce, trade and services. This institute can be easily set up at the National Academy of Direct Taxes at Nagpur.

NOTES AND REFERENCES

1. "The great and chief end of men uniting into commonwealths, and putting themselves under government, is the preservation of their property.", said Locke.
2. Bertrand Russell, *History of Western Philosophy* p.581
3. H.H. Monroe, Q.C., *Intolerable Inquisition? Reflections on the Law of Tax* p. 49
4. [1869] L.R. 4 HL 100, 122
5. (1879) 4.A.C. 197 H.L. Quoted in H.H. Monroe, *Intolerable Inquisition? Reflections on the Law of Tax. (It contains his 1981 Hamlyn Lecture)*. p. 51
6. (1981) 2 ALL ER 93 at 107 (H L) Quoted in H.H. Monroe p. 49.
7. [1984] A.C. 474
8. O Hood Phillips' *Constitutional and Administrative Law* p. 44
9. *Mohomed v. Yeoh* (1916) 43 I.A. 256, 263)
10. Vol.28 p.402:
11. Quoted by me in *vide the* Petitioner's Counter-Affidavit filed before the Hon'ble Supreme Court p. 238
12. O.Hood Phillips' *Constitutional and Administrative Law* [7th Edition Pg.45]
13. Quoted by me in Counter-Affidavit para 129
14. (a) US legal practice. The United States Constitution provides in Article VI, cl. 2 The U.S Senate must approve a tax treaty before it is made operational.
(b) German Legal practice
"In Germany, a tax treaty is enacted in accordance with Art. 59 Abs. and Art 105 of the Grundgesetz (the Federal Constitution). [Klaus Vogel on Double Taxation Conventions, 3rd ed. p. 24].
(c) Canada : A tax treaty is by enactment viz. Canada-U.S. Tax Convention Act, 1984. discussed in *Crown Forest Industries v. Canada*
(d) Australia: Every tax treaty is enacted under International Tax Agreements Act 1953
(e) U.K.: A tax treaty is enacted through an Order in Council in accordance with section 788 of the Income and Corporation Act 1988 which prescribes : "Before any Order in Council proposed to be made under this section is submitted to Her Majesty in Council, a draft of the Order shall be laid before the House of Commons, and the Order shall not be so submitted unless an Address is presented to Her Majesty by the House praying that the Order be made".
(f) In other countries tax treaties are enacted. [Philip Baker F-1 to F-3]
(g) Treaty practice in different countries with different constitutional provisions materially differs. Oppenheim's International Law pp 52-86
15. e.g. Lord Tomlin in *Duke of Westminster v. CIR*, [1936] A.C. 119, *Tax Cas*, 490.
16. e.g. Lord Simon in *Latilla v. CIR* [1943] A.C. 377, 25 *Tax Cas*. 107.
17. e.g. Templeman L.J. In *IRC v. Gravin* [1980] S.T.C. 295 and *W.T. Ramsay Ltd. v. IRC*, [1979] S.T.C. 582.
18. Per Donaldson L.J. In *IRC v. Garvin* [1980] STC 296 at 313.
19. *McDowell & Co v. CTO* 154 ITR, 148 SC
20. [1984] 1 ALL ER 530
21. J.K. Galbraith, *Culture of Contentment* (Boston); Hayek, *The Constitution of Liberty* quoted by Peter Watson, *A Terrible Beauty* p.518
22. Ashok H. Desai and S. Murlidhar, in *Supreme but Not Infallible: Essays in the Honour of the Supreme Court*. (Oxford)
23. *Vide* Hubert Monroe, *Intolerable Inquisition? Reflections on the Law of Tax, the 1981 Hamlyn Lecture*
24. Our Government's position is clear from the U.N. Doc. ST/LEG/SER.B/3, at63-64 (Dec. 1952) Memorandum of April 19, 1951 which was made in response to a circular letter addressed by the Secretary General of the U.N. to governments in January 1951
U.N. Doc. ST/LEG/SER.B/3, at63-64 (Dec. 1952) (Memorandum of April 19, 1951) quoted in *National Treaty Law and Practice* ed. Duncan B Hollis, Merritt R. Blakeslee & L. Benjamin Ederington p. 356-357 (2005 Boston).
25. First edition and reprints 2006 Published by Centre for Study of Gobar Trade System and Development, New Delhi http://shivakantjha.org/openfile.php?filename = books finalact_wto.htm
26. *Att.-Gen. For the U. K. v. Heinemann Publishers Australia Pty Ltd.* (1988) 62, *Australian Law Journal Reports* 344; *Government of India v. Taylor* (27 ITR 356 HL).

17

MY REFLECTIONS ON THE INCOME TAX ADMINISTRATION

To tax and to please, no more than to love and be wise, is not given to men.

Edmund Burke

When a law becomes so impossible to understand that the ordinary citizen must look to the “super expert,” the law becomes a trap and not a viable guidance.

Robert S. Taft

“The economist Adam Smith laid down some basic principles. Taxes should be “certain, and not arbitrary....clear and plain to the contributor, and to every other person.”

Walter B. Wriston

(i) I joined the statutory Civil Service

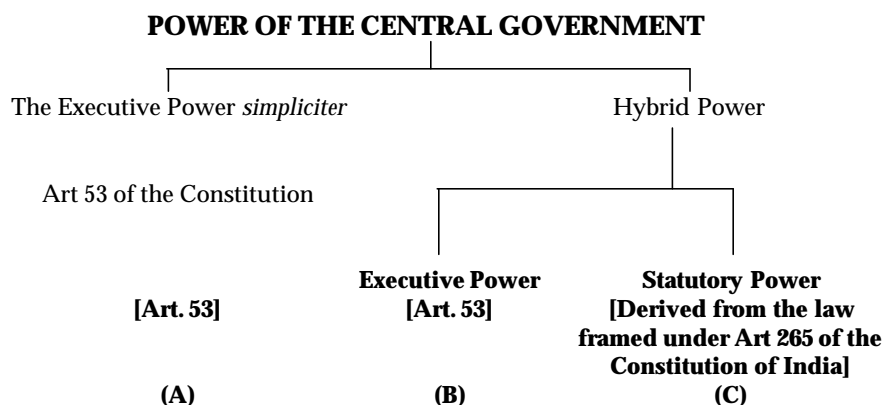
At the IRS (Staff) Training College, Nagpur, Shri V. V. Badami, who later became the Chairman of the CBDT, told us, whilst delivering his first lecture that the Indian Revenue Service was not a general civil service: it was a statutory civil service for which the governing norms were prescribed in the Income-tax Act itself. He told us to keep in view certain constitutional principles of fundamental importance. The Executive Government exercises powers over taxation in accordance with the provisions of our Constitution. In our country, the Executive is a creature of our Constitution with prescribed duties and conferred powers. The executive power is exercised in terms of Articles 53 and 73 of the Constitution. The Article 265 states, with wonderful precision, the norm of Parliamentary control on ‘taxation’. An exclusive power over taxation had been acquired by Parliament in England after the Glorious Revolution 1668. The Executive had, thus, lost all powers on ‘taxation’; and it could exercise these only in conformity with the law. Our Constitution’s provisions are the same as under the British constitution.

We learnt that CBDT was established by the Central Board of Revenue Act, 1963. The Act established separate Central Boards: one for Direct Taxes, and the other for Excise and Customs. The section 3 of the said Act prescribes: “each such Board shall, subject to the control of the Central Government, exercise such powers and perform such duties, as may be entrusted to that Board by the Central

Government or by or under any law.” Section 4 authorizes the Central Government to “make rules for the purpose of regulating the transaction of business by each Board”. The following two important propositions emerge:

- (i) the CBDT “shall, subject to the control of the Central Government, exercise such powers and perform such duties, as may be entrusted to that Board by the Central Government”; and/or
- (ii) the CBDT shall exercise such powers and perform such duties, as may be entrusted to that Board by the Central Government by or under any law.

It follows that in exercise of the functions entrusted to the CBDT by the statutes, the CBDT is not “subject to the control of the Central Government”. It discharges the Parliamentary commission, and for the propriety of its acts, it is accountable only to the Courts on the points of legality. The tax authorities can be mandated to discharge their public duty, and their orders can be quashed on standard grounds for which remedy for Judicial Review is granted by our superior courts (on the counts of illegality, irrationality, procedural impropriety and also breach of proportionality). The Central Government is, thus, interdicted by law from trespassing on the Board’s spheres of statutory functions which are controlled and guided only by the terms of the statutes. But functions, which are analytically administrative, are under the control of the Central Government to be exercised through the CBDT. These provisions reflect certain constitutional principles of fundamental importance. Without going into details, I would state them thus diagrammatically:



Explanatory comments:

- (A) Governed by the Business Rules.
- (B) Governed by the Rules of Business.
- (C) Powers to be exercised in accordance with the statute ONLY.

The Revenue Department of the Government would be a clear trespasser if it interferes in (C). The Executive Government’s power is derived simply from Art. 53 of the Constitution: and it would be acting *ultra vires* if it interferes in the exercise of the legal duties prescribed by the law framed under the discipline of Art. 265 of our Constitution. The Income-tax Act is framed in exercise of power under Article 265 of our Constitution.

(ii) The *raison d'être* for the above; the subversion of our Constitution and law that I witnessed

As this Chapter is a part of my autobiographical Memoir, I would draw only on my experiences to show how frequently our law and Constitution were subverted by our Government itself. What is most worrisome is the way things have become worse and worse, irrespective of the colour and commitments of the political parties in power. I intend to tell you what happened at three different times which I witnessed. These are; (i) what I saw in 1960s when I had investigated into the affairs of the six eminent former Congress Ministers of Bihar (I would call this the Justice Aiyar Commission Phase); (ii) what Justice Shah had noticed as the instances of the gross subversion of the law in his report (I would call this phase simply as the Phase of Emergency); and (iii) the subversion of the law and constitution through administrative acts (I would call this as the Phase of the Nation's loot).

(a) Those were the best days: My experience in the Aiyar Commission phase

I have told you about the Aiyar Commission in my Chapter 10 of this Memoir. Even though a Bihari, I was trusted by the Commissioner of Income-tax, Patna, to exercise statutory jurisdiction over the cases of the six distinguished politicians, and very powerful civil servants of the State still occupying high posts. I held jurisdiction over them for almost three years. I investigated their cases, I inspected their places in different parts of Bihar, I interacted with the State of Bihar helping the Aiyar Commission in going ahead with its mission, and also with the very powerful CBI unit headed by DIG, Mr. Hingorani. Those assesses had wide contacts with the high politicians of the day. But neither they tried to obstruct investigation I was carrying on, nor did my administrative superiors ever interfered with my work of investigation, and decision-making.

Those days were different. Once Mr. T.P. Singh, ICS, visited the Central Revenue Building at Patna, and addressed us. He was then the Revenue Secretary. A point cropped up in the meeting: it pertained to a non-recoverable tax demand that deserved to be written off. He was unhappy that that work was pending since long. In his annoyance, he said: "Bring the file, I would order that the demand be waived". Everyone in the Conference was silent, but I sowed my wild oats. I had gained experience of not more than two years. I said, "Sir, You are not competent to do that. Not even the Cabinet can forgo a *paisa* of tax raised in terms of the law. Taxes are raised under the Parliamentary commission. We can only transfer the non-recoverable demands to the Register of dead demands to be periodically reviewed for exploring the possibility of recovery." The Commissioner seemed to wear a frown, and he looked at me with his stern eyes. Mr. Singh came out after a pause, "Yes, the officer is right. I stand corrected".

(b) Those locust-eaten years reaching its climax in the Emergency

I have told you about the infamous Emergency in Chapter 11 of this Memoir. The Shah Commission had drawn up its horrendous portrait. The monstrosity that it displayed must have shocked Mrs. Gandhi too. She must have been struck aghast how the baser elements in our public life could subvert our administrative system to promote their unworthy agenda. The Shah Commission, after examin-

ing the excesses done during the Emergency, drew comprehensive accounts showing the noxious crudities wrought by what it called the “Root of All Evil”. Some top politicians and bureaucrats formed an unholy alliance to shock our nation with many instances of the gross subversions of the law and Constitution of our country. I would focus on one instance which had become the subject-matter of our serious discussion at the Central Revenue Building at Patna where I worked for a decade.

I would request you to read Chapter IX of the Shah Commission Inquiry Report. It tells us certain unbelievable truths about ‘Baroda Rayon Corporation —Search and Seizure under Section 132 of the Income-tax Act, 1961’. The things which happened then bring to mind what Shakespeare said in Othello: “You are one of those that will not serve God if the devil bid you”. The “Searches and Seizure” were authorised on hurriedly cooked up grounds: they were found later false and irrelevant. Events moved with the strange delirious pace as if the Income-tax Administration was being led, nay dragged, to say in the words of Shakespeare’s Iago, “as tenderly... by the nose as asses are”. The statutory provisions pertaining to the mode of the seizure of the documents, and the provisions governing the post-seizure procedure were blatantly breached. The *dramatis personae* of this morbid drama included the then CBDT Chairman (Shri S. R. Mehta), the then Director of Inspection (Inv.) (Shri Harihar Lal), and Shri Pranab K. Mukherjee, the then Minister for Revenue and Banking. It was shocking how lies and half-truths were traded, how the Administration allowed itself to become the stooges of the politicians. A reading of Chapter IX of the Commission’s *Report*, would convince you that they had played their unworthy role in that strange melodrama. I have already quoted two short extracts from that *Report* in Chapter 11. The great Tulsidas said: “Let us not go on putting gloss on the unseemly”: so I must stop pursuing these points further.

(c) The Loot of the Nation. Whose Government? This Darkest Chapter

It is said: there is no ceiling on excellence, but there is no bottom to degradation. We are witnessing how low our public morality has sunk, how grossly our Government can betray our nation’s interest, how dense and asphyxiating the noxious gloom has become! I would come to these points in Book III, but for the present, I would like you to reflect on following lines of Thomas Mann in his novel, *Death in Venice*; and think about our present which stinks with corruption at all levels facilitating amassing of ill-gotten gains in tax havens and secrecy jurisdictions:

“But the city was not swayed by high minded motives or regard for international agreements. The authorities were more actuated by fear of being out of pocket, by regard for the new exhibitions of paintings just opened in the public gardens, or by apprehension of the large losses the hotels and the shops that catered to foreigners would suffer in case of panic and blockade. And the fears of the people supported the *persistent official policy of silence and denial*.” (italics supplied).

Aren’t we passing through a similar situation? Please think about it.

(iii) Lack of Transparency: its lethal effect

I saw for more than three decades how our government worked. Nothing is loved by the *entente cordiale* of the vested interests more than 'secrecy'. They are fond of areas of darkness like the tax havens. This love for darkness and opaque system is on account of sinister reasons. Stiglitz aptly says¹ :

'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."

I always felt, and also asserted wherever I could, that secrecy provisions created an Opaque System under which our Right to Know and Express (Art. 19 of the Constitution) suffered. The Article 19(1) (a) of the Constitution of India grants to the citizenry of this Republic a fundamental "right to freedom of speech and expression". The fundamental right to "freedom of speech and expression" cannot be exercised properly unless with it goes the Right to Know. Our Supreme Court has recognized the supreme importance of the Right to Know. *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers Bombay Pvt. Ltd.*² says "that the people at large have a right to know in order to be able to take part in a participatory development in the affairs of our democracy."

Now comes the Direct Taxes Code Bill, 2010 (Part 'G' Chapter XVIII of the said Code) introduced in Parliament some time back. It sought to incorporate the core provisions of that Circular 789 of 2000 in the statute itself ensuring the continuance of secrecy provisions, and uninhibited operation of the strategy of deception. Instead of withdrawing the said Circular, there is an effort through the provisions of the Code Bill to authorize the issue of the Certificate of Residency. It is an old device common in several tax havens. It is a practice in tax havens to grant this certificate in order to preclude any investigation into the questions of residency of the entities operating from or through their jurisdictions. In Monaco, a *Carte de Sejour* (residency permit) is granted if small deposits are made in a Monegasque bank. Those who procure the certificates of residence are accustomed to plead that such certificates should be accepted without demur as they are granted by authorities constituted by a sovereign governments.

(iv) The encroaching shadow of the WTO on the Laws of Direct Taxes

I consider it important to tell the Income-tax administrators, and our people in general, that the WTO has already commenced casting its shadow on the laws of taxation which pertains wholly to our own domestic sovereign space. The General Agreement on Tariffs and Trade 1994 ("GATT 1994") was a new version of the General Agreement on Tariffs and Trade (GATT 1947), and it was evolved and structured under the WTO framework. When the GATT 1947 was signed, none thought that the regime sought to be established would ever have any impact on Direct Taxes. The same position existed even when the Uruguay Round Final Act was signed in 1994 setting up the WTO driving the whole

complex multilateral trade regime in terms of the various Agreements done under its common umbrella. There are good materials to think that things are being engineered so that the shadow of the WTO is cast wide on the domestic space of the nations. The WTO-inconsistent Direct Taxes measures are likely to be identified, and would run the risk of being questioned by the WTO-members before the DSB of the WTO. Michael Daly has a point when he says: "Multilateral WTO rules, which are agreed by consensus can therefore be expected to continue to be an important factor in how Members' shape their tax policies as they will undoubtedly want to avoid having their tax policies successfully challenged in the WTO." [Michael Daly, 'The WTO and Direct Taxation' (Discussion Paper 9, http://www.wto.org/english/res_e/booksp_e/discussion_papers9_e.pdf)]. But three things happened to promote an activist approach of the WTO and of its other associate organs and associate agencies. They are:

- (i) The activist approach of the Uruguay Round of Multilateral Negotiations led to annex many new areas of commerce and trade to the WTO province: viz. the Trade Related Intellectual Property Rights (TRIPs), the Trade Related Investment Measures (TRIMs) Agreement on Agriculture (AoA), the Agreement on Subsidies and Countervailing Measures (SCM), and General Agreement on Trade in Services (GATS). This expansive approach goes on.
- (ii) Even the WTO's Disputes Settlement Body and the Appellate Forum adopted in their judicial decision-making expansively creative and activist approaches to make the Body virtually the World's most powerful judicial tribunal.

Efforts to annex Direct Taxes to the WTO regime were made in various ways, but the most patent ways were through the interpretation of Articles III (National Treatment on Internal Taxation and Regulation) and Article XVI (Subsidies) of GATT 1947, and Article XIV and XXII of General Agreement on Trade in Services (General Exceptions and Consultation). The said Article III prescribes mandatory provisions requiring the members of the WTO to provide "National Treatment". No more favourable domestic protection can be given to domestic products. This Article was not originally conceived to affect the Laws of Direct Taxes. These provisions affected the product specific taxes, and were concerned with trade and tariffs which came within the purview of Indirect Taxes. But things changed; and Direct Taxes too have been dragged in under the WTO regime.

The General Agreement on Trade in Services, one of the Agreements coming under the umbrella of the WTO, grants, in some circumstances, an effective role to the Council for Trade in Services in the matter of the interpretation of certain disputes pertaining to the treaties relating to the avoidance of double taxation (see Articles XIV and XXII). Its provisions prescribe that under certain circumstances the tax disputes can be shifted to an international forum to be decided by an international body. It is amazing how our Government accepted such treaty-terms. No authority for doing so could be derived from Article 265 of our Constitution, or from section 90 of the Income-tax Act. Our Government could not invoke its general executive power to agree to such treaty-terms because 'taxation' is not under the domain of the executive power. This is one of the sad consequences of our Executive Government agreeing to the wide terms of the

Uruguay Round Final Act that set up the WTO. That Agreement was made under an opaque system without the people and Parliament knowing the terms of the said treaty.³

I consider it an appropriate context to point out that a treaty that transgresses the constitutional competence of our Government must be held by our court as domestically inoperative. I thought of challenging some of the provisions of the WTO treaty and the various Agreements under its umbrella, and also some of the provisions of the Double Taxation Avoidance Agreement, as they, I felt, contravened our Constitution's provisions including the judicially propounded doctrine of the Basic Structure. This exercise involved two questions:

- (i) Whether our superior court could exercise jurisdiction to examine the constitutional validity of a treaty provision, and could hold a treaty with a foreign government domestically inoperative for transgressing such constitutional limitations; and
- (ii) if the answer to (i) is yes, whether the provisions of the WTO treaty and the Agreements⁴ under its umbrella, and some of the provisions of the Double Taxation Agreements, suffered from such constitutional infirmity.

The question at (i) has been answered by the Delhi High Court approving my position as taken by me in the PIL I had filed and argued. I have discussed the decision of the High Court in Chapter 21 (III) of this Memoir.

The question at (ii) was not decided by the High Court. Hence, in the light of the answer to question (i), this question would be decided someday if we can show how the treaty provisions transgress the constitutional limitations on the Government's treaty-making power. I hope someday our superior court would decide such concrete questions with reference to the provisions of a treaty. It seems that our Government would surely not agitate such issues because it is itself party to such treaties, and also because uncontrolled power is loved most by the executive. As the capitalists and their lobbyists are the direct beneficiaries of such treaties, they would surely not act against their own interests. So the only way to agitate such issues before our superior courts would be through a Public Interest Litigation. Let us see when it happens, and with what result.

After the commencement of the neoliberal economic era in 1970s (in our countries, 1980s, but most aggressively from 1990s), things were engineered to ensure that all legal matters touching the foreigners get gradually shifted from our country's domestic fora to the international fora. They realized that they could get over the domestic laws, and the Constitution of India, by devising a favourable regime through treaty terms.⁵ The features of the Treaty of Allahabad (1765), the Treaty of Nanking, the Treaty of Wanghia (with the United States in 1844), and the Treaty of Whampoa (with France in 1844) stand incorporated in Article XVI (4) of the Agreement Establishing the WTO.⁶ 'Taxation', which is traditionally a subject matter coming only under the domestic sovereign space, is now being shifted slowly to the foreign fora, where not only the law is bent in the favour of the MNCs, and the foreign operators, even our nation is denied the knowledge of things happening in the secret conclave of persons without democratic accountability. To facilitate the creation of such a system, they are running down our civic administrative culture. They even criticize our judiciary; and try hard to devise, through the treaty-terms, a system under which the final words on the settlement of disputes would not be with our High Courts or the

Supreme Court but with bodies like the DSB of the WTO, and many other bodies constituted outside our country under the terms of bilateral, or multilateral agreements.

(v) Shouldn't we go in for *droit administratif*?

It is high time to think of restructuring our civil services keeping in view the French, or even the Japanese models, of the civil services (of course, with appropriate modifications responding to our needs). Justice J.C. Shah in his *Reports* had suggested that the advantages of *droit administratif* deserved to be considered to provide effective protection to the public servants.⁷ It is time for us to consider why and how the French Civil Service has been a great success whereas our civil services have deservedly got more brickbats than commendation. H. M. Seervai has perceptively drawn attention to some features of the French Civil Service: I draw certain propositions from his exposition :

- (i) The French Civil Service is not vitiated by morbid fragmentations within the superior civil services. In our country the members of the Indian Administrative Service claim superiority, even paramountacy, because of the wider powers they enjoy, and also because of their closer nexus with the wielders of political power. The effect of this is always to destroy the *esprit de corps*, which is the characteristic feature of the French Civil Service breathing a common ethos in Palais Royal near the Louvre.
- (ii) "The French Civil Service could build a sound tradition of culture and competence, and its members know how to scale excellence through their individual talent." "Their dynamic outlook and missionary zeal in public service transcend politics on account of the training they get in a number of post-entry schools."
- (iii) "The (French) civil servant is not in contractual relationship with the State but enjoys a status determined by an Act enacted in 1946 (as revised in 1959) supplemented by an extensive and important case-law of the *Conseil d'Etat*, under whose jurisdiction fall all disputes touching recruitment, pay, promotion, duties and discipline within '*la fonction publique*'"⁸
- (iv) How many civil servants in our country would go to their administrative superiors with total trust for redressal of their grievances? Like ordinary folk, even they run to the Tribunals and courts with hope, even if in most cases they hope against hope. But in France? The "biggest single category of citizens who resort to the administrative courts are civil servants, and this is itself a testimony from those most competent to judge the efficacy of administrative justice."⁹
- (v) The French administrative law boldly applies the general principles law and justice (*principes generaux du droit*) in its administration of justice.
- (vi) The French civil services have worked well because they submit their actions "to a body of civil servants who are familiar with the problems of executive government, but who are capable of a judicial detachment, which commands public confidence."¹⁰

(vi) The Problem of Vigilance

Vigilance is undoubtedly the price of liberty without which 'democracy' cannot survive. Right from my day one in the Income-tax Department, I heard

that 'corruption' ruled in the government services amongst which the worst notoriety was said to have been gained by the Revenue Department. With the experience of all the years that I slogged and trudged in the Revenue Service, I felt much of the canard was on account of ill-acquired habit to dodge paying taxes at all costs. Old habits die hard. Often I was led to feel that our literature would have been poorer if the hapless tax-gatherers would not have been the butt of laughter, or the target of sardonic ridicule. But I have always considered it unfair. Low public morality is endemic in the society of our 'low arousal' people. Prof. Kaldor said in his famous Report: "the general standard of integrity in the Department.... I am sure is very high..." Today we have reached a point where I cannot persuade myself to grant a certificate of integrity to persons in public life. Besides, we know how tainted deeds remain shrouded in darkness in our opaque administrative system, and how a rich industry to promote greed is being run under the able guidance of our greedy professionals.

I consider that whilst 'corruption' in some measure has been endemic in our society since ancient times, the golden age of corruption set in with the advent of Economic Globalization. It has helped many to amass wealth and to park that in safer places outside our country. The real reasons for the government's culpable inaction has been described by a much abler person, H. M. Seervai. He posed a question which he himself answered. The question posed was: "Why was it that nothing effective had been done to eradicate the evil which six Inquiry Commissions had condemned?" He answers: "... If successive Governments took no effective remedial action, there must be deep rooted causes for such culpable inaction. The answer to the question is simple. Government was unwilling to pay the price which such removal required."¹¹ Haven't we seen corruption at high places going unnoticed? Has anyone been ever dragged from his Olympus to his nemesis? What is obvious needs no explanation. Who will watch the watchers?

(vii) The Union Administrative Services Commission

It is high time to set up in our country an institution which we may call the Union Administrative Services Commission. It should do for the Administrative Services what the High Court does for the subordinate judiciary. The Civil Services should be under the jurisdiction of the Commission in respect of the disputes touching recruitment, promotions, duties and discipline within services. The members of the Commission should have fixed tenure till the age of retirement, and should have the security enjoyed by the judges of the Supreme Court. Under our administrative jurisprudence, the Courts, under Article 226 or under Article 32 of the Constitution, have played extremely restrictive role in service matters because of their narrow interpretation of their supervisory jurisdiction, and their wider view of the Doctrine of the Presidential Pleasure. For proper discharge of public duties, it is essential that FEAR, the worst of the negative feelings, must be eliminated from the mind of the civil servants. Fear makes men small; and small men cannot achieve great task. Administrative process has to be transparent, and the milk of human kindness should saturate the administrative process. H. M. Seervai too has suggested the setting up of such a commission. I wholly endorse his views.

(viii) What is obvious is not always known : Herbert Monroe on the British Tax Administration

At the outset of his 1981 Hamlyn Lectures, Hubert Monroe raised some very interesting questions, each one touching the administration of income-tax in the United Kingdom. As the systems of taxation and the patterns of tax administration in India and the U.K are same, the questions that he posed are relevant even in our own country. He said:

“Why does the law of tax have to struggle to make good any claim to respectability or, indeed, relevance among lawyers? Why are the practitioners and exponents set apart? Why are those whose task is to apply and enforce it regarded so frequently with hostility or, at best, wariness? Why when issues of tax law come before the courts do judges so often adopt an approach quite different to that which they normally adopt in relation to other branches of the law? Is the law of tax fairly castigated as unnecessarily complex and obscure? Are there reasons to account for this inherent in the subject-matter?”

The learned lecturer tried to explore their answers in his various lectures in which he examined not only the historical development of the administration of income-tax, but also the roles of Parliament, and Judiciary. He concluded the series with a lecture on ‘The law of tax and the common people’ I am greatly indebted to him.

But the big problem which Monroe articulates through a series of pregnant rhetorical questions, quoted above, has, I believe, a short answer. The problem can be understood by studying the attitudes of the politically dominant class, or those who can call the tune at a given time. After the fall of the Roman Empire, the Roman Catholic Church developed institutions to protect property interest of the Church. The circumstances of history wrought situation which brought about the emergence of the nation states which acquired dominance to work for the dominant classes of property owners, traders, and power wielders. Their collective and collaborative pursuits led to the growth of the sinister geopolitical phenomena of ‘colonialism’ and ‘imperialism’. During this phase of Economic Globalisation pursuing neoliberal paradigm, corporatocracy, has emerged to subjugate the political realm to its corporate *imperium*, by a dexterous operation of the mechanism of the Rule of Market (*Pax Mercatus*) characterized both by ‘democratic deficit’ and ‘moral deficit’. I have always felt that the only political scientist, with right insight into the political systems of the West, was Karl Marx, whose ideas are thus summarised in Nehru’s *Glimpses of World History*:

“The class which controls the means of production is dominant....The State and Government are controlled by this class which controls production, and the first object of the State thus becomes one of protecting this governing class....Laws are made for this purpose, and people are led to believe by means of education, religion, and other methods, that the dominance of this class is just and natural. Every attempt is made to cover the class character of the Government and the laws by these methods, so that the other classes that are being exploited may not find out the true state of affairs, and thus get dissatisfied.”¹²

It was this inordinate lust for 'property' that had made Dr. Samuel Johnson define 'excise' in his famous *Dictionary* (1755) as "a hateful tax levied upon commodities, and adjudged not by common Judges of property, but wretches hired by those whom 'excise' is paid." This definition tells us what he felt about the 'excise' and its gatherer. Hubert Monroe has insightfully observed, after quoting Dr. Johnson: "The same would in due course, and was, said about odious officers of Revenue." The same attitudes towards 'taxation' is portrayed in W.S. Gilbert's comic opera *Ruddigore* from which I have quoted in Chapter 16 an interesting dialogue. Despite the casual observations by some judges in various decisions, and by some experts in their learned writings, the attitudes towards 'taxation' and the 'tax-gatherers' in our times continue to be the same as they were in the past.

(ix) Classical Indian ideas on 'taxation'.

Under our Indian thinking (I mean the thinking before the phase of our servitude that began in the medieval India), we held egalitarian attitudes towards society treating 'property' as the necessary wherewithal for common public good in a democratic ethos with steadfast faith in values. It may be worthwhile to read Chapter 20 of this Memoir which contains my reflections on the precious ideas of Krishna, the Buddha, Jesus, Muhammad, Marx and Gandhi. Our great past is forgotten. This philosophy that we had developed had shaped our ideas about 'property' and 'polity', 'taxation' and 'government', and the 'tax-gatherers'. Dr. Kiran Tandon summarises the view of Chanakya which our other political thinkers of those days shared, and wholly endorsed: (I translate from her Hindi)

"Acharya Chanakya has identified the taxes and duties, and has prescribed norms to determine fair incidence of taxation so that there is better budgeting and financial management for the nation. Acharya Chanakya has discussed a tax he called '*pranaya kar*' (taxation through the cooperation and love of people). This imposition teaches the administration how best to obtain people's assistance in raising resources in the periods of emergency. No high-handed and tyrannical method is adopted. People are persuaded to pay such a tax. For doing this, emergency and 'state necessity' are pleaded. On such valid reasons, people never mind paying right quantum of taxes. People do understand the needs of the State. People would not grumble paying taxes if Administration really needed resources, not for the benefit of the power-wielders, but for the welfare of people. Under such situations, not only the tax administration succeeds in its tasks, even the tax-gatherers are appreciated and respected by people."¹³

I must mention that those days the tax-gatherers were not subject to criticism. But during the days of Asoka, the Government functionaries had come up for severe criticism. To keep vigilance, certain government officials had been appointed: they were called *mahamatras* (high officers). But it is an irony of history that too much surveillance and strictness destroyed much of their initiative. But what I emphasize here is the general assumptions shared by the society and Government in the matter of the levy of taxes, and the tax-gathering.

(x) Conclusion

When the Patna High Court was monitoring the Fodder Scam Cases, a new aspect of our tax administration came under our sharp focus. The High Court was conducting an intensive monitoring of what we were doing in investigating the cases pertaining to that Scam. I recall, once some officers resented this monitoring calling it a judicial intrusion in what was wholly an administrative matter. They felt that this sort of monitoring would destroy the hierarchic discipline in the Civil Service. Their view made me reflect on the problem of judicial monitoring by the High Court, or the Supreme Court. I told them that the High Court was just exercising its constitutional jurisdiction under Article 226 of our Constitution which authorized it to issue mandamus, or continuing mandamus, to ensure that public duties, required by the statute, are done by the public servants. In fact, it was wrong to see any conflict in the exercise of the statutory power, and the exercise of the Court's constitutional jurisdiction. The High Court exercised its power, under Article 226 because the non-discharge of statutory duties by the public servants could defeat the fundamental rights of people, and also frustrate the operation of the Rule of Law. Besides, our Constitution requires the public servants, including civil and judicial authorities, to assist the superior courts in exercising their jurisdiction. I was glad that all the officers involved in the investigation of the Fodder Scam within the region of the Chief Commissioner, Patna, (*i.e.* Bihar and Jharkhand) worked hard, and whole heartedly. They received words of appreciation from the High Court for the dedication to duties they showed. As I have written comprehensively about the Fodder Scam Cases in Chapter 12 of this Memoir, I need not go into further details about the Scam.

NOTES AND REFERENCES

1. Stiglitz, *Globalization and its discontents* (Penguin) pp. 228-229
2. AIR 1989 SC 190 [Coram: Sabyasachi Mukharji, and S. Ranganathan, JJ.]
3. *Report of the Peoples' Commission on GATT* by V.R. Krishna Iyer, O. Chinnappa Reddy, D.A. Desai, the former Judges of the Supreme Court, and Rajinder Sachar, the former Chief Justice of Delhi High Court (published by System of Study of Global Trade System and Development, New Delhi); Muchkund Dubey, *Unequal Treaty* Chapt.1 (New Age International Ltd, New Delhi.)
4. *Report of the Peoples' Commission on GATT* says at page. 164: "Such a treaty is not constitutionally binding within the Indian Constitutional system and, in the facts and circumstances cannot be given effect to."; and again at page 179 : "If the Constitution is what the Judges have told us it is and the text with the Preamble explicates it, the TRIPS part *vis-a-vis* Indians will in all probability be *ultra vires*."
5. See Shiva Kant Jha, *Judicial Role in Globalised Economy* Chapter 1.
6. "Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements."
7. *The Shah Commission of Inquiry*, the third and Final Report p. 231
8. Brown and Garner, *French Administrative Law* 3rd ed. Quoted by H.M. Seervai, *Constitutional Law of India* 4th ed p. 3058
9. Brown and Garner, *French Administrative Law* 3rd ed. Quoted by H.M. Seervai, *Constitutional Law of India* 4th ed p. 3058
10. H.M. Seervai, *Constitutional Law of India* 4th ed p. 3059
11. H.M. Seervai, *Constitutional Law of India* 4th ed p. 3057
12. Nehru, *Glimpses of World History* p, 545
13. Dr. Kiran Tandon, *Sanskrit Sahitya mei Rajniti* p. 581 (Eastern Book Linkers, Delhi)

18

ON MY RETIREMENT

*Oh perpetual revolution of configured stars,
Oh perpetual recurrence of determined reasons,
Oh world of Spring and Autumn, birth and dying !
The endless cycle of idea and action,
Endless invention, endless experiment.*

—T.S. Eliot in the First Chorus in *The Rock*

*'The time has come,' the Walrus said, 'to talk of many things:
Of shoes – and ships – sealing-wax – of cabbages – and kings -.'*
—Lewis Carroll's "Through the Looking Glass"
in *Alice in the Wonderland*

At 4 p.m. on March 31, 1998 I retired from the post of the Chief Commissioner of Income-tax-II, Delhi. I experienced in my farewell function a pregnant void where one phase had ended and the other was yet to begin. In the *Bhagavad-Gita*, Lord Krishna asks Arjuna to ascend the chariot of action to discharge his duties. In the *Astavakara Maha Gita*, the Rishi reminds King Janaka that it was time for him to get down from the chariot of actions to begin his *sannyasa yoga* (a phase of renunciation and withdrawal). For me, the point of time had come to get down from my chariot on which I had ascended in 1964 by joining our government service. I was given a farewell in the Central Hall of the Central Revenue Building, New Delhi, at 4 p.m. Nice words were said about me. Whilst they said good words about me, I was weighing myself to feel how much I deserved them. In my reply I acknowledged my great debt to the Income-tax Department which I had served for more than three decades. Like Lord Denning, I quoted Lord Bacon:

"Hold every man a debtor to his profession; from which as men of course, do seek to receive countenance and profit: so ought they of duty to endeavour themselves by way of amends to be a help and ornament thereunto."

It was the ethos of this Department which became for me a chrysalis. A village-bred and muffed educated lad, who had studied English grammar on the mango-tree, or at the mound of hay, and enjoyed tending his cows with pleasure infinite, was transformed from dross to gold (at least in his assessment). His journey in life from literature to law has been through his days in the IRS. I ended my reply with two quotes: one again from Lord Denning who concluded his reply in his farewell speech saying: "I wish I could say as a great man once did when

his departure was at hand: 'I have fought a good fight. I have finished my course, I have kept the faith'"¹: the other from Osho's oeuvre. I render Osho's ideas, as I recall them, in English thus:

The *dharma* of a boat is to cruise on the water
It doesn't know where it must come to a halt.
If it comes to halt, it trembles even to capsize
If it keeps moving on, it goes on making waters tremble.

Once I asked an officer of proven integrity and acknowledged competence to reflect on his long years in the Income Tax Administration. Wistfully, he said that the story of the Tax Administration is virtually the myth of Sisyphus. In Greek mythology there is a story about Sisyphus. Camus has written *The Myth of Sisyphus*, Sisyphus worked hard to push uphill a stone that rolled down again and again. His toil was endless and fruitless. In my view, the metaphor expresses cynicism. It is interesting to mention that H.H. Monroe, Q.C. dedicated his book, *Intolerable Inquisition? Reflections on the Law of Tax* to the tax gatherers in the following words:

"These lectures are respectfully dedicated to those who truly endure the heat and bear the burden, Her Majesty's Inspectors of Taxes."

I never felt that I was like Sisyphus. I had problems but I took them in stride, and endured the heat and bore the burden in administering the tax law with satisfaction.

II

I had been transferred to Delhi in June 1997 as Chief Commissioner of Income-tax. I was asked to hold the Patna charge as my additional charge for some time. In New Delhi, I resided in Flat No.2.1, MS Flats, at Shahjahan Road just opposite the Union Public Service Commission. It was interesting that the landmarks of the beginning and the end of my service career met at Shahjahan Road. I was not sure whether my transfer to Delhi was in appreciation of my request, or because my continuance at Patna was irksome to persons who mattered. The ways of the administration are often mysterious.

On April 1, 1998, the Chief Commissioners of Income Tax and the Commissioners gave me a touching farewell. They presented to me the following books:

- I. *History of Western Philosophy* by Bertrand Russell.
- II. *The Rise and the Fall of Great Powers* by Paul Kennedy.
- III. *A History of God* by Karen Armstrong.
- IV. *The First Man* by Albert Camus.

The books were placed on a high table. Many of my distinguished colleagues signed these books. Some of them noted in the books some insightful comments and suggestions. I treasure them with a sense of gratefulness. Their hands kissed the pages. I felt that much thinking must have gone into the selection of these books. In the process of selecting these books they virtually evaluated me. On the title page of the *First Man* by Albert Camus, my friend O.P. Srivastava, Chief Commissioner of Income Tax Delhi-I, wrote: "Dear Shri Jha, Sending back to Literature". This cordial command was reinforced and reiterated by many others. These comments brought to my mind what Professor Mahendra Pratap,

my teacher at L.S. College at Muzaffarpur, had written in the testimonial he had given to me as the Head of the University Department of English. He had mentioned in his certificate that I was cut out for literature. I too often feel that somewhere in my life I lost my way.

When Lord Denning retired after a long and glorious career as a Judge, he replied to his farewell speeches at the Inner Temple. Perhaps, he had in his mind what troubles most persons on retirement. In his own characteristic way, he quoted Theo Mathew's advice on retirement given in his well-known *Forensic Fables*: The story tells us about a wise old bird who retired from the Bench the very moment he had done his 15 years. His friends told him that he would be bored to tears, probably he will pass away in near future. The story tells us that he organized his post-retirement period so well that he lived long and lived well. It is interesting to consider the way he lived after his retirement. It is interesting to read in the words of Theo Mathew as quoted by Lord Denning in his *The Closing Chapter* (p. 37)

"The Wise Old Bird took a Nice Little Place in the Country, and Thought Out an Admirable Routine. He Rose Late, Breakfasted Comfortably, Read The Times (Skipping the Law Reports) and had a Look at the Pigs. Then he Lunched and Read a Novel. At Four-Thirty the Wise Old Bird Took a Cup of Tea and had Another Look at the Pigs. At Seven-Thirty he Dined, Finishing up with Two Glasses of Vintage Port, an Old Brandy, and a Cigar. Before Retiring to Rest he Consumed a Stiff Whisky and Soda, and had Another if he Felt he Wanted it....The Wise Old Bird Firmly Declined to be Bothered with Quarter Sessions, Petty Sessions, or Any Nonsense of that Kind. He thus Survived to Celebrate his Ninety-Eighth Birthday and had the Extreme Satisfaction of Outliving All his Contemporaries. Moral. - Retire."

Shri Shree Narayan Singh was one of my colleagues during my first phase at Patna (1965-75). He loved quoting Vidyapati and Tulsidas. We had shared many unforgettable moments of delight and distress. He retired long back, and is settled at Ranchi. After several years of his retirement, he met me while I was having an evening stroll in the Lake area of South Calcutta. I asked him how he spent his time, and organized himself after his retirement. He said: "It goes on well. After my afternoon nap I go to a nearby Hanuman Temple where I recite the *Ramcharitmanas* to Hanumanji." I told him: "Well, You have made Hanumanji your captive audience. It is good. It is said that, Hanumanji manifested Himself to Tulsidas on the bank of Chitrakoot. Who knows, someday he would manifest Himself to you in the temple." He smiled and said, "That would be His Grace. For a few months I recited the *Ramcharitmanas* when the Lord was the only listener. Later on, many persons started coming to listen to my recitation. I am happy and satisfied."

Organizing oneself after retirement becomes a great task. Most retired persons remain nostalgic about the past. Either they hate it, or they remain emotionally attached to it. In season or out season, they go back to their lost years narrating this or that; thus cruelly taxing the patience of their listeners. Osho has given a graphic account of the plight of the retired officers in his own characteristic way in his *Ashtavakara Maha Gita*.² You may read it in the 'Notes and References' of this Chapter.

It was the morning of April 5, 1998. I was sitting in my balcony at my M.S. Flat at Sahjahan Road in New Delhi. My wife had brought a cup of tea which I was slowly sipping. I was observing the storm of my life in the ripples of my tea-cup. My mind went back. I was surely not what I had been when I had joined the University as a lecturer in 1960, or the Indian Revenue Service in 1964. I had suffered a massive heart attack, and had undergone three invasive cardiac procedures of angioplasty. I picked up a book, and flipped through it. I read what Seneca, a Roman Stoic Philosopher (c.1 BC – 65 AD), had said in his dialogue '*On Tranquillity of Mind*':

"If Fortune has removed you from the foremost position in the state, you should, nevertheless, stand your ground and help with the shouting, and if someone stops your throat, you should nevertheless stand your ground and help in silence. The service of a good citizen is never useless; by being heard and seen, by his expression, by his gesture, by his silent stubbornness, and his very walk he keeps... Why, then, do you think that the example of one who lives in honourable retirement is of little value? Accordingly, the best course by far is to combine leisure with business,for a man is never so completely shut off all pursuits that no opportunity is left for any honourable activity".

It was inspiring. It led me to pray to God that in the rest of the years of my journey in the world, I should never be (to say in the words of T.S. Eliot): "Like a patient etherized upon a table".

NOTES AND REFERENCES

1. Lord Denning, *The Closing Chapter* pp. 20-21
2. The psychologists say that men after retirement die early. The difference is of ten years, not a small period. The man who can live upto 80 years when he retires at 60, he dies at 70. That man could have lived for eight decades. There was no reason for his death. But one cause he had. He was a Collector or a Commissioner or a Police Inspector or even a Constable or a School Teacher. Even a School Teacher has his ego. He too has his own world. He keeps his hegemony certainly at least over 30 or 40 students. He controls them, he is the emperor there. It is said when Aurangzeb imprisoned his father. His father told him that he didn't like that place. He asked his son to send 30 or 40 small boys so that he could open a school. It is said that Aurangzeb said that though his father was in jail, his ego had not ceased. He intended to lord over 30 or 40 students. Aurangzeb made the requisite arrangement. Even a Teacher of a small school is the King in world of 30 or 40 students. Even the greatest Kings would not enjoy so much of majesty. If he commands them to stand up, they stand up; if they command them to sit down, they all sit down. Everything is in his hands whether a School Master, a Collector or a Deputy Collector or a Minister, whosever he may be, once he retires his power is gone. Nobody greets on the way now: nobody realises his relevance. He appears useless as if thrown on the heap of garbage or hurled in junks. Now he is not needed. People tolerate him but from their response it is clear that they suggest: "Please leave me. Forgive me. Now for what have you come here? Let others work." They were the persons who danced around him. Now they just evade him. They were the persons who, once, massaged his feet; now they are not to be seen. Now suddenly the balloon of ego shrinks; as if the balloon is punctured and the trapped air is getting out. Now life has lost meaning. And death-wish stands generated. He starts thinking: Now it is time for me to die. After retirement persons die early. This was because the whole strength of life lay in his empire, now lost. Someone is the Head Clerk: he had some clerks under him to exploit. Your status does not make any difference. You may be a peon. But even the peon has his ego. When you go to an office then observe the peon. He is on his stool sitting outside: mark his arrogance. He tells you, "Stop". [Vol. I p. 67]. (translated from Hindi).

244
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BOOK III
ILLUSION AND REALITY

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19

UNDERSTANDING THE IMAGERIES AT THE SUPREME COURT OF INDIA

(i) Introduction

Shortly after my retirement in March 1998, I joined the Bar at the Supreme Court. I joined the Bar without having cultivated contacts on whom I could bank on for help. I joined the Bar because I could think of no other pursuit for which I could go. I joined it with the words of Seneca in my mind, which I have already quoted in the chapter on 'My Retirement': "The service of a good citizen is never useless".

The lawyers I met there in the campus were not much different from those who had been portrayed by Chaucer in his *The Canterbury Tales*, written in the 14th century. The variety in the specimens of the *homo sapiens* as we see in *The Canterbury Tales* couldn't be found in that medley of *homo juridicus* in the campus of the Court. Now the lawyers seemed to me as a monochromatic community of the *homo economicus*. They seemed to me the latest versions, or editions, of the Man of Law whose mirthful portrait Geoffrey Chaucer had drawn up in the Prologue to *The Canterbury Tales*. Like their fourteenth century counterpart, my learned friends, to say in Chaucer's words, "rood but hoomly in a medled coote", and were busy overmuch believing, as that Man of Law had believed, it was easier to find lost cattle than lost time.

I felt lonely in the crowd, but I found a lot of things of much interest. I spent some time in the Library 1. I found many learned friends either busy breaking the wings of butterflies on the Catherine wheel of logic, or criticizing (or admiring) the idols they were accustomed to worship (I mean, the Honourable Judges), or just talking, without rhyme or reason, about kings and cabbages. Finding not much interest in all that they did, I loitered to see if there was anything else to draw my interest. I recalled the days of my adolescence when I had seen many 'brief-less lawyers' in the Darbhanga district court responding to the cuckoos on the trees. I felt none could develop this expertise in Delhi as cuckoos had already deserted Delhi! It was in course of my quest in vacant mood that I reflected on the imageries with which the campus abounded. In this Chapter of my Memoir, I intend to dwell on them as a token of my gratefulness to their makers, and also towards those who added poetry to otherwise dull prose that our forensic process is.

The imageries I saw at the Supreme Court led me to reflect on the possibilities of studying them reflectively. I had plenty of time to stand and stare at things which invited me. I had opportunities to see, in my changing moods, those images in shifting light and shade producing charming chiaroscuro effects. I know it is difficult to portray with fidelity what I had felt seeing them for the first time. I saw the images before my mind's eye, and I responded to them with my total self believing in what T.S. Eliot said:

Time present and time past
Are both perhaps present in time future,
And time future contained in time past.

(ii) The imageries are metaphors; the visuals make poetic statements

Imageries express ideas with precision and concreteness. They communicate with directness. They work on the mind of the observers at times as stimuli, at times as catalytic agents, and also at times to provide a sky in which mind can explore things which enrich and enlighten. They deepen insight, and enable us to see things at several levels.

The title to this Chapter of my Memoir harks back, in my mind, to my fragrant years when as a Post-Graduate student I had studied Caroline Spurgeon's *Shakespeare's Imagery and what it tells us*. What had impressed me most was the way Spurgeon had widened the province of 'imagery'. 'Image', for her, was much more than visual representation: it was for her a kind of imaginative expression of emotions and feelings with metaphorical or analogical references. Whilst Professor Mahendra Pratap concentrated more on the evocative impact of Shakespearean imagery, my another teacher, Prof. Sri Krishna Mishra¹, stressed more on what he called the *sphota* ('the explosion') coming from the imageries. This word of Sanskrit poetics is difficult to be translated into English. It suggests the 'eruption' of meaning from a word, or an image, with its full effulgence and resonance suggesting a province of the evocative experience the confines of which are determined only by the reader's own imaginative and intellectual reach.

Discursive exposition narrates facts but imagery stimulates and evokes. Ezra Pound perceptively said: "...the image is more than an idea. It is a vortex or cluster of fused ideas and is endowed with energy". It seems the imageries at the Supreme Court constitute a 'concrete verse' that expresses the collective consciousness of our Constitution. What our Constitution says through its myriad provisions, the imageries suggest poetically and profoundly through traditionally conceived cultural and visual metaphors. In this Chapter, I focus on certain imageries at the Supreme Court. I have seen them in my light which was often dim, often bright, and often blurred.

(iii) The impression we get from the architecture of the Supreme Court

When in April 1998, I visited for the first time the campus of the Supreme Court of India, my memory leaped back into my dim past when I had to keep a vigil on the weighman, weighing paddy (punctuating each counting uttering 'Ramahiji Ram'). Whilst the weighman kept weighing paddy, or wheat, ceaselessly for hours, I kept observing with utmost concentration that nothing wrong

was done by him through the sleight of hand, or any other variant of that craft. Later, whilst at school, I went every morning to the vegetable market, called Gudari at Laheriasarai, to buy vegetables for our kitchen. I had seen the tricks galore which the vendors practised often unnoticed and uncaught. Now we see that craft brought to perfection under this *Pax Mercatus* where the *entente cordiale* of fraud and collusion rules the roost under the guidance of the economic experts! (More of this later in this Memoir). Those experiences of my childhood and adolescence hibernated all along in my mind; buried, but not dead, in my mind's deep well. I got carried, in my mind, back to the years when every evening I sat on a straw-mat in the light of an earthen lamp, and my mother told me stories of birds and beasts, of ghosts and gnomes, of crooks and knaves, of saints and sinners, and of this or that. One of such stories related to the Tuladhar of Varanasi illustrating the cultural and spiritual qualities which the holders of the scales must possess. This story leaped into my consciousness on seeing the architecture of the Supreme Court. I would tell you about this story later, and I am sure you would be able to understand my logic of analogy between the said architecture and the story.

Any visitor at the Supreme Court is charmed first by the classic grandeur of the architecture of the building. Even its exteriors delight. How accurate was Goethe in calling architecture frozen music. The mural and other images reveal poetry in pictures. The French painter Charles Alphonse Du Fresnoy said in his *De Arte Graphica*²:

“A poem is like a picture; so a picture ought to try to be like a poem.... a picture is often called silent poetry; and poetry speaking picture.”

The building of the Supreme Court is majestic and gorgeous, but what makes it a living poetry is, besides its other features, its structure cast in the balance with two prolongations at its extremes suggesting the scales. The Judges of the courts dot the balance to hold (uphold) it even. [It is true that certain court rooms create asymmetric pageantry, but the broad imagery of the Judges at work in the courts, balancing the scales of Justice, remains a dominant impression.] I felt that the metaphor, which the exteriors of the building unfolded, got illuminative reinforcement through the imagery inside the court room. The Judges sat on the elevated dais projecting a vibrant imagery of the balance. The room lay-out resembled the two extremes of the balance metaphorically suggesting the two pans on which the rival litigants placed their contentions for the Hon'ble Judges to weigh them, and play Daniel. I was thrilled by the gestalt effects of what I saw. This rich extended imagery can never go unnoticed: though I am not sure that lawyers, except perhaps the briefless ones, have time to stand and stare to appreciate the sonority and subtle cadence of the beauty and music of the images, whether taken in isolation or in synergy.

The architecture of our Supreme Court was designed on an epic scale in tune with the importance and dignity of the Court. Its massive tall colonnade, with well wrought ornate capital supporting its majestic structure with a surmounting dome, suggests the paramountcy of law and justice in our society. Its massive rounded columns united the best features of the Corinthian and the Doric styles of architecture. Its entablature, with its classical simplicity, and its frieze with rich elegant imagery, kept mind preoccupied for hours while I warmed up at the outer

veranda. What drew my mind most was the aura, and the moral tone exuded by the architecture of our Supreme Court. Architect Cass Gilbert and his friends, who were charged by Chief Justice Taft and Chief Justice Hughes to design the building of the Supreme Court of the United States, succeeded well in yoking together art and philosophy expressing the vision of that nation. Our Supreme Court too is an excellent piece of art illustrating exquisitely the sensuous shining forth of ideas which our Constitution's heart treasures, and into which its value system is firmly anchored.

(iv) The Mural³ that evokes and suggests

“Beauty in things exists in the mind which contemplates them.”

David Hume's Essays, 'Of Tragedy'

Justice Jagannadha Rao has accurately drawn up the word-picture of the mural on the coloured marble tiles constituting a rectangle between the two doors to the Chief Justice's Court room from the Judge's wing. The mural's graphic portraits have been drawn up with utmost fidelity and perspicacity:

“... there is in the centre a rectangle in marble tiles with its length vertical, with six small lotuses on the smaller horizontal top and six on the corresponding horizontal bottom side. There are sixteen small tiles of peacocks on each of the two longer vertical sides. Between the Mahatma on the left and the Goddess of Justice on the right we have the rectangle. At the centre of the rectangle there is *dharmachakra* (wheel of justice) with twenty-four spokes and with an inscription below in Sanskrit which reads 'Satyamevoddharmam' which means 'Truth alone I uphold'.”

The said mural is drawn at a place where the imageries can never go unnoticed by the Judges, but what they draw from the symbolic representations on the mural largely depends on what they themselves are. We can see the exquisite photographs of the said suggestive images at pages 42-43 of *The Supreme Court of India: Sentinel of Freedom* published by our Supreme Court. The images on the mural seem to constitute an extended metaphor of high juristic ideas dear to our nation's 'We, the People'.

The mural on the tiles between the two entrances from the Judges' wing to the Chief Justice's Court display lotuses in full bloom on the top and at the bottom of the rectangle at the centre of which the *Dharmachakra* is portrayed. The lotuses tell our Hon'ble Judges what constitutes the very basic ideas of the Administration of Justice. A lotus grows above water, with its tendrils inside water and mud, teaching how to live and work with detachment. This quality of the art of life has been expressed in the *Bhagavad-Gita* through the profoundly suggestive expression: 'पद्मपत्रमिवाम्भसा' in a *shloka* (Ch. V.10) which has been thus rendered in English:

'Offering actions to Brahman,
Having abandoned attachment,
He acts untainted by evil
As lotus leaf is not wetted'.⁴

The judicial process requires that our Judges must not be indifferent to what our jurists and logicians called *Jal Pankaj Nyaya* (the logical relationship between water and lotus).

The 16 peacocks on each of the two vertical sides of the rectangle of the said mural remind us of our cultural variegation, and of our country as a multi-colored dome of a rich ancient civilization. The beauty and joy that the birds exude invite us to reflect both on our pursuits and expectations in life in our constant collective efforts to achieve beauty and joy. These birds dance to give us delight, and through their amorous idioms they pray to Lord Indra for rain. Besides, they remind us of Krishna too whose 16 *kalas* are suggested by the 16 peacocks, the pointers to the infinitude and plenitude of Krishna one of whose incarnations was Buddha Himself (‘केशव धृतबुद्धशरीर जय जगदीश हरे’) whose *dharmachakra* is also drawn up in the mural.

Gandhi, in the said mural, is in his *Dandi March* posture, agile, forward-looking, commanding, on his grand journey forward on the ridge of history. His gait and demeanour revealed his obedience to an inner call to march ahead towards his great mission. The verve that the image exudes recalls the Gandhi leading the Civil Disobedience Movement in our Struggle for Freedom. The agile rhythm of his fast advancing steps; the virility, simplicity, and the firmness of his body; the forward-looking visage amply revealing a mind concentrated on the objective of his pursuit; the length and strength of his lathi, have a powerful effect on mind. On seeing this image of Gandhi, one is reminded of the *Bhagavad-Gita* (Ch. II.47), which tells us that our right is only to act, not to its fruits.

Below Gandhi’s image, the mural has two images of the spinning wheel. On seeing them my mind went back six decades when I was regularly spinning on this wheel we called *arbarachakra* (a portable variant of the spinning-wheel). Every week we had in those days spinning-wheel class at my school, M. L. Academy at Laheriasarai. With remarkable inner pride I carried to my school my *arbarachakra*. We were taught that the spinning wheel represented a creative matrix in every household. It was integral to the economic model dear to Gandhi which, over years, would have led our country to set up many mini-economic ventures in our rural society. Besides, the spinning wheels could have provided jobs to the most marginalized amongst our people, and would have saved many from worthless and foppish distractions. Gandhi would have preferred the image of the spinning wheel at the heart of our national flag as an edict of *karmayoga*, and as a pointer to the direction of Indian economy. Many amongst our young friends might not have even seen how the spinning wheel looks like. But the spinning wheel is of great value as a potent synecdochic metaphor. It is an irony of our nation that despite all these, we have allowed ourselves to become converts to neo-liberal capitalism by assiduously building up what I call our ‘Taj Mahal Economy’ about which I would write something⁵ more later in this Memoir.

At the heart of the said mural is the *Dharmachakra* with 24 spokes (as in the Sarnath lion capital). The path of salvation, the Buddha said, required obedience to the Noble Eightfold Path symbolized through the *Dharmachakra* showing 8 spokes in the wheel. It seems that by Ashokan time the virtues of the Noble Eightfold Path were spelt into 24 virtues represented metaphorically by the 24 spokes. Whatever the Buddhist ethnologists may say, I see in the *Dharmachakra* only the grammar of action (*karma*) that was stated with beauty and profundity

in the *Bhagavad-Gita*. I would touch this point again later, when I reflect on Sri Krishna. Over years, my reflections on the imagery have led me to believe that the '24' spokes represent the eight paths towards enlightenment which can be pursued by people with *sattwik*, *rajasik* and *tamsik* traits (eight multiplied by 3) to which the *Bhagavad-Gita* refers as the natural track for growth towards salvation open to all. I need not indulge into metaphysical speculations. I simply highlight the symbolic value of the imagery. I pray to God that our Hon'ble Judges see the images every day, and realize their wholesome import to save our millions, to the extent their creatively expanded role under our Constitution permits, from the agony of the Wheel of Fire on which most of our brothers and sisters are bound.

'Satyamevoddharmyam' & 'Satyameva Jayate'

'*Satyamevoddharmyam*' means "Truth alone I uphold"; and '*Satyameva Jayate*' means "Truth Alone Triumphs". Both the expressions stress, in effect, on the sovereignty of 'Truth'. Writing about the *Mundaka Upanishad* (in which the mantra *Satyameva jayate, nanritam*⁶ occurs), Eknath Easwaran has aptly stated: '...the pregnant concept *sat*, or *satya*, means "truth", "the Real", and "the Good"'.⁷ It is interesting to find that our country has valued Truth so much that it has conceived God Himself as Satya Narayan (the Lord of Truth).

I feel the best way to comprehend the *Bhagavad-Gita* is to read its text in the context of Krishna's own life. The imageries on the murals deserve to be kept in mind whilst interpreting our Constitution, and administering justice. This pursuit would combine tradition and individual talent. It will also help us to evaluate the propriety of our decisions made day to day, and will help us avoid critical traps obstructing right comprehension. It would have been better if the replica of the mural would have been provided also on the front wall of the Supreme Court for the lawyers and litigants to ponder over. Besides, I would suggest to the Supreme Court to place the images of the mural in the public domain through its website, marked with excellence that characterizes the website of⁸ the Illinois Supreme Court Courtroom. The murals there have audio-visual effects. One thing I must point out that whilst the murals in the Illinois Supreme Court Courtroom reveal an individual⁹ artist's comprehension of justice, the murals in our Supreme Court are from varied cultural sources spreading over time from Krishna and the Buddha to Mahatma Gandhi: a mind boggling span of years. Before I move to reflect on the Goddess of Justice, I would quote myself on my view of the cosmic flux in which all deeds, good or bad, take place:

संसार की गति सर्पिल सर्वदा
चलती अहिर्निश प्रवाहित पुष्प सी

[The ways of the world are serpentine. The world moves on time as do the flowers when offered ritualistically into a river flowing fast].

(v) The Goddess of Justice

तौलती हो तुम तुला सबको मगर
तुलित होती हो सदा अदृष्टि से
झुक न जाना कभी निज कर्म में
पर छद्म में, भ्रममें, त्रिमोह-प्रभाव में

[The balance that weighs gets itself weighed by destiny. O Scales!
never tilt through sleight of hands on being trapped by deception,
illusion, or lust.]

Now on the image of the Goddess of Justice holding a balance with scales. On the right side of the rectangle stands Goddess Justice, whereas on the left is seen Gandhi on march. The eyes of the goddess are not blindfolded. On seeing her, a lot of ideas welled up in my mind. The Goddess is a conflate of several noble ideas from different civilizations. In the ancient Hellenic world, she was 'Themis' representing the cosmic moral order whose commandments were administered by her daughter, *Dike* (the Instrument of Justice) who carried scales to weigh the acts and deeds of the humans. The great tragedies of Aeschylus, and Sophocles, of Shakespeare and Racine, all demonstrate through the tragic ends of their protagonists the triumph of the moral order (which is 'Themis' or 'Justice'). In her early icons, Themis was not shown blindfolded, nor did she carry a sword. How could Justice be blind? In the tragic dramas of Aeschylus and Sophocles, she administers her even-handed justice weighing pros and cons with remarkable agility and unfaltering certainty. Her Roman version was Lady Justice, a brilliant anthropomorphic representation of Justice. But she was not shown blind-folded. Rome had become hegemonic but its moral decline reached its worst. The system of justice stood degraded in alarming measure during the Herodian establishment: it had executed Jesus. That Lady Justice couldn't see why and how Pontius Pilate, the judge, went wrong at the trial of Jesus. It is understandable why in such situations, Goddess Justice was portrayed blind. We realize that Justice can never be blind. Lord Denning aptly said in *Jones v. National Coalbord*¹⁰ :

'It is all very well to paint justice blind, but she does better without a bandage round her eyes. She should be blind indeed to favour or prejudice, but clear to see which way lies truth: and the less dust there is about the better.'

It is believed that the Goddess, with a blindfold, suggests the detachment without which administration of Justice is impossible. Justice must see realities of our society to respond to the deeds of Adam Smith's 'Invisible Hand' of the Market, and also the misdeeds of the economic gladiators of our days. But the Goddess without a blindfold may not always be just. The eyes have a limited role in perceiving things to decide issues. Often one sees only what one's mind wants to see. Problems and realities provide external stimuli which our neurons carry to mind which shape our response conditioned by our 'pre-conceived notions, concealed references, cultural orientations, and various noble or ignoble extraneous factors'. When all is said, the most needed pre-requisite for justice is the judicial sensibility of the judges. Justice Cardozo explained how the best judges worked "informed by tradition, methodized by analogy, (and) disciplined by system". Yet in life's frustrating criss-cross, the image of the Goddess assures us with some soothing vernal breeze. More she reigns with majesty, higher we ascend in culture and civilization.

Now I would tell you the story of Tuladhar of Varanasi, which I had heard from my mother. It deserves to be read by all those who weigh things, the judges included. The story carries some message for us in this Market-ruled world. The *Mahabharata* (in its 'Shantiparva') tells us this interesting story. Jazali was a great sage who underwent a most rigorous penance to acquire supreme wisdom. A

moment came in his life when he felt that he had acquired the highest bliss of wisdom. He grew egocentric. Whilst he enjoyed such inflated notions about himself, he heard a voice from the sky: "O Jazali, never think this way. You have not achieved the distinction that Tuladhar of Varanasi has achieved. But even he does not harbour such notions about himself." Jazal grew eager to meet Tuladhar. After much roaming, he reached Varanasi, and called on Tuladhar. Jazali found Tuladhar at work as a trader selling wares. For Tuladhar, trade was the means of livelihood. After the exchange of pleasantries they discussed issues pertaining to *Dharma*. Jazali sought at the outset a clarification: "Tuladhar, You are a trader selling wares for your livelihood. How could you acquire deep and true insight into *Dharma*?" The trader told him that he never economized with truth, never swindled anyone in course of his vocation, never transgressed the norms of propriety and good conduct. Holding his scales even, Tuladhar told Jazali : (to quote from the *Mahabharata* itself) :

"Neither I endeavour to gratify anyone, nor I nurse any grouse against anybody. I see all the living beings equably and without discrimination.

See, O Jazali, this is my steadfast conviction and the norm of conduct.

O Saint, see that the scales I hold are the same for all, my balance weighs wares for all with the same fairness."

I have not heard any story so expressive as the story of Tuladhar. It tells us about certain fundamentals of the administration of justice. Our Judges and the lawyers must reflect on the metaphorical implications of this story.

On being weighed in the balances

This preoccupation of jurisprudence, ancient and modern alike, with the imagery of the scales suggests the profound principle that all the players in the litigious process are weighed, in their distinctly characteristic ways, on the scales; and there is a standing risk that derelictions would invite verdict of the sort given by Daniel "You have been weighed in the balances and found wanting." In his *The Closing Chapter* at p. 277. Lord Denning explains with remarkable felicity: "Why does justice carry a balance in her hand with lifted scales? This is plain. It needs no justification. The balances have always been the symbol of even-handed justice." He refers to this metaphor of balancing the scales in *Jones v. National Coalbord* where he said:

'Let the advocates one after the other put the weights into the scales — the 'nicely calculated less or more' — but the judge at the end decides which way the balance tilts, be it ever so slightly.'

Even the Hon'ble Judges are weighed by the omnipotent brooding Justice to which all are subject. The Judges dot the balance but get weighed nevertheless. If they through design or carelessness, even care-freeness, tilt the balance unfairly, they invite on themselves, as a matter of course, Daniel's Judgment. The round majestic dome is the veritable fulcrum of the imperious Old Court building. It is *Dharma* that upholds and sustains the fulcrum of the balance of the judicial scales. I often remember the pregnant words of Lord Akin in his dissenting Judgment in *Liversidge's Case* in which he had appealed to the "the brooding spirit of the law". We all together must try to tread on the straight-line

which Ernest Barker described to Albert Einstein: “If at your command, the straight lines have been banished from the universe, there is yet one straight line that will always remain –the straight line of right and justice.”

As a student of law, literature and philosophy for over six decades I have felt that Justice often dithers, or is often betrayed even without realizing. A most widely noticed fault has been highlighted by C. K. Allen in his *Law and Orders* 3rd ed. p. 297:

“In *Liversidge v. Anderson* the majority of the Lords felt the same confidence in the wisdom and moderation of executive officials; there is, apparently, something in the tranquil atmosphere of the House of Lords which stimulates faith in human nature. The fact, is, however, that nobody on earth can be trusted with power without restraint. It is ‘of an encroaching nature’, and its encroachments, more often than not, are for the sake of what are sincerely believed to be good, and indeed necessary, objects.”

The holding and upholding the balance of Justice is to tread on the razor’s edge, an image of profound depth found in the *Katha-Upanishad*. Somerset Maugham used its English rendering as the title of his famous novel *The Razor’s Edge*. Of all the paths in the Noble Eightfold Path of the Buddha (Right Views, Right Aspirations, Right Speech, Right Conduct, Right Livelihood, Right Effort, Right Mindedness, and Right Contemplation)¹¹, the Right Contemplation (needing right comprehension) is the most important as without it one cannot decide what is really good. But this topic makes my mind to leap back to the years when Prof. Pratap, who had studied for his English Tripos at Cambridge University in the thirties of the last century, had taught us practical criticism. We read how psychological road-blocs and inner disposition shaped one’s comprehension. The great British tax-lawyer Hubert Monroe has aptly said: “...that obscurity and absurdity too, may sometimes rest in the eye of the beholder”. But I must not pursue this point here.

(vi) Kaliyugi administration of Justice

This context takes my mind to what is called ‘the *Kaliyugi* administration of Justice’. An insightful reflection on the administration of justice in our degraded times is given in the most celebrated 10th century *Srimad Bhagavad-Mahapurana* (XII.2.). It tells us in two of its mellifluous *shlokas* about what ails the administration of justice in our times:

वित्तमेव कलौ नृणा जन्माचारगुणोदयः ।
धर्मन्यायव्यवस्थायां कारणं बलमेव हि ॥
लिंगमेवाश्रमख्याताबन्योन्यापत्तिकारणम् ।
अवृत्त्या न्यायदौर्बल्यं पाण्डित्ये चापलं बचः ॥

I render the above Sanskrit *shloka* into English.

“In *Kaliyuga*, the wielders of power would succeed in tilting the scales of Justice in their favour. Those, who cannot bribe, may not expect Justice in the courts. Those, who excel in legal sophistry and logomachy, would alone be considered pundits (the lawyers?) scaling height in proportion to their attainments in such crafts.”

We quite often see how justice is hurried to get buried, and how justice is delayed to the point where it stands denied. Obtaining justice is most often becoming costly and bothersome. New versions of Charles Dickens *Bleak House* (where the litigants lost in expenditure all that he had expected to gain from the litigation) keep coming to the mind. To most of the common Indians, the judicial exposition, with all its technical abracadabra and western borrowings, seem commandments from some other world (reminding one of the trial, at the Red Fort, of the helpless and hapless last Mughal Emperor who didn't understand anything of the pleadings made ferociously against him in English).

The biggest problem in the administration of justice is how to keep the scales of justice even. The apprehension of corruptions polluting the stream of justice is now widely shared though effective ways to correct them are seldom seen to have been taken. Forensic skill is seen to find its climax in the craft of just winning a point at all costs. The *Bhagavad-Mahapurana* had said precisely what Karl Marx stressed later that the economic sub-structure shapes socio-political and jural superstructure of a given society. Didn't Bhartrihari say *sarve gunah kanchanmasrtanti* (All the good qualities reside in gold alone)? I felt how accurately the 10th century *Srimad Bhagavad-Mahapurana* (XII.2. shlokas 2, and 4), quoted above, reflected on the conditions to which we feel we stand betrayed:

A reflection on this critique of our legal system in the *Mahapurana* may help our friends in black robes to have the right perception of their duty in the administration of justice. To say the obvious, a pre-condition for this pursuit is a coherent value system with a steadfast commitment to promote public weal. Many great judges have treaded this path well. One such judge was Lord Denning. Analyzing his judicial approach, Prof. Schmitthoff observed:

"He thinks of the result before he considers the legal reasoning on which it has to be founded. If the result to which established legal doctrine leads is obviously unfair or out of touch with what ordinary people would expect to be the law, he will examine first principles in order to ascertain whether they really compel an unjust solution and often this method will enable him to arrive at an answer which is more adequate to modern needs."

I would end this segment with a few lines from the epic *Kurukshetra* of Ramdhari Singh 'Dinkar':

न्याय शांति का प्रथम न्यास है जबतक न्याय न आता,
जैसा भी हो, महल शांति का सुदृढ़ नहीं रह पाता¹²

[Justice is the prime condition for peace. Till justice does not prevail, the castle of peace cannot survive.]

(vii) The Emblem of the Supreme Court

On ascending the stairs of the massive and sprawling platform to the Supreme Court building, I was charmed by what appeared to me, from a distance, a vermilion-mark on the forehead of this Lady of Justice, at the spot where under our Tantra we find the *Ajnachakra* on which the yogis concentrate while meditating. I learnt that it was the emblem of the Supreme Court. It exists on the wall just above the entrance to the Chief Justice's Court (Court No. 1).

I felt that a full treasure of evocative ideas had been delightfully emblemized in light saffron images etched in the plaster of Paris relief. The base seemed to show how two snakes, coming from two opposite directions, curve to dip their heads in a coil alluding the source of human power and creativity known as the *kundalini* in our *Yoga* and *Tantra*. Above it, in the semi-circular stretch of a strip, is inscribed the immortal dictum of the profoundest truth: *Yato Dharma-stato jayah*.¹³ One is enraptured by the ravishing, well modulated, realistic lions in their most majestic but placid mood taken straight from the capital of the ancient Sarnath Ashokan pillar which Ashoka had erected at the place where the Buddha had proclaimed his *Dharma* revealing the very grammar of human life. Through the imagery of the lions, standing back to back facing the four directions, it was announced to all the triumph of *Dharma* in all the quarters of the universe. The Sarnath Ashokan lion capital surmounts an inverted lotus, often called the Persopolitan Bell. On it the Persian impact is obvious. We know that we had come in close contact with Persia and Macedonia during the days of Chandragupta Maurya. The inverted lotus brings to mind the image of the *samsarbrikchha* (the cosmic tree) with roots above and branches luxuriating down (described with high poetic precision in Chapter 15 of the *Bhagavad-Gita*). But the bell was excluded from our national emblem, perhaps for aesthetic compactness; and also because it was more appropriate to let the whole superstructure have its subjacent foundation on *Satyameva Jayate* ("Truth Alone Triumphs"), a *mantra* from the *Mundaka Upanishad*. What struck me most was the wise creativity emerging assertively in the emblem of the Supreme Court. It showed a beautifully carved *Dharmachakra* placed above the lions, its width suggesting its comprehensive dominance over all mortal powers. Even this Sarnath pillar had a wheel above its crest representing the universal triumph of *Dharma*. It is said that this wheel was destroyed during the Turkish invasion. How this might have looked before its destruction can be imagined by looking at the image of the Ashokan lion capital at Wat U Mong near Chiang Mai, Thailand, with well-wrought *Dharmachakra* at the crest of the lions. The Chakra suggests the subservience of all powers to the discipline of *Dharma*. The crest of *Dharmachakra* above the lions in the emblem of the Supreme Court, exfoliates the immanent presence of *Dharma*. And *Dharma* is the most powerful and accurate measuring-rod to measure all acts: it is also the most potent catalytic agent in the universe to ensure the unfaltering operation of the infallible Justice. The abacus of the capital bears a frieze with the images of an elephant, a horse in motion, a full-grown bull, and an imperious lion marching in languid rhythm each separated by a chariot wheel (the *Dharmachakra*). The wheels in motion suggested *Dharmachakra* which suggests to us that the universe is just *kriya* (action), and human life mere *karmasamigri* (instrument of action). The upward thrust of the conjoint images of the emblem of the Supreme Court, and their synergic effects bring to one's mind an *augustpradeep* (an earthen lamp) the flame which sheds light, *tamso ma jyotirgamaya* (lead us from darkness to Light). It can also be said that the imagery is choreographed with upward rhythm of a lotus in bloom to suggest that the *kundalini* at the base (in *muladhar*) is rising towards the *Dharmachakra* which is no different from the *Sahasrarachakra* of our *Tantra*. The overall thrust in the pattern of the images would invite the Judges, the litigants and all others who see it, to strive to be, what the Buddha had

asked people to be in words of immortal poetry: '*App dipo bhavah*' (Be thy own Light).

In England, the Superior Courts are answerable, as Holdsworth says, "only to God and the King". Under the Constitution of India, the King or the Queen is non-existent, and God is not relevant to the polity or governance: at least this is what they say. Then to whom are our superior courts answerable? Our Constitution, which we have given to ourselves, contemplates no Grand Mughals. Our superior courts are answerable to the high institution of Judiciary itself: Justice being its sole guiding star. Hence, in India miscarriage of justice can be remedied only under a system of institutional accountability. Our Superior Court is answerable to itself as an *institution*, and ultimately to *Dharma*.

(viii) On the Chakra

The adoption of the image of Chakra at the centre of, at the heart of the flag, illustrates the profound insight of those who selected that image. I have always felt that this 'Chakra' on the flag is to be understood in a frame of reference wider than that conceived by the Buddhists.

I feel like conceptualizing three Chakras, though all these tend to become one in divine dispensation. First I conceive the *Kaalchakra* (the wheel of time). The great poet Bhartrihari has beautifully portrayed its inexorable working in his lines which I have quoted in Chapter 8 of this Memoir. It is within this domain where, to say in the words of Shakespeare, "wasteful Time debateth with Decay". The cycles of life and death go on caught in the *Kaalchakra* (the Wheel of Time). This point is stated with precision in the *Hitopdesha* which says: चक्रवत्परिवर्तते दुखानि च सुखानि च (life keeps changing through sorrows and happiness). One is bound to act incessantly on this wheel. The *Srimad Bhagavad Mahapurana* tells us that 'action' alone can be one's teacher and God (कर्मैव गुरुरिष्टरह). But all that happens on the *Kaalchakra* are judged and controlled by the *Dharmachakra*. Gandhari illustrates the sovereignty of the *Dharmachakra* by pronouncing to Duryodhana that it is *Dharma* alone that ultimately triumphs. When, in bad times, the operation of *Dharma* gets obstructed, the *Kaalchakra* invokes God to let His *Sudarshanachakra* operate. Nowhere in the world you can find the supreme power of destruction called '*sudarshana*' (beautiful to look at). Our poets have called this wheel '*sudarshana*' because it restores harmony in the universe by destroying what is against *Dharma*.

(ix) On Dharma

The words of Gandhari, *Yato Dharmah stato Jayah* ('Where dharma is victory is surely there only'), are inscribed in Devanagari script on the semi circular strip on the Supreme Court's emblem.¹⁴ I wonder at the wisdom of the person who chose this expression for being inscribed on that. This supreme law ('*Yato Yato Dharmah stato Jayah*') has been referred at several places in the *Mahabharata* by persons like Krishna, Sanjaya, Vidura, Vyasa and Gandhari. Before going to the battle field, Duryodhana went to his mother Gandhari for her blessings to achieve victory. She blessed him telling: "victory would go where *dharma* resides". We all know that he fought bravely, but was defeated and killed.

When the devastating war of the Mahabharata was over, the Pandavas, with their supreme mentor Krishna, went to meet Gandhari. So sore was that pious lady that she decided to curse them for having destroyed her sons and many others most venerated by all. The great Vyasa could see through his inner eyes that the Pandavas would be cursed, and would have to reap the consequences of her wrath. He ran to Gandhari to dissuade her from doing what she had contemplated to do. He told her that what had happened was the command of *Dharma*, and accorded well with her own verdict. Listening to this, she gave up the idea of cursing the Pandavas.

(x) The Flag

From afar, the tricolour flag of our nation can be seen atop the portico, resting on massive solid round pillars with decorated frieze on the capital. The verandah is most often crowded by the lawyers in black coats, coming out and going into the court rooms with alacrity and pace as if the doomsday is just round the corner. Our nation's flag is an epic, a veritable reflecting-mirror of the values of our culture. We cannot be indifferent to this symbol of our nation. I was not much interested to know why and how the colours for our flag were chosen. What matters is the imagery it provides, and idioms in which it communicates. Its saffron top stresses not only the most admirable quality of detachment, but also it brings to mind the flag of Arjuna in the Mahabharata War, and also the great *Bhagwa* flag of our Shivaji the Great. The green down the flag represents the nation's commitment to agriculture, and our obligations not to pollute nature and environment. The central band of our flag bears the image of *achakra* (wheel) with 24 spokes. It symbolizes the famous Buddhist *Dharmachakra* suggesting our commitment to peace and spiritual values so important in our world of fast changing technology but stagnant, if not decadent, morality. I remember what decades back my father, himself a freedom-fighter, had told me that the *Dharmachakra* can turn into the *Sudarshanchakra* of Krishna, if *dharma* is ignored on account of the tainting factors like greed, lust, anger and fear. I enjoyed the great poetry expressed through the possibilities of the transformation of the *Dharmachakra* into the *Sudarshanchakra* to undo injustice. I always salute the flag once a day when I enter the campus of the Court. I wish the Hon'ble Judges and the lawyers should also pay a daily homage to our flag.

(xi) Musings on the Mahatma at the Supreme Court

क्यों दुखी और नतमस्तक, प्रस्तर बन बैठे हो ?
 समझ रहा हूँ दर्द तुम्हारे संवेदित मानस का
 अपनों से इतना विरक्त हो आत्म कष्ट सहने का
 आज देश तेरी बातों को भूल गया है जड़ से
 स्वार्थलीन भोगवादी बन इतराते हैं भ्रम से
 कहाँ खड़े हो फरियादी बन आज नजर नीची कर
 कौन सुनेगा जहाँ खड़े हो, किसको अब फुरसत है
 भीड़-भाड़ में एकाकी बन क्या चिंतन करते हो ?
 राष्ट्र नहीं है, पिता चिता में, सब कुछ तो बिकता है

[Why are you drooping with sad and stony face? It is easy to understand what gnaws in your sensitive mind that makes you sad, and so indifferent. The country has forgotten your instructions, and is fast turning hedonistic. Why should you be there as a humble suppliant with a downcast look? Who would listen to you, who has time left for that? Why are you thinking alone in the crowd? Where is our 'nation' now? Fathers have fallen, and everything is commoditized for sale.]

Two images, which drew me most to intense reflections, were the emblem of the Court with Gandhari's words inscribed on it, and the image of the Father of the Nation strategically placed on a pedestal perhaps to observe round the clock how the progeny of the Freedom Fighters manage the affairs of the State. I felt deeply drawn towards Gandhi's bust both for its symbolic value and aesthetic qualities. This bust of Gandhi is outside the Court's main building. It is in front of the Chief Justice's Court. Here he, with his down-cast visage and drooping eyes, seems to be experiencing pangs. The pangs of seeing the Father of the Nation thus downcast got enhanced on seeing his image on the high-value currency notes where he is shown bubbling with joy. I felt it was a sacrilege on the part of our Reserve Bank to select the image of vivacious and over-jubilant Gandhi for the currency notes! But Gandhi is not the first, nor will he be the last, to be damned this way. It was beyond me to comprehend why the Father of the Nation was so much downcast and morose. Is he so morose because he found that the *talisman*¹⁵ he had given to our decision-makers of the free India, was quoted at the zero price on the Stock Exchange! I could have asked Freda Brilliant Marshall, who sculpted the bust of Gandhi, or Dr. L. M. Singhvi, Senior Advocate, who had presented the bust to the Supreme Court¹⁶, to know what it was that had anguished Gandhiji. I hope persons abler than me would make that discovery someday. To assuage his sufferings; I intoned the following two lines from the end of the *Mahabharata* (in the 'Swargarohanparva') where the great Vyasa says: (translated from Sanskrit):

'By raising my both the hands, I shout to say (what is good for all) but none listens to me. Why do people not resort to *dharma* that gives wealth, power and energy all at once?'

(xii) Conclusion

The imageries at the Supreme Court impressed me. So I have reflected on them. My labour of love would be amply rewarded if my short and sketchy account makes minds abler than mine to reflect on them.

NOTES AND REFERENCES

- 1 He had taught me for 4 years at C.M. College at Darbhanga during 1954-58..
- 2 Wimsatt & Brooks, *Literary Criticism, A Short History* P. 264
- 3 As Justice Jagannadha Rao describes the mural in his article on 'Goddess of Justice: The Constitution and the Supreme Court' in *Supreme but not infallible* (Oxford). You can see its photograph at page 86 of the book.
- 4 http://www.atmajyoti.org/gi_bhagavad_gita_ch5.asp
- 5 Chapter 25 of this *Memoir*.
- 6 "Truth alone prevails, not unreality"
- 7 Eknath Easwaran, *The Upanishads* (Jaco) p. 181
- 8 <http://www.state.il.us/court/SupremeCourt/Historical/Artwork.asp> [accessed on Feb. 3, 2011]
- 9 Albert Henry Krehbiel (1873 - 1945)
- 10 [1957] 2 QB 55, 64
- 11 As translated in *Advanced History of India* by Majumdar, Roychaudhuri and Datta
- 12 Ramdhari Singh 'Dinkar' in *Kurukshetra*.
- 13 'Where there is Righteousness, there shall be Victory'
- 14 You may read the Sanskrit text, as in the *Mahabharata* (Striparva Chapt. 14. *shlokas* 1-13) ; and its English rendering, on my website http://shivakantjha.org/openfile.php?filename=pil/indo_mauritius_dtaa_pil.htm
- 15 Mahatma Gandhi had said (as displayed in Gandhi Smriti, Birla House, New Delhi):
"I will give you a talisman. Whenever you are in doubt or when the self becomes too much with you, apply the following test:
Recall the face of the poorest and weakest man whom you have seen and ask yourself if the step you contemplate is going to be of any use to him. Will he gain anything by it? Will it restore him to control over his own life and destiny? In other words, will it lead to Swaraj for the hungry and spiritually starving millions?
Then you will find your doubts and yourself melting away."
- 16 Similar busts of Mahatma Gandhi were installed at Tavistock Square in London [visit http://en.wikipedia.org/wiki/Tavistock_Square
<http://en.wikipedia.org/wiki/File:DSCN1997TavistockSqGandhi.jpg>
'Those who cannot go to London to see the most admired work of Fredda Brilliant may see the bust of Mahatma, a replica of the face and the chest of the statue at Tavistock, at the State Museum complex in Shimla. Its clone adorns the Supreme Court campus. The words of Shiv Kant Jha, an advocate in the SC and a descendent from the freedom fighters' family, reflects the feelings of many who see the bust in Shimla, "It was beyond me to comprehend why the Father of the Nation was so much down-cast. While it is not unlikely in these locust-eaten years for most fathers to be sad on seeing the deeds of their progeny, Gandhi's drooping face indicated some deeper pang, some iron in his soul. Is he so morose because he has really noticed that the talisman he had given to the decision-makers of the free India is now quoted at the lowest price on the stock exchange?"' Shrinivas Joshi in the *Tribune* [HTTP://WWW.TRIBUNEINDIA.COM/2008/20081008/HIMPLUS1.HTM](http://WWW.TRIBUNEINDIA.COM/2008/20081008/HIMPLUS1.HTM)

20

MY REFLECTIONS ON KRISHNA & THE GALAXY OF THE GREAT (The galaxy in which Krishna, the Buddha, Jesus, Muhammad, Marx and Gandhi scintillate)

I

INTRODUCTION

I reflected over Krishna and our Constitution for well over six decades of my life. I concretized my ideas over the 7 days in December 2005 that I devoted hearing the exposition of the *Srimad Bhagavad Mahapurana* at 'Veenapani Bhawan', my house at Laheriasarai, where I had founded the 'Veenapani Bhagavad-Gita Swadhyaya Kendra'¹ for the study of the *Bhagavad-Gita* from all observation-posts, adopting diverse approaches: historical, comparative, sociological, analytical, philosophical and functional. Immediately thereafter I went for meditation to the holy Naimisaranya, where, as our tradition goes, the great Vyasa had written in ancient times the great *Mahapurana*.

I have intuitively perceived that the *Bhagavad-Gita* stands illustrated in the events of Krishna's life. The *Mahapurana* illustrates through stories and metaphors what the *Bhagavad-Gita* teaches us through aphoristic principles in *shlokas*. I feel that the best way to comprehend the *Bhagavad-Gita* is to read it in the light of what Krishna did.

I remember how Prof. Sachinath Mishra commenced his first lecture on civics when I had joined my undergraduate class in 1954 at C. M. College. He referred to our Constitution as *Shashtra* quoting the *Bhagavad-Gita* (XVI.23) to tell us the great importance of obedience to our Constitution. Prof. Krishna Kant Mishra, who taught us the history of modern India, helped us in understanding what was common amongst Krishna, Jesus and Muhammad, and what made each emerge in history as the supreme role-model for those who struggled for justice, and



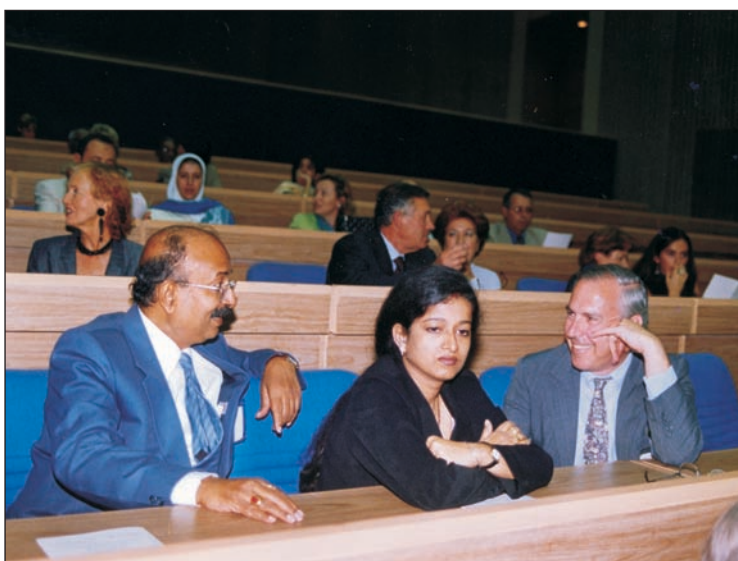
Veenapani Jha reading the *shlokas* of the *Bhagavad-Gita* on the rows of edicts at the Geetai Mandir at Wardha, near Nagpur



We two (Veenapani Jha & Shiva Kant Jha)



Smt. Veenapani Jha, President of the Draupadi Devi-Gopi Kant Jha Charitable Trust at 'Veenapani Bhawan', Laxmipur-Balbhadrapur, Laheriasarai (Bihar)



Shiva Kant Jha, his daughter Anju Jha Coudhary, Advocate, and John Cary Sims, Professor of Law at McGeorge School of Law, Sacramento, USA attending the 43rd Congress of the International Association of Lawyers at New Delhi

worked for the welfare of all. In Krishna's *dharmayudha* (the righteous war) and *lokmangal* (welfare of all), Muhammad's *s'jehad* (the holy struggle only to promote noble cause for the weal of all), and Jesus' struggle against the brute imperialist exploiters of his time, the thinkers and the revolutionaries have discovered, at different points of time, a clarion-call to struggle against an unjust order. They manifested themselves at the three distinct and distant co-ordinates of time and space, but each one blew the conch of revolution for the good of humanity. Besides, I have always felt that the core egalitarian ideas of the great *Bhagavad-Gita* were at the most conscious point of the collective consciousness of the Constituent Assembly that had framed our Constitution.

II

REFLECTIONS ON KRISHNA

(i) The Prelude: I am indebted to that bird

It was a summer afternoon when resting on my bed on the first floor of our 'Veenapani Bhawan', I saw a little bird fluttering its tiny scarlet plumes on a blade of a ceiling fan. It had come into the room, it stayed for a while, and then flew away through a widow, kept ajar, unto the azure sky. The few moments I gazed at it became a long time, and a rich experience. My mind went back to a *ashloka* from the *Bhagavad-Gita* (Ch. II. 28), which tells us how we become manifest, again to become unmanifest. I was surprised how my wife caught my mental wavelength. I heard her singing, wholly withdrawn to herself, certain lines of *akirtan* which we had heard from Swami Satyananda Saraswati, the great founder of the Munger School of Yoga. She sang that *kirtan* again at the 'Srimad Bhagavad Purana Gyana yagya'. You can listen it on my website². Some of its stanzas (rendered in English) can be read in the Chapter 4; 'Portrait of my Mother'. We considered this as the quintessential presentation in simple words of the *Bhagavad-Gita*. This *kirtan* expresses our profound philosophical vision which has shaped our ethics and philosophy: in short, what we can call the Hindu view of life. It expresses our oneness with the whole creation: thus it stresses our love and obligations towards not only all humans but also towards all creations. All the teachings of the *Bhagavad-Gita*, and its worldview find most succinct expression in those lines.

(ii) The historicity and reality of Krishna

Much time has been wasted to prove whether Krishna or Jesus had historicity, or were mere myths. A lot of literature is available on the point to carry on the debate till the end of time, but this sort of quest seems to me futile. A story goes that someone had asked Meera; "Is Krishna real?" And she replied, "Yes, I believe. For me He is more real than anything else." She was right. Important point is the probability of His coming, and the credibility and creditworthiness of all that He said or did. Millions and millions never doubt His reality in their lives He has real presence for them. It is great that nobody before the Allahabad High Court, hearing the famous Ayodhya Dispute Case, questioned the reality of Sri Rama (by implications, of Krishna) Justice S.U. Khan, in his Judgment of Oct. 30, 2010 noted the sagacity of the litigants observing:

“At this juncture, it may also be noted that Sri Zafaryab Jilani, learned counsel for Waqf Board and other Muslim parties ...categorically stated that his parties did not dispute that Lord Ram was born at Ayodhya (previously this was also an area of dispute between the parties).”

Besides, nothing turns on the issue of ‘historicity’ (whether of Krishna or Jesus). With deep insight, Acharya Rajneesh (also known as ‘Osho’) said:

“How does it matter if there had been no Krishna?... The probability of the existence of Krishna is a matter of internal coherence. This probability exists, or it exists not.”³

We have danced with *Krishna* with ecstatic joy. We have drawn help and inspiration from Him when we feel depressed and our ways lost. We have received succour when all hopes are gone. Our burdens vanish when we think of Him. He helps us face the blizzards of existence. He helps us how to live, and also how to die. My grandmother would have been terribly shocked if I would have questioned the ‘reality’ of Krishna, who had for her an immanent living presence. When I was born, songs praising Him were sung by the ladies assembled to celebrate my birth. It is customary in our society to sing such songs of joy when a child is born. I wish when I die I should go praying, in the words of Tagore, ‘*maran re, tunhu mamō Shyam-saman*’ (O Death, Thou art like Krishna) seeking ‘*mrityu-amrityu korey daan*’ (grant me immortality through death) In my childhood, I heard His stories from my parents; and thereafter I have read them in the *Bhagavad Mahapurana*, and the *Mahabharata* over the years enjoying them at different levels of my awareness of life. When someone raises the issue of Krishna’s ‘reality’, the words of Zeno (who lived sometime in the fourth century B.C.) come to mind:

‘Zeno began by asserting the existence of the real world. “What do you mean by real?” asked the Sceptic. “I mean solid and material. I mean that this table is solid matter.” “And God,” asked the Sceptic, “and the soul?” “Perfectly solid,” said Zeno, “more solid if anything, than the table.” “And virtue or justice or the Rule of Three: also solid matter?” “Of course,” said Zeno, “quite solid”’⁴.

It matters little if the historicity of Krishna is doubted. It is enough for me that Krishna is the richest and greatest cultural construct of mankind. They say He was the poetic creation of the great epic poet Vyasa. If that be so, then Vyasa was Krishna Himself as without acquiring ‘Krishna consciousness’ the *Mahabharata* (and its illustrious segment the *Bhagavad-Gita*), could not have been composed. Krishna *katha* (Krishna’s stories) are true. But their truth is both poetical and philosophical. The poetic truth has the greatest fidelity but it cannot be referential. “Richards denied to poetry any truth of reference and argued that ‘truth’, as applied to a work of art, could mean only the ‘internal necessity’ or ‘rightness’ of the work of art: that is, whereas scientific truth has to do with correspondence to the nature of reality, artistic “truth” is a matter of inner coherence.”⁵ When all is said, our oriental culture, the Hindu or the Muslim, is profoundly endowed with the gift of creative imagination

For centuries and centuries our seers and poets have conceived in their most exalted cultural consciousness the personality of Krishna. India's creativity at its most conscious point finds expression in Him. It seems to me that through the events of His life, our finest and deepest thoughts of abiding significance have found most efficacious expression. I intend focusing on some of the ideas which are contextually called for by the subject-matter of the Book III of this Memoir.

(iii) The Central ideas of the *Bhagavad-Gita* stated in brief

Astrophysicist Sir James Jeans aptly said: "The universe begins to look more like a great thought than like a great machine": I would say: the universe is an expression of thought, and its grammar is *kriya* (action). I intend to summarize what I have considered the core ideas of the *Bhagavad-Gita*. These ideas have shaped our worldview that reveals itself in our ethics, and our attitudes towards life and the universe. They have shaped our assumptions about 'property' and all other things which matter in our life.

The central idea of the *Bhagavad-Gita* was expressed in an oft-quoted *shloka* (Ch. II. 47) where Krishna counsels Arjuna to act without expectations of the fruits of actions. He tells Arjuna that he could never exist without action. Krishna told Arjuna precisely what modern science has shown. Whether it is an atom or a galaxy, the process of being and becoming is just an 'action' (*kriya*) and nothing else. I would try to state some of the fundamental principles of the *Bhagavad-Gita*, thus:

- (i) One should acquire right competence to understand and evaluate (through *viveka*, wisdom) the needs of the changing moments of one's life to acquire the right vision of one's duty (*kartavya-karma*) [see the *Bhagavad-Gita* Chapt. II. 47] to be done from moments to moments in one's life;
- (ii) One must not allow oneself to go under the spell of the negative feelings of attachment, lust, anger, and greed;
- (iii) One's perception of duty is determined by one's traits (*gunas*) which are the product of one's own actions, whether in this life, or the earlier life cycles;
- (iv) One is competent to evolve in the trajectories of the *gunas* evolving first towards the *sattwaguna*, and then towards transcendence of *gunas* in *moksha* (total liberation from life cycle) [see the *Bhagavad-Gita* Chapt. XIV];
- (v) In the trajectory of life, one tends to take to the path that accords with one's traits (*guna*), but it is possible to evolve treading any of the three paths (the paths of action, of knowledge, and devotion) of which the path of action is the easiest for the humans, though all the paths can go in synchrony, enriching each other, leading to the common goal in life;
- (vi) One should discharge duties for the weal of all (*sarvamanga*); and
- (vii) One must realize that what matters most is the attitude (the state of mind) with which acts are done.

One should work with the point of view which is *subh* (good) for all. The 'Utilitarians' prescribed a flawed objective for polity and political economy. Its chief proponent, John Stuart Mill (1806-1873), called it "the greatest happiness of the greatest number". Nehru noted, with great perspicacity, what we consider its basic flaw. "This view-point was not quite the same as the earlier democratic doctrine of equal rights of everybody. The greatest happiness of the greatest

number might conceivably require the sacrifice or unhappiness of smaller number”.⁶ Our Constitution strikes a different note. It comes close to what Krishna said in the *Bhagavad-Gita*.

**(iv) Krishna's *Bhagavad-Gita* provides a remedy
against the 'moral deficit' of our times**

Our Problem: the 'Wallace Syndrome'

In our world what makes us worried most is its alarming 'moral deficit' almost every sphere. The industrial achievements and technological wonders cannot mask the rot, and hide what may become the founts for impending disasters. It is unwise for us to live in the romantic delirium of scientific achievements. The 19th century was greatly remarkable for industrial, imperial and technological changes, yet whilst assessing the worth of human achievements over that century one of its ablest scientific minds, Alfred Russel Wallace, expressed in his *The Wonderful Century: Its Successes and Failures* his deep concern at the “exponential growth of technology matched by the stagnant morality” which implied “only more potential for instability and less capacity for reasonable prognostication.” This is the well-known 'Wallace Paradox'. He presented, in his *Bad Times* (1885), the picture of what had gone wrong in the economic management of the West in the 19th century. What was the most worrisome problem for mankind at the end of the 19th century, continued to vex humanity in the next century too. Wallace observed in 1898 in his *The Wonderful Century: Its Successes and Failures* to quote:

“.... It must therefore be held to constitute the beginning of a new era in human progress. But this is only one side of the shield. Along with these marvelous Successes—perhaps in consequence of them—there have been equally striking Failures, some intellectual, but for the most part moral and social. No impartial appreciation of the century can omit a reference to them. and it is not improbable that, to the historian of the future, they will be considered to be its most striking characteristic.”

Stephen Jay Gould, examining the trends of the 20th century, drew up an enlightening account of our achievements and failures focusing on our tragic traits and our incapacity to respond to the challenges with optimism. He too considered the problem of 'the moral deficit' of our days alarmingly shocking. Sigmund Freud examined the ways of the humans, both as individuals and as the wielders of political power, and was led to comment:⁷

“Two things in this war have aroused our sense of disillusionment: the low morality shown externally by states which in their internal relations pose as the guardians of moral standards, and the brutality shown by individuals whom, as participants in the highest human civilization, one would not have thought capable of such behaviour.”

When we scan the course of things in our own days, there are reasons to believe that we have learnt nothing from the past. In the context of the present-

day economic management in our 'globalized' world, Joseph Stiglitz has perceptively highlighted its 'moral deficit'. He says in his *Free Fall* (2010):

“...too little has been written about the underlying “moral deficit” that has been exposed – a deficit that may be larger and even harder to correct. The unrelenting pursuit of profits and the elevation of the pursuit self interest may not have created the prosperity that was hoped, but they did help create the moral deficit.”

The *Bhagavad-Gita*'s Prescription

But we must not forget that the law of *karma* and its inevitable consequences operate in all the spheres (including, of course, our politics and economics). It was this great wisdom which Krishna imparted to Arjuna by telling him to know the very grammar of *karma* (the *Bhagavad-Gita* IV 17). The neo-liberals, supply-siders, the votaries of the present-day economic globalization, and the compradors of all the hues, must note that we do not garner miracles, we reap only consequences of our acts. The *Bhagavad-Gita* sets forth the inexorable law when it says :

Atmaiva hyatmano bandhur

*Atmaiva ripuratmanah.*⁸

The logic of *karma* is inexorable. If things go wrong, we ourselves are to be blamed. Man is free to choose his salvation or damnation. The *Bhagavad-Gita* teaches us the supreme art of living.

Dharma, as Medhatithi says, means *kartavya* which is generally translated as 'duties'. We know Deguit's view that 'duty' is the basic force at work in the social matrix involving the factors of solidarity and interdependence. 'Duty' is an individual's perception of what is right in a given situation, and what is required to be done for the weal of self and for the welfare of all others. Tilak quotes *ashloka* that goes to say: “those, who give up the duties, which *Dharma* demands to be discharged, but devotes time simply reciting 'Hari', 'Hari', are really enemies of Hari, as the Lord had taken birth only to protect *Dharma*.”

(v) Our Guide to Duties, and the standards for evaluating actions

Krishna explains to us the grammar of life, and provides us certain firm norms for judging the propriety of actions whatever be their spheres. He casts a great burden of responsibility on the humans, and makes them wholly accountable for their own actions or inactions. The edict to govern human actions and the criteria to assess their propriety can be gathered from the following four short extracts from Tilak's *Gita Rahasya* (Chapter XV):⁹

- (i) “The chief object of the *Gita* is not to show what would be the proper arrangement for the maintenance of society. The summary of the *Gita* is that, whatever the arrangement of society may be, one should enthusiastically perform all the duties which have come to one's share, according to one's status in life.....”
- (ii) “...one has necessarily to consider, in the first instance, the Reason (*buddhi*) of the doer, that is to say, the motive with which he did the act, and whether or not he had realized the consequences of the act, when one is determining the righteousness or the unrighteousness of the doer.”

- (iii) “Whether Bhishma will die or Drona will die as a result of the carrying on the war, is a minor consideration; the principal question is with what frame of Reason you are going to enter the fight;[Y]ou will incur no sin if Bhishma and Drone are killed while you are performing your duty with the pure and untarnished Reason.”
- (iv) “Therefore, in order to find out whether or not Reason is pure and equable, one must in the first instance consider the external Actions of the man; otherwise, a man will by his mouth say that his Reason is pure and equable, and by his hands do whatever he likes.”

The great Hindi Poet ‘Dinkar’ makes Bhishma tell the remorseful Yudhisthira, when the latter called on him in the battlefield of Kurukshetra, that the most important thing in one’s actions is the motive and attitude of the person acting :

सत्य ही भगवान ने उस दिन कहा. मुख्य है कर्ता-हृदय की भावना
मुख्य है वह भाव, जीवन-युद्ध में भिन्न हम कितना रहे निज कर्म से

(God Himself said this: what matters most is one’s attitudes to what one does. The most important point is how much detached one is from what one is doing.)

The Imperatives of the Grammar of Life

In course of my years gone, I discussed the ideas that I got in the *Bhagavad-Gita* with my parents, teachers, savants and many others. These ideas pertain to : (a) the acquisition of the art of getting over Fear, (b) the resolution to shun Greed, (c) the acquisition of the well cultivated capacity to understand and evaluate all the demands on our duty, (d) the acquisition of right ‘character’ without which the grammar of life cannot work. A few comments on these are set forth thus:

(a) The factor of Fear must go from life

In human history, ‘Fear’ has worked as the most paralyzing and asphyxiating of all factors. It robs one’s competence to analyze and evaluate the challenges; it robs one of one’s capacity to visualize things in right perspective, and to take actions with courage and imagination, unfaltering even when storms rage, and lightning strikes. Fear undermines what we call ‘human specifics’, and makes the victims mere fragile beach balls tossed hither and thither with heads held low.

We had suffered bouts of ‘fear’ in our remote past, both when nature inflicted on us acute sufferings, and when the greedy hordes of robbers and imperialists defiled our land and succeeded in subjugating our fiery people for centuries to servitude. ‘Fear’ is taking toll on us even now when thousands and thousands of our people die of starvation, when inequality and injustice make us fear return to servitude, when we fear to lose our culture and the way of life which has maintained us over centuries. Edmund Burke had rightly said: “No passion so effectually robs the mind of all its powers of acting and reasoning as fear.” It is well said that when Fear governs, prudence goes on a holiday, and imagination gets shackled. Nehru portrays what had happened, and can happen again: it is an excellent portrait of Fear at work before World War I;

“So fear reigned in Europe and fear is a terrible thing. Each country went on preparing for war and arming itself to the uttermost....The

big private firms which made armaments—that...—naturally reaped a rich harvest and waxed fat.”¹⁰

(b) GREED must be conquered by individuals and the nations:

Krishna explained in the *Bhagavad-Gita* (in Chapter XVI *shlokas* 12-15) the traits dominant in the persons of ‘demonic’ nature. Nowhere in the world literature I could get better comprehension of the human traits (of all the three broad types of the humans) than in the *Gita*: these traits are called *Sattwik*, *Rajasik* and *Tamsik*. The description of the attitudes and assumptions of the ‘demonic’ people, as stated in the *Bhagavad-Gita*, is most graphic description of the exploiters and looters, fraudsters and crooks, self-servers, time-servers, go-getters and the economic gladiators busy in pursuing their limitless greed. Such persons claim to have supreme power to realize their ever increasing desires: They claim even to be ‘god’ (*Ishwar*). :

“For I am the Lord,
I enjoy, I am successful,
Perfect, powerful, and happy.”¹¹

Greed works as a most Important vector in imperialism. The demonic persons deify mighty capitalists. The Medicis of Italy were the great bankers in Italy during the Renaissance. Botticelli celebrated them in his *Adoration of the Magi* as the wise men in the service of Jesus. “The painting was commissioned by the head of the Bankers’ Guild as a tribute to that family. It should perhaps have been called *The Adoration of the Medici*. Having once being damned, bankers were close to divinity.”¹² This ‘Rogue Finance’ succeeded in establishing good relation on the principle of ‘give and take’ amongst the power wielders and the financiers to promote their common GREED.

(c) One must develop the capacity to understand and evaluate all the demands on one’s duties in the changing contexts of life.

The evaluative and judging agency is *buddhi* (pure Reason) that manifests itself through one’s *viveka*. One decides one’s *kartavya-karma* in life’s changing contexts in accordance with one’s *viveka*. But this process requires high level of character with developed intellectual and spiritual capacities. The situation in the *Bhagavad-Gita* illustrates this point. Arjuna never ceased to be a free agent. And Krishna never tried to become authoritative. As a good teacher He helped Arjuna remove his mental cobwebs; and as a good teacher he explained to him the grammar of the cosmos, and his own position and role in life in the larger context of the society. He counsels Arjuna to acquire the highest skill, even to develop the competence to act by both hands (the *Bhagavad-Gita* XI.33). Arjuna ascended the chariot to wage the Mahabharata War when his *viveka* made him think that alone was his duty. This is how we live our life. We must develop competence to decide what is what. Democracy requires this quality most. When the citizenry cease to be the free explorers of ideas, and free decision-makers in every demanding moment, not always sets in.

(vi) Krishna's attitudes towards 'Property'

The Oriental philosophy, whether Hindu, Muslim, or the pristine Christianity, never considered 'property' the fruit of an individual's acquisitiveness. Social purpose was always most dominant. 'Property' could not be a matter of an individual's greed. Certain stories in the *Srimad Bhagavad Purana* are the metaphors expressing Krishna's philosophical ideas we get so clearly stated in the *Bhagavad-Gita*:

- (a) The *Srimad Bhagavad Purana* tells us the story of Dhenukasur who had asserted his monopoly over all the fruits and trees in the area of land where he controlled all the resources with his brute might. He prevented humans, birds and beasts from an access to the natural resources of that area. Krishna fought with him, and destroyed him in order to make the social resources available for all. Mahatma Gandhi pleaded for the Trusteeship concept underscoring what the *Gita* had said: "acquisitive pursuit for property without considering others' demand is thieving only" Perhaps, when Gandhi was asking the acquirers of property to treat property a matter of public trust, he was stressing what Krishna had said. 'Property is for the weal of all'.
- (b) It is narrated in the *Bhagavad Mahapurana* (Canto V. Chapter 56) that Satrajit acquired *Shyamantak*, a precious stone which could beget a good quantity of gold every day. Krishna advised him that such a property should go the State for the benefit of all. He refused, and ridiculed Krishna. But he could not keep that precious stone safe. His brother, while roaming in a forest, lost not only that but lost his life also. He was killed by a tiger. When he did not return, a canard was spread against Krishna that he had got that person killed to snatch away that precious stone. Krishna saw to it that the precious stone was traced out, and brought back to the King's court. Satrajit was called to face it. He realized his folly. After examining Krishna's ideas about 'Property', Dr. Kiran Tandon observes: Krishna was all for social justice and egalitarian ideas.¹³
- (c) Krishna had resorted to a revolt against tyranny and exploitative order, as Jesus had done against the Herodian establishment and the callous money-changers (the ancestors of the present-day bankers, the arch-priests of the neo-liberalism) of Jerusalem. Krishna fought to put an end to exploitative *impeium* of Indra and Kamsa.
- (d) Krishna held in the *Bhagavad-Gita* that 'property' acquired merely for acquisitiveness and greed is clearly a sinister "THEFT" (Chapter III.12). It reminds us of the French anarchist Pierre-Joseph Proudhon who had said: "Property is theft." But Proudhon's, and Marx's, ideas about 'property' are markedly different from Krishna's. Marx taught class conflicts, Krishna stressed on social harmony. Marx believed that the votaries of his ideology would destroy those who were the thieves of 'property'. Krishna stressed on the weal of all by teaching people the right way of acquiring 'property', and the right purpose for holding it. He stressed on the change of attitudes: one's propensity towards acquisitiveness must be got rid of by realizing the right course of action. It is amazing to see how close Gandhi goes to Krishna in formulating his ideas of 'trusteeship' to which I would come soon.

- (e) We get in the *Bhagavad Mahapurana* and the *Mahabharata* recurrent assertions that national wealth should be preserved for people's weal. Bhishma, in that epic, advised the King:

"The King should strive to augment the wealth of people to be used in the moments of emergent needs. He should treat such wealth as the wealth of the nation." ¹⁴

It is for our people and for government to consider the propriety of allowing the crooks to amass their ill-gotten gains in tax havens and the Swiss banks. I would revisit this point later in this Memoir. But in this context I must point out that Chanakya had instructed in his *Arthashastra* that those who amass their wealth in foreign lands deserved to be killed even without notice.¹⁵ Chanakya had prescribed severe punishment for tax evaders.¹⁶

(vii) Krishna's ideas of the Welfare State

The idea of the Welfare State had been best expressed in the concept of *lokasamgraha* explained in the *Bhagavad-Gita* (Ch. III.20)

*Lokasamgrahameva pi
Sampasyan kartumarhasi*

[You should do work with a view to the maintaining the world.]

Krishna illustrated the principle with reference to the deeds of the great Janaka. Good deeds for the weal of all deserve to be done with total involvement [the *Bhagavad-Gita* III.25]. The cardinal principles of 'social justice' and 'equality' are stressed again and again in the *Gita*. No jurist or court anywhere in the world has stated the operative norm of the Right to Equality better than what Krishna did in the *Bhagavad-Gita* by requiring the authorities to be *samdarshi* (*saumdarshin*: seeing all without prejudice). Article 14 of our Constitution wants all the organs of the State, including our courts, to be *samdarshi* (the seers of the same *atman* in all) though the decisions would only be context-specific depending on the nature of the deeds done and the provisions of the law involved. In the *Bhagavad-Gita* (and our Constitution) the driving force is *lokmangal*, welfare of all. It rejects Hegelian and Marxist dichotomies reflected in their theories of dialectics, to which I would refer in Chapter 24 of this Memoir.

The *Bhagavad-Gita* and our Constitution contemplate no class conflict or class struggle. They do not recognize dialectics which is central to the thought of Hegel and Marx. Our Constitution commits our polity to social justice under a system in which all live and work without discrimination. We have rejected Marx's dictum: "The [written] history of all hitherto existing society is the history of class struggle". Our society over centuries has believed in co-existence and harmony. A Muslim poet, Maulana Zaffar Ali Khan Punjab says:¹⁷

If the teachings of Krishna are shared by all,
The fissiparous hawks would exist no more.

In my considered view, Krishna is of great contemporary relevance for us. I agree with Acharya Rajneesh that¹⁸

"Krishna has a great relevance for future. In future there would be a growing realization of his value. When creeds would fade, dialectical

religions would pass into the oblivion of history, Krishna would emerge even more resplendent.”

III

KRISHNA AND BUDDHA

I had no interest in the eschatology of Buddhism, but what interested me most was the Buddha's teaching that it is possible to evolve to the higher level of consciousness by following the Noble Eightfold Path (Right Views, Right Aspirations, Right Speech, Right Conduct, Right Livelihood, Right Effort, Right Mindedness, and Right Contemplation). His prescription is same as of Krishna's. What the Buddha did was what he felt to be his *kartavya-karma*. His traits (*guna*) led him to adopt the life-style that he adopted. Krishna might have told Gautama to tread in His own light; and the Buddha would have advised Arjuna precisely what Krishna had done in the *Bhagavad-Gita*. This perception of what was common between the Buddha and Krishna led the poet Jayadeva to treat the Buddha as one of the incarnations of Keshava (Vishnu, or Krishna Himself): केशव धृतबुद्धशरीर जय जगदीश हरे (Praise be to Keshava who assumed the form of the Buddha). Whatever the Buddha wished people to do to get out of life's sufferings couldn't be different from their treading the Noble Eightfold Path: acts which amount to worship; or as Sankaracharya put it: यद्यत्कर्म करोमि तत्तदखिलं तवाराधनम् ('whatever I do is just worship'). The Buddha boldly asserted that all the sufferings emanated from desires which are driven by GREED. This profound statement deserves to be considered by all of us in the world we live these days.

IV

KRISHNA AND JESUS

Jesus challenged the powerful Herodian establishment. He had a wide following amongst the simple folk. Prof. Galbraith, in his *A History of Economics the Past as the Present* (1987), has described Jesus with full fidelity when he says (at p. 21):

“Those who in later times entered a protest against the established economic order would be called rabble-rousers, and it would be part of their defense that His assault on the Jerusalem establishment—in denigrative terms, the moneychangers and usurpers of the Temple – Jesus was their ultimate role model. To a far greater extent than many conservative Christians have liked to think, he legitimized revolt against evil or oppressive economic power. That priests in Central America who join the people in opposing rapacious or corrupt authority today believe themselves to be acting according to His example is a cause even now of much reputable distress.”

Prof. Galbraith recorded his indebtedness for this insight to Krister Stendahl, the former dean of the Harvard Divinity School, who in his *Meanings: The Bible as Document and as Guide* (1984) mentioned the “increasing evidence that the role of Pilate was considerably greater in the execution of Jesus than the tradition and

even gospels lead us to think. The crucifixion — a Roman execution — speaks its clear language, indicating that Jesus must have appeared sufficiently messianic, not only in a purely spiritual sense, to constitute a threat to political order according to Roman standards”. And H.G. Wells aptly says: “It was not merely a moral and social revolution that Jesus proclaimed; it is clear from a score of indications that his teaching had a political bent of plainest sort”.¹⁹

The role that Jesus played and the ideals he set before people, are accurately stated with remarkable precision by Jawaharlal Nehru in his *Glimpses of World History* (at p. 85):

“Jesus talked a strange language of revolt against existing conditions and social order. In particular, he was against the rich and the hypocrites who made of religion a matter of certain observances and ceremonial. Instead of promising wealth and glory, he asked people to give up even what they had for a vague and mythical Kingdom of Heaven. He talked in stories and parables, but it was clear that he was a born rebel who could not tolerate existing conditions and was out to change them. Jesus was looked upon as a political, and by the Jews as a social, rebel....”

As the *Bhashyakars* (the commentators) read Krishna’s *Bhagavad-Gita* in the light of their own sectarian ideas. Jesus was also read later, from Paul onwards, by the scholars and the church, in the light of their own philosophy and of those whose interests they intended to promote and protect. They established powerful churches; they acquired political patronage and power, and also acquired fabulous wealth which bred corruptions and arbitrariness usual in a Plutocratic society. The great teachings of Jesus were transformed. [The way it could happen is amazing. Similar strategy is being adopted by the neoliberals in their attempts to subject our constitutions to a new gloss through what they call ‘the economic interpretation of constitution, the phenomenon now broadly described ‘neo-constitutionalism’]. This institutionalization of Jesus was utilized in ways not always worthy. Samuel Butler in *Erewhon Revisited* (1901) and *The Way of All Flesh* (1903) brought out what it all meant. Prof. Cazamian, in the contexts of such books, said: “To all practical purposes, churches are banks in which the pious, speculating on eternal rewards, in exchange for cash receive drafts on the hereafter.”²⁰ I have been led to believe that the Roman Catholic Church utilized the Roman tradition of power and wealth rather than the teachings of Jesus. The great historian Fisher has rightly said; “While Christ and His disciples were preaching the gospel of renunciation, the Italians, animated by a spirit as far removed as possible from that of the Galilean, were pushing into new markets, developing new enterprises, exploring new lands, and clamouring for new conquests.”²¹

I studied the *Holy Bible* while at my college, and I delivered a series of lectures on the ‘Book of Job’. My study of literature has led me to believe that Jesus bore spiritual affinities both with Krishna and the Buddha. There are grounds to believe that Jesus was well acquainted with them. The probability of such contacts has been admitted by many historians.

My reflections on Jesus have convinced me that he was a revolutionary against exploitative and corrupt regime, as was Krishna Himself. Obviously such

a person was too dangerous to be tolerated by the dominant acquisitive barons of the Mammon-worshipping clan. In the *New Testament*, St. Mathew says: "It is easier for a camel to go through the eye of a needle, than for a rich man to enter into the kingdom of God." One may think that Jesus, if he comes again, would be subjected to the same fate because the circumstances, which treated him that way, have recurred in ways much worse, and more dangerous. At the core points, the real Jesus was close to Krishna. The transformation of the activist Jesus into pensive, meditative *sannyasi*, which in later times the churches and the meta-physical speculators brought about in Him, is one of the ironies of human history. Wells has summed up the revolutionary ideas of Jesus in these suggestive words²²:

"The doctrine of the Kingdom of Heaven, which was the main teaching of Jesus, is certainly one of the most revolutionary doctrines that ever stirred and changed human thought..... For the doctrine of the Kingdom of Heaven, as Jesus seems to have preached it was no less than a bold and uncompromising demand for a complete change and cleansing off the life of our struggling race, an utter cleansing, without and within." "And all men were brothers" His teachings condemned all the gradations of economic system, all private wealth, and personal advantages." "It was not merely a moral and a social revolution that Jesus proclaimed; it is clear from a score of indications that his teaching had a political bent of the plainest sort." "In the white blaze of kingdom of his there was to be no property, no privilege, no pride and precedence, no motive indeed and no reward but love. Is it any wonder that men were dazzled and blinded and cried out against him?"

The ironies of history: Christ and Christianity

Jesus Christ seems to have suffered more under the ironies of the Western history than He might have suffered on the Cross. It is amazing how His ideas were transmuted to support, first, the capitalism of the Church, then the imperialism of the nation states, and now this corporate *imperium* in this phase of Economic Globalization. I would revisit this point in Chapter 24.

(V)

KRISHNA AND MUHAMMAD

I belong to an orthodox Brahmin family, but I was fortunate to get occasions to spend time with some noble Muslims from whom I could get an overview of Islam. I felt indebted to Shri Ramdhari Singh 'Dinkar', whom I met at Muzaffarpur, for an insight into Islam. While working as a member of the Indian Revenue Service, I studied a number of standard books on Islam and Islamic Jurisprudence, and was for some time the question-setter and examiner of Muslim law for the LL.M. examination of Calcutta University. During the years I practiced law I came in contact with the India Islamic Centre at New Delhi. I requested Professor Dr. Razia Khan, who had been a professor at Patna, to write an article on 'the *Bhagavad-Gita* and *Qur'an*'. I am grateful to her for her ideas which have

made me see Krishna in Muhammad in a perspective. I tend to agree with the view that it was a flash of the *Sudarshanchakra* (the ultimate weapon that Krishna could use) that the world had seen in the sword of Muhammad; and it would see it again in the sword of Kalki whose arrival is eagerly awaited by the exploited and suffering souls of the world.

Krishna and Muhammad shared the oriental view that the forces of good never fail. Explaining why Krishna could not succeed in dissuading the Kauravas from inviting the devastating war, Krishna told Uttanka in 'Anugita Parva' of the *Mahabharata*: (translation from Sanskrit by me):

"I am at present a human being. Hence I cannot exercise my supreme power over the Kauravas. I made all efforts, which were humanly possible, to dissuade them from the disastrous course of war, but they remained indifferent to my counseling."

"I explained to them the fearful consequences of the war, but they, under the grip of sinister forces, refused to listen to me, perhaps awaiting the verdict of Kaal ('Time', the supreme force of Destruction).."

I always felt that Krishna acted at two planes. It is never difficult to see when He speaks as God Himself, and when he speaks and acts just as a great man, a great teacher, or a great statesman. Muhammad heard messages from God, and Arjuna heard the words of God from Krishna who was God himself. But they resembled with each other as they acted and thought as great men.

"No civilized people in the world are so ignorant of Islamic history and contemptuous of the Mohammedan religion as the Hindus." ²³ Even the Indian Muslims have, as Ramdhari Singh 'Dinkar' says ²⁴, 'very superficial knowledge of Islam, and its historic role.' The Hindus saw Islam the way the Turkish invaders, who plundered this country, presented that to them. The Hindus were reduced to servitude for long. Thus they had reasons not to appreciate Islam. When the Hindus saw the cruelties, which Sultan Mahmud, Muhammad of Ghur, Timur and Changez Khan inflicted on the Hindus, it was understandable that the greatness of Islam went unnoticed. History of the world shows how the imperialists distorted even the noblest ideas, and turned them as grist for their mill. Whatever be the reasons, the Indians, (the Hindus and the Muslims alike) failed to see the charm of the revolutionary and egalitarian teachings of Islam of which Muhammad was the prophet. 'Islam' means "surrender to the will of Allah (Arabic: God). The recorded history of mankind has not seen a force as remarkable as Islam. I have always believed that his vision of Islam is still of relevance for the good of humanity. On core points I see him one with Krishna and Buddha who went before him, and Marx and Gandhi who came after him.

I would touch only certain points on which I could get opportunities to reflect over. I would do that with as much precision as this Memoir permits.

(i) Muhammad's God and the ideas of Sankaracharya.

For long it was believed that the great Sankaracharya's absolute monism (*advaita*) had been shaped substantially by the Islamic ideas. This view is simplistic. It is true that both Islam and Sankaracharya believed in one God, but they differed on fundamentals. God (*Brahma*), in *advaita* Vedanta, did

not act as the creator, operator, protector or destroyer, as did Muhammad's God. God in the Vedanta was a sort of catalytic agent in whose presence *prakriti* and *purush* created all the creations in which Brahma, Vishnu and Mahesh were supreme. Muhammad was God's Prophet and a great man. In Islam, Allaha is the sole God who is this world's creator, sustainer, and restorer. There are good reasons to think that Sankaracharya, and many other saints of the medieval India, were familiar with the fundamentals of Islam.

(ii) Muhammad and compassion

In the spiritual quest in every civilization, the quality of compassion has always been emphasized. Krishna is Himself *Karunanidhan* and *dayasagar*. In the Bible, God is compassionate, and in Islam God is *Rahman* (the Merciful). Buddhism considers *dukkha* (sufferings) one of the Four *Arya Satya* (Noble Truths), to be transcended by efforts and commitments. 'Islam' has underscored compassion for all. It is unwise to find fault with Islam for the unwise acts of certain persons done to promote objectives extraneous to the Islamic way of life.

(iii) Muhammad was against imperialism and capitalism

Karen Armstrong has discussed in *A History of God* (Mandarin, 1997) how Muhammad worked aggressively against imperialism and capitalism. With reference to *Qur'an* (92: 18; 9:103; 63:9; 102:1), she writes:

"In practical terms, Islam meant that Muslims had a duty to create a just, equitable society where the poor and vulnerable are treated decently. The early moral message of the *Qur'an* is simple: it is wrong to stockpile wealth and build a private fortune, and good to share the wealth of society fairly by giving a regular proportion of one's wealth to the poor."

Islam held: "God's uniqueness was the basis of the morality of the *Qur'an*. To give allegiance to material goods or to put trust in lesser beings was *shirk* (idolatry), the greatest sin of Islam".²⁵ And this "perception of God's uniqueness was the basis of the morality of the *Qur'an*. To give allegiance to material goods or to put trust in lesser beings was *shirk* (idolatry), the greatest sin of Islam."²⁶ The wealthy Meccan traders "felt that they had become the masters of their own fate and some even seem to have believed that their wealth would give them a certain immortality."²⁷ Krishna called such persons 'demonic'. Krishna stated the traits of such persons in detail in Ch. XVI.12 of the *Bhagavad-Gita*. In *shloka* 12 such 'demonic' persons are:

'Bound by a hundred ties of hope,
Given over to lust and wrath,
They strive to gain by unjust means
Wealth for sensual enjoyment.'²⁸

(iv) Muhammad's catholicity

The Hindus and many western thinkers wrongly believe that Islam was deficient in catholicity and toleration. Karen Armstrong aptly says: "Muhammad never asked Jews or Christians to convert to his religion of Allah unless they particularly wished to so, because they had received authentic revelations of their own. The *Qur'an* did not see revelation as

cancelling out the messages and insights of previous prophets but instead it stressed the continuity of the religious experience of mankind.”²⁹

(v) Muhammad, and the neo-liberal paradigm

The neo-liberal paradigm of the present-day economic globalization is resorting to all conceivable methods to generate corporatism, consumerism, and crash materialism. 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 State, now it is the Market, *Pax Mercatus*”. There is a systematic attempt to generate more desires and wants for goods and services through all fair and foul means. The Market believes that without consumerist culture, modern capitalism would get starved, and would collapse on account of its depleted profits. The zest of this sort leads one to believe that even the value of a person lies in his saleability. The genesis and effect of consumerism can be best understood by reflecting over the *shlokas* 62-63 of Chapter 2 of the *Bhagavad-Gita*: to quote —

‘When we are drawn over much to hedonistic allurements for things, we develop attachment with them. This ‘attachment’ breeds lust for them. Lust or craving, when obstructed, leads to anger. Anger leads one to delusion and ignorance, which in turn destroys memory without which one’s intelligence cannot survive. And when this happen, all is lost.’

Both Islam and Hinduism are against the hedonistic culture, and the consumerism that it promotes. It seems that this life-style is not appreciated by the neo-liberals because their strategy requires generation of more and more desires believing that Greed is good. This is one of the reasons why they are all against our oriental culture in general. It is hoped the Hindu culture would survive because it has strong inner strength to survive as it has powerfully interiorized its values; and the Islamic culture would also survive because it has powerfully interiorized its received values, and has also developed capacities to exteriorize them through their assertive actions.

It would be mankind’s misfortune if Muhammad’s message is not grasped, or is distorted for ulterior and ignoble reasons. The ‘arc of crisis’, apprehended to ensue on account of what the *Encyclopedia Britannica* (Vol. 21 p. 897) calls a “clash of civilizations”, must be removed. I believe that for the survival of *Homo sapiens* we should allow civilizations to run their natural cycle so that clashes may not destroy our fragile, one world, already on the volcanic crater. More on this in Chapter 24 of this Memoir.

VI

KRISHNA AND MARX

In my view, Marx was *arishi*. Whilst Marx reflected on the grosser realities of human phenomenal world, Krishna went to the subtlest points which shape the realities of the cosmos and all its integral parts including the human societies. Marx had a narrow horizon, and a limited brief: Bertrand Russell is right in saying

that Marx “is too much wrapped up in the problems of his time. His purview is confined to this planet, and, within this planet, to Man.” Krishna had a cosmic vision of ever-lasting relevance. Yet both are great. In their own distinct idioms, they have taught us great lessons we cannot afford to forget.

Marx’s deductions from history are sound if they are considered within the perspective he had adopted and on the assumptions he had made. As I said above, he was not adopting a cosmic vision of the sort Krishna had adopted. He had taken up a limited province of human affairs at the grosser level of existence. He showed wrath against the exploitative socio-economic order as Krishna or Muhammad had done. To Marx, the alternative to private capitalism was, as history has shown, ‘State ownership of land and capital’. Gandhi felt that the problem could be solved through trusteeship. Krishna suggested attitudinal changes from greed to welfare of all. Marx had a right wrath: but in his prescriptions he seems to be the captive of his times

Marx’s materialism was right from his observation-post, and under the world-view he had assumed. His observations made him think that what mattered was ‘man’s relation to matter’. He was right to the point he had gone, but he had not gone very far. This constriction, on his perspective, was its strange tragic trait. He was not aware of the views that matter gets ultimately reduced to spirit, and then finally into Brahma. He was not aware of the view of modern physics to the effect that moments come when ‘matter’ ceases to be ‘matter’. Marx’s approach was scientific only in a restricted sense, and only to a limited extent. It will be folly to criticize him on the ground that he could not rise up to acquire the vision of the *Bhagavad-Gita*, which shows, as Swami Ramsukhdassays in his *Geeta-Prabodhni*, that “देखने में वस्तु मुख्य दिखती है. क्रिया गौण है. पर वास्तव में क्रिया-ही-क्रिया है, वस्तु है ही नहीं. शरीर तो केवल कर्म सामग्री है.” (On observation, ‘matter’ appears of prime importance, and action not that important. But Cosmos is nothing but ‘action’. Human body is just an instrument of action.) Modern science shows us how the distinction between the observer and the observed ceases on right knowledge. Marx could not appreciate why *Kartavya-karma* is so important because he, like many other 19th century thinkers, felt in the inevitability of progress on account of the dialectic movement of forces. And this mistake led him to the error of ignoring, as Rusell says, “ethical considerations”, and moral vision in the cosmic context.

I have reflected on Marx’s ideas as to ‘property’. How close they come to Krishna’s which are so well expressed by the poet ‘Dinkar’ in his epic *Kurukshetra*:

जो कुछ न्यस्त प्रकृति में है
वह मनुज मात्र का धन है,
धर्मराज, उसके कण कण का
अधिकारी जन जन है.

[Whatever is the endowment of nature is the property of all.
O Dharmaraj, every being is entitled to all the resources in nature.]

Marx was great as he too had the same vision; and he wanted us not to procrastinate but to act. He said in *Eleven Theses on Feuerbach*: “Philosophers have only *interpreted* the world in various ways, but the real task is to *alter* it.”

With great perspicacity he said that the material factors of the production matrix determine the political system including law and judicial functions. We have good reasons to believe in what Marx said: "The State is an executive committee for managing the affairs of the governing class as a whole," Krishna would call this system 'demonic' where the traits of *rajas* and *tamas* dominate. The Chapter XVI of the *Bhagavad-Gita* (*shlokas* 1 to 20) tells us what happens when the 'demonic' forces dominate. Marx's ideas are, at the fundamentals, not materially different. I have reasons to conclude that in the capitalist system, as it emerged in the West from the 16th century, and also as it got established in other countries through imperialism, the powerful economic substructure determined the political and economic superstructure. I would try to prove my point in subsequent Chapters. In those Chapters, I would set forth my evaluative reflections on the system of governance and the institutions of polity at work in our times, and also on the world-view that has emerged triumphant in this phase of Economic Globalization.

The ideas of Marx are still a powerful force in human consciousness. Implementing them is treading on the razor's edge. Those, who have pretended to act in his light, have allowed themselves to be swept off for unwholesome reasons. The right Time for Marx's ideas is yet to come. Of course, some of its assumptions would undergo changes, and the strategy of its promotion would, through some creative destruction, be shaped anew. Perhaps this revolution in Marxist thought would take place someday only in the catalytic presence of the *Bhagavad-Gita*.

This context takes my mind to my comments in the National Seminar on "Treaty Making Power of Government", organized on July 21, 2007 by National Working Group on Patent Laws (NWGPL) at the 'ASSOCHAM', New Delhi.³⁰ It was attended by many distinguished persons including the former Prime Minister Shri I.K. Gujral, the former Chief Justice of India Shri J. S. Verma, Dr. Murli Manohar Joshi, M.P. and Shri D. Raja, M.P. Referring to Shri Raja's Special Address, I said³¹:

"It is distressing that the art and craft of calculations are dear as much to the communists as to the capitalists under whatever version. The queer syndrome in our country is that whilst the common Indians are surely socialists, our formal socialists and communists have lost their ways and moorings, many even turning into crypto-capitalists. Every citizen of Bharat is a socialist in the sense Krishna and Gandhi have expounded socialism, teaching us the highest ideals as to property, production, equity, equality, justice, ethics, and the doctrine of the proper sharing of wealth for common weal. To offer an unsolicited advice: our leaders should read and understand the *Bhagavad-Gita*, and the *Bhagavad Mahapurana*. Let the comrades try to create conditions: when (to say in the oft-quoted words of Faiz):

*Jab zulm-o-sitam ke kohe-garaa
rui ki tarah ud jaayenge."*

[the fog and mist of injustice, will go into wind tossing to wither like the shreds of cotton wool]

VII

KRISHNA AND GANDHI

I have mentioned that the *Mahabharata* shows that Krishna operated at two levels; as a man, and as God. As a man, he strove to do everything possible to prevent the war of destruction; and in this effort, as it happened with many great persons in the history, he failed. He worked as God indifferent to how the humans acted and invited inevitable consequences of acts. He merely ensured *Dharma* to remain triumphant. But Krishna was never fussy about notions like *himsa* or *ahimsa*. What mattered was one's perception of duty, and its bold discharge. If men find, on their right perception of duty, that it is proper to take resort to force, Krishna could have no objection to that. Mahatma Gandhi just acted in accordance with the ideas set by Krishna. In his perception of his duties in the context of the problems he faced, he was right in his doctrine of *ahimsa*. His view cannot be erected as a general creed valid in all contexts. Bertrand Russell has a point when he says:

“Certainly it has an important sphere; as against the British in India, Gandhi led to triumph. But it depends upon the existence of certain virtues in those against whom it is employed. ... But the Nazis had no scruples in analogous situations..”³².

Even Gandhi realized that time might come, circumstances might emerge, when assertions of right, even with force, can become people's *sdharma* (duty). This view follows from what he said in these extracts which I read when I visited Sabarmati Ashram shortly after my retirement from the government service in 1998:

“I see coming the day of the rule of the poor, whether that rule be through force of arms or of non-violence.” (*Harijan*, 1-2. 1947) “If only the capitalists class will read the signs of the times revise their notions of God-given right to all they possess, in an incredibly short space of time the seven hundred thousand dung-heaps which to-day pass muster as villages, can be turned into abodes of peace, health and comfort.... There is no other choice than between voluntary surrender on the part of the capitalist of the superficialities and consequent acquisition of real happiness of all on the one hand, and on the other the impending chaos into which, if the capitalist does not wake up be times, awakened but ignorant, famishing millions will plunge the country and which, not even the armed force, that a powerful Government can bring into play, can avert.” (*Young India* 5.12. 1928 p. 396)

This context takes my mind to Dr Amartya Sen's *Argumentative India* where he held that the conversation between Krishna and Arjuna was their way of 'debate' “between consequence-independent deontology and consequence-sensitive assessment” in which Arjuna accepts defeat as Krishna backed his ideas by the display of his supernatural powers. Sen posits a question: 'But was Arjuna really mistaken?' He feels that the consequences of the War could have been avoided if Arjuna's view would have been appreciated. I always felt that Dr. Sen read the *Bhagavad-Gita* to support his theory of consequentialism. The medieval commentators on the *Gita* had read their denominational and sectarian views in

the *Gita* to show that their views conformed to the philosophical doctrines expounded in that. It was a strategy to prove one's points, and to make them acceptable to people. Dr. Sen too seems to adopt similar approach. He has reservation about the *Gita* because he feels his theory of consequentialism is not compatible with the *Bhagavad-Gita*. I think Dr. Sen would have thought differently if he would have comprehended Tilak's *Gita Rahashya*. As my quotation from the 'Anugita' of the *Mahabharata*, quoted above, would show, every attempt had been made to avoid the Mahabharata war. When everything failed, He had no reasons to prevent the protagonists of the War to work out their destiny as free agents, with responsibility for sure and certain consequences of their acts. He had done everything possible to prevent the War. That was his role as a great man. When all efforts failed, He allowed *Dharma* to operate. He did not obstruct its operation: perhaps, even He couldn't have done so.

Krishna did take every step that could have been taken to avoid the Mahabharata War. If you read the discussion between Vidura and Krishna in Chapter 29; and also Krishna's pleadings in the Court of Kaurava against the devastating War in Chapter 95 of the Udyogaparva of the *Mahabharata*, you can appreciate the position that Krishna had taken in the *Gita*. It is unfortunate that Dr. Sen has tried to see this dichotomy (between deontology and consequentialism) of the western capitalist society in the all-inclusive philosophy of the *Gita*. One can perceive one's duty only after proper evaluation of the circumstances and possibilities. 'Duty' is not *karma* (action) but *kartavya-karma*. And when this approach to perceive one's duty is adopted, the dichotomy, to which Dr. Sen refers, ceases to exist. Both Krishna and the Buddha tell us that a right perception of duty requires 'Right Mindedness' and 'Right Contemplation' which require right knowledge and wisdom (*viveka*).

VIII

THE GRAMMAR OF REVOLUTION

The *Bhagavad-Gita* ends with certain propositions, which seem to me to constitute the very grammar of a revolution (Ch. XVIII. 78). It boils down to this: where, on the high altitude of graph, the lines of thought (represented by Krishna) and of action (represented by Arjuna) meet, we have a revolution; but where they meet at low altitudes we get mere revolutionary sparks. We see that in our country, both the lines are at low point these days. But the *Mahabharata* tells us never to forget the principles of Justice in human affairs. Such ideas, recurrent in our cultural oeuvre, were excellently summarized by Shri Ramdhari Singh 'Dinkar' in his epic *Kurukshetra*:

पापी कौन ? मनुज से उसका न्याय चुराने वाला ?
याकि न्याय खोजते विघ्न का सीस उड़ाने वाला ?

(Who is the sinner? Tell me the answer,
He who robs humans of their justice,
Or he who in the quest of justice,
Chops off the head of the sinister derelict?)³³

People's Right to Revolt

Moments come when it becomes duty to change the apparatus of power through a revolution. The *Srimad Bhagavad Mahapurana* tells us the story of the destruction of King Vena as he had ignored his people's welfare because of his inordinate greed. Krishna killed several demonic kings including Kamsa, Jarasandha and Bhomasura. Such stories are in the *Mahapurana* and also in the *Mahabharata*. In this epic the great Bhishma bewails why he did not revolt against Duryodhana which might have compelled him to desist from the Mahabharata War. It is a crime to see wrong being done, yet to keep silence. The poet 'Dinkar' describes Bhishma's agony in these words:

राज-द्रोह की ध्वजा उठाकर कहीं प्रचार होता
न्याय-पक्ष लेकर दुर्योधन को ललकारा होता.....
भारत भूमि पड़ती न स्यात्, संगर में आगे चल के

(If I would have raised even the seditious flag and given a clarion call, if I, in the cause of Justice, could have challenged Duryodhana then itself, perhaps, our land, Bharat, might not have faced this saddest day.)³⁴

Most of us suffer from similar agony. Whittier said:

For all sad of tongues or pen
The saddest are these: 'It might have been'.

But this struggle against a tyranny can be done in several ways: Krishna adopted one, Jesus another, and Gandhi still another: the category of inventiveness is never closed.

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- 6 Nehru, *Glimpses of World History* p. 531
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21

OUR CONSTITUTION AT WORK

Why does a judge swear to discharge his duties agreeably to the constitution of the United States, if that constitution forms no rule for his government? . . . If such were the real state of things, this is worse than solemn mockery. To prescribe, or to take this oath, becomes equally a crime.

Chief Justice Marshall of the US Supreme Court in
Marbury v. Madison 2 L Ed 60 (1803)

I have referred in Chapter 15 about my interactions with Dr. T. B. Smith who had come to Kolkata to deliver his Tagore Law Lectures of 1977. I recall, in some context, he asked me to tell him (i) what constituted the most important feature of India's polity as structured under the Constitution; (ii) what appeared to me to be the prime mission of the Constitution of India; and (iii) what was, to my mind, the most worrisome aspect of India's constitutional regime. What I told him boiled down to the following three propositions:

- (i) the most important feature of our Constitution is its closely structured polity where all the organs are constitutional creatures, with specifically conferred powers, to operate only under the prescribed parameters;
- (ii) the prime mission of our Constitution is to promote what I call 'constitutional socialism' as conceived by our Constituent Assembly whose thoughts seem to reveal the presence of the *Bhagavad-Gita* at their most conscious point; and
- (iii) the most worrisome aspects of our constitutional arrangements are the lack of assertive and effective popular vigilance on our institutions, and the gruesome 'democratic deficit' in the exercise the high executive power.

Dr. Smith heard me attentively but kept silence. He, when we were ready to part, wished our Constitution a long glorious life, and wished our Republic never to become anything like Milo's Rome. I did not understand, for years his reference to Milo's Rome. But I understood it when I read Will Durant's pregnant comments in his letter to Bertrand Russell¹: "Democracy has degenerated into such corruption as only Milo's Rome knew; and our youthful dreams of a socialist utopia disappear as we see, day after day the inexhaustible acquisitiveness of men." Over all these years, I have reflected on Dr. Smith's pregnant cautionary reference to Milo's Rome. In Section VI of this Chapter, I would mention some of the morbid features of the Roman Republic; and would also touch certain points

showing how our Republic too seems, unfortunately, caught under similar whirls produced by moral degradation.

First, I intend to develop my ideas which had made me formulate those three propositions that I had told Dr. Smith. The constraints of the space in this Memoir would not allow me to go into the details. I would summarize what had led me to say what I had told Dr. Smith. But I would reflect on them from my present observation-post so that they do not sound outdated, and are seen in right perspective.

I

THE CREATURES OF THE CONSTITUTION MUST ACCEPT THE DISCIPLINE OF OUR CONSTITUTION

The American Constitution, which provided us with a model of a written constitution with fundamental rights, provides an appropriate perspective for comprehending constitutional issues under our Constitution. The Attorney-General, addressing the court in the *Five Knights' Case* (one of the state trials of Stuart England) for the Crown asked, "Shall any say, The King cannot do this? No, we may only say: He will not do this."² It was precisely to ensure that in the American system one would be able to say, "the State *cannot* do this," that the people in America enacted written Constitution containing basic limitations upon the powers of government³. But our Constitution-makers were great as they made our Constitution by subjecting the entire State power, I repeat 'entire', to the discipline of our Constitution, whether exercised within domestic jurisdiction or at the international plane.

Our Constitution was framed under circumstances different from the circumstances under which the US polity was framed. The material specifics of the U.S. polity were in the mind of Justice Sutherland, who was led to believe in *Curtiss Wright Case* [299 USA 304 (1936)], that the USA possessed 'extra-constitutional' power at the international plane. Our Constitution was framed by our sovereign Constituent Assembly. Mahatma Gandhi said in 1922 that the Swaraj would not be a gift of the British Parliament, but must spring from 'the wishes of the people of India as expressed through their freely chosen representatives'. Nehru had said that the British could dissolve the Constituent Assembly only by force. He declared that India's constitution-making could not be "under the shadow of an external authority".

The U.K. Constitution is the product of the nation's constitutional struggle over the centuries. Courts and Parliament have stripped the Crown of many powers by subjecting them to constitutional discipline. Whatever is still left with the Crown, it belongs to that realm of the Executive's powers which is called 'the Crown's Prerogative' generally invoked in matters pertaining to the foreign affairs and the exercise of the Treaty-Making power.

In sustaining the *Migratory Bird Treaty Act of 1918*, Justice Holmes, delivering the opinion of the U.S Supreme Court, stated his core reason thus:

"The treaty in question does not contravene any prohibitory words to be found in the Constitution. The only question is whether it is forbidden by some invisible radiation from the general terms of the 10th Amendment."

But our Constitution-makers used 'prohibitory words everywhere in our Constitution so that all powers, exercised by our constitutional organs, are subject to our Constitution's specific limitations. Had the U.S. Constitution subjected all powers under constitutional limitations, the powers even at the international plane, the decision in *Missouri v. Holland* would have gone the other way. And Justice Sutherland would not have granted 'blank check' to the US President in exercise of foreign affairs powers in *Curtiss-Wright*. To undo this view of Justice Sutherland, Mr. Bricker moved a constitutional amendment to subject the Treaty-making power to some constitutional control. The Bill was passed by the Congress but could not be cleared by the Senate mainly because President Eisenhower did not like that for certain reasons close to his heart. No Executive Government would ever like to subject its brute power to constitutional discipline. But credit goes to the U.S. Supreme Court which, in *Reid v. Covert* (1957), held certain provisions of certain treaties, made in exercise of 'foreign affairs power', unconstitutional.

Our Constitution is unique in structuring and distributing the entire gamut of the State's sovereign power through the terms of our Constitution. H.M. Seervai is right to observe: "the main reason given for the *Berubari Opinion* is clearly wrong, for no power can be outside our Constitution."⁴ And the organs function subject to our Constitution. It matters not whether they are exercised in Delhi or in Detroit. This is the effect of the specific Articles of our Constitution (vide Articles 53, 73, 245, 253, 265, 363, 368, 372, 375). It is also worth mentioning that our Constitution imposes no limitations on our national sovereign powers, as organized under our constitution, even on the spacious plea to promote international cooperation.⁵ The effect of this is that our government is subject to the constitutional limitations, both in the domestic sphere and at the international plane.

II

(a) Our 'Constitutional Socialism': Historical Perspective

What led Mrs Gandhi to go in for the 42nd Amendment Act, 1976, inserting specifically the idea of 'socialism' into the Preamble to the Constitution operative from 3.1.1977, has been much speculated upon mainly in the phase when the creeping ideas of capitalism tend to capture the thought process of the wielders of our political power. What has led to this is not far to seek though its realities are evaded even by the experts. The mission of our Constitution's 'socialism' was never appreciated by the capitalists. Even the word 'socialism' seems to them like a red rag to a bull. I remember to have participated, whilst I was a student at my school and college at Darbhanga, in the frequently organized processions, meetings and peace marches for our Constitution's 'socialist' mission. In doing so I had in one of my cousins a role model, though he was just a petty socialist leader but with great verve and conviction.

But only in the 1990s, I could become conscious that the conspirators against our Constitution's mission had much succeeded in subverting our system to serve the interests of the growing capitalists of all brands, national or international. Even whilst Mrs. Gandhi was at the helm of our political affairs, it was obvious that such forces had exercised their *ultima ratio* through the strategies of 'money power' and 'deception' slowly at work to turn India into a 'Sponsored State'. As

a student of history, I am of the firm conviction that ‘capitalism’ triumphs only through the conjoint operation of Mammon’s Power of wealth and Mephistopheles’ power of allurements through deception. The scope of this Chapter does not permit me to go deep and wide into such matters, but I would mention the trends which even Mrs. Gandhi must have marked emerging in our country and elsewhere.

Anybody who has critically studied the history of our times would have marked that the real victor in World War II was America in which politics works under the dense shadow of the Big Business. The trends to subjugate political institutions to the economic realm have been at the heart of the neoliberal paradigm. Even when Mrs Gandhi was in power, massive efforts had been made by the US Government, big corporations, and their alter-ego, the institutions set up at the international plane, to promote their interests. The strategy of providing ‘aid’ was used even in the late 1960s and in 1970s to crowbar for the intrusion of the American corporate interests. How this sort of system worked over the years find a graphic description in the words of Noam Chomsky:

“Within the nation-state, the effective “national purpose”, will be articulated, by and large, by those who control the central economic institutions, while the rhetoric to disguise it is the province of the intelligentsia.”⁶

I would show in Chapter 24 (‘Our world-view and the trends of our times’) of my Memoir how adroitly the imperialists had worked to establish in our country a Sponsored State to promote the interests of the British in India. The East India Company ensured that the key-functionaries in the Nawab’s Government remained loyal to the Company Bahadur, and promoted that Company’s interests showing only ostensible loyalty to the Nawab. In my *Judicial Role in Globalised Economy*, I examined their strategy, and stated:”⁷

“Clive pursued this objective with a stroke of stealth by securing for Rida Khan, who was Clive’s deputy diwan, the post of the nawab’s deputy. The inevitable consequence was the emergence of powerful coterie of bureaucrats and self-seekers who worked for the Company whilst swore loyalty to the nawab.”

The lobbyists, the corporations and the vested interests brought about similar situations in our country. How such things happened has been well described by Noam Chomsky with whose conclusion I wholly agree. Chomsky quotes⁸ Mr. Meagher: “If it was possible, India would probably prefer to import technicians and know-how rather than foreign corporations. Such is not possible; therefore India accepts foreign capital as a necessary evil.” Even by 1966, enough had been done indicating that the American Government and the World Bank ‘arrogated to themselves the right to lay down the framework in which our economy must function.” Chomsky quotes a dispatch of that year which reveals how our mission of constitutional socialism was lost. He quotes the dispatch:

‘There are signs of change. The Government has granted easy terms to private foreign investors in the fertilizer industry, is thinking about decontrolling several more industries and is ready to liberalize import policy if it gets sufficient foreign aid... Much of what is happening now is a result of steady pressure from the United States and the

International Bank for Reconstruction and Development, which for the last year have been urging a substantial freeing of the Indian economy and a greater scope for private enterprise. The United States provides by far the largest part of foreign exchange needed to finance India's development and keep the wheels of the industry turning. Call them "strings," call them "conditions" or whatever one likes, India has little choice now but to agree to many of the terms that the United States, through the World Bank, is putting on its aid. For India simply has nowhere else to turn'

Commenting on this, Chomsky writes aptly, what was becoming evident to all: "The heading of the article refers to this development as India's "drift from socialism to pragmatism." ⁹

Such developments must have jolted Mrs Gandhi, as she had an unswerving faith in our 'constitutional socialism'. A lot of domestic and international distractions and challenges had drained her out. It was humanly impossible for her to gauze all the implications of the economic structure being devised by the vested interests. Besides, after the Emergency, she developed some fatigue and had grown lonely and indifferent. It was natural But it is not far to seek that the 42nd Amendment, operative from 3.1.1977, had inserted the idea of 'socialism' into the Preamble to our Constitution to forestall the trends of the neo-imperialism of corporatocracy, growing fast in the post-Yom Kipper (1973)-phase. It was to make explicit what was at the heart of the constitutional provisions, and also to emphasize certain norms and values at the heart of our Constitution. M.P. Jain rightly says:

"the concept of 'socialism' has been made explicit and India's commitment to this ideal has been underlined and strengthened."

Just a year before the 42nd Constitutional Amendment, a powerful book had come out: Bell's *The Cultural Contradictions of Capitalism* highlighting the irreconcilable contradictions of the neo-liberal capitalist society producing the sinister trends evidencing the gruesome, to quote Peter Watson, "separation of law from morality, 'especially since the market has become the arbiter of all economic and even social relations (as in corporate obligations to employees) and the priority of the legal rights of ownership and property over all other claims, even of moral nature.'" It was natural that, on reading the trends of the time, she thought it appropriate to underscore our Constitution's prime mission.

But most graphic account of the fundamentals of our Constitutional Socialism is found in some of the celebrated decisions of our Supreme Court: to quote from two widely known judgments. In *Excel Wear v. Union of India* (AIR 1983 SC 130 (para 33), the our Supreme Court explained the concept of Socialism comprehensively. But the classic exposition of, Socialism, under our Constitution, was made by Justice Chinnappa Reddy in a Constitution Bench decision in *D. S. Nakarav. Union of India* AIR 1983 S.C. 130: to quote in *extenso*—

"The principal aim of a socialist State is to eliminate inequality in income and status and standards of life. The basic framework of socialism is to provide a decent standard of life to the working people and especially provide security from cradle to grave. This amongst others on economic side envisaged economic equality and equitable distribution of income."

(b) The collective consciousness of the Constituent Assembly

On the examination of the broad profile of our Constituent Assembly the following points emerge:

- (i) The Constituent Assembly was virtually a microcosm of India. Most of the leading lights of our Freedom Movement were assembled there. They had in their marrow, the fire that burnt to inspire us in waging struggle for our freedom. We must not forget their noble ideas in running our polity for socio-economic management. Art. 51A of our Constitution wants every citizen of this Republic to “cherish and follow the noble ideals which inspired our national struggle for freedom”.
- (ii) The Constituent Assembly was never under the hangover of Karl Marx. Neither the Communist Party nor the Socialist Party had their representatives in the Constituent Assembly. Glanville Austin says: the “absence of a formal Socialist group meant little, however, for most members of the Assembly thought themselves as Socialists, and with few exceptions the members believed that the best and perhaps only way to the social and economic goals that India sought was by the road of government initiative of industry and commerce.”

The members of the Constituent Assembly were well versed in oriental cultural ideas, and most of them were distinguished masters in humanities and jurisprudence. On a close scanning of the career and thoughts of many of them, I concluded that the *Bhagavad-Gita* had the greatest impact on their thoughts which found expressions in our Constitution. It is really tragic to note that our jurists have not appreciated this fact. Certain points are obvious:

- (a) The *Bhagavad-Gita* and our Constitution contemplate no class conflict, or class struggle. We have rejected Marx’s dictum: “The [written] history of all hitherto existing society is the history of class struggle”. Our society has always believed in co-existence and harmony of all.
- (b) The driving force in the cosmic affairs for Hegel is Spirit. For Marx the driving force is ‘matter’, which means that for him “the driving force is really man’s relations to matter, of which the most important part is the mode of production”, in effect, his ‘materialism, in practice, becomes economics.’ In the *Bhagavad-Gita* (and our Constitution) the driving force is *lok mangal*, welfare of all. The great poet ‘Dinkar’ had felicitously described in his epic *Kurukshetra* that peace cannot last long unless it is based on the just socio-economic arrangements of the affairs in a given society.
- (c) The *Bhagavad-Gita* and our Constitution contemplate Rights and Duties for the development and happiness of all. The Utilitarians are satisfied with the happiness of a few, thereby facilitating the emergence of Capitalism, Fascism, and now neo-liberalism. Their arch-priest Bentham cared little for the weal of all. He thought of the liberty only for a few dear to Adam Smith’s ‘Invisible Hand’. The rights of man, he said, were plain nonsense. When the French revolutionaries made their ‘*Declaration des droits de l’homme*’, Bentham called it ‘a meta-physical work—the *ne plus ultra* of metaphysics’. Our Constitution posits an over-arching social vision for the Free India: in short, it rejects Adam Smith’s unfair assertions.

(c) 'Socialism' under our philosophy

I have always believed that our Constitution's attitudes towards 'property' are socialistic. H. G. Wells has very perceptively observed:

"Essentially Socialism is no more and no less than a criticism of the idea of property in the light of public good....A steady, continuous criticism of the permissible scope of property seems to have been going on for the last twenty-five centuries." ¹⁰

The socialist vision expressed in the Constitution can be called 'Constitutional Socialism'. ¹¹ It is not 'socialism' as understood by Marx. The neoliberal philosophers of the West sought to promote capitalism by rejecting 'social justice' and 'equality'. The philosopher, whose influence is writ large in the Constitution and the political economy of the United States, was John Locke (1633-1704). The system of checks and balances in the structure of constitutional polity is a mere adjunct to his view of political economy. Bertrand Russell insightfully points out that the proponents of capitalism tend to believe that the glory of the West is on account of capitalism. Bertrand Russell draws up this spectacle of this alluring illusion in these words:

"No doubt he was impressed, as all men of his time were, by the gains to civilization that were due to the rich men, chiefly as patrons of art and letters. The same attitude exists in modern America, where science and art are largely dependent upon the benefactions of the very rich. To some extent, civilization is furthered by social injustice." ¹²

The objectives set under our Constitution, as also in the *Bhagavad-Gita*, are not "greatest good for the greatest number"; but the welfare of all. We are free to earn, but not to turn robbers. This is the principle of *lokamangal* suggested in the *Gita*. This view provides right alternative to the Lockean view of property.

Our Constitution's Socialism is an expanded metaphor. It has an activist content of Justice. It exfoliates itself in the Preamble to the Constitution, and also in the harmony and synergy of the Fundamental Rights and the Directive Principles prescribed under our Constitution. Under our 'Constitutional Socialism', the State has a positive role to play. It represents the people of the country.

(d) Dimensions of our constitutional socialism

In course of my reflections over years, and whilst assisting the Delhi High Court and the Supreme Court in deciding certain constitutional issues, I analysed and articulated some important dimensions of our 'constitutional socialism'. I would summarize them thus: ¹³

[A] Philosophical dimension:

1. Driving force in human history, according to Hegel, is 'Spirit'; but it is 'Matter' according to Karl Marx, but for Marx 'it is a matter ... , not the wholly dehumanized matter of the atomists, hence, in effect, it turns out 'really man's relation to matter, of which the most important part is his mode of production: in short economics'. ¹⁴ This is the philosophical foundation of the Hegelian dialectics utilized by Marx to interpret history. We have not shared this view. Our spiritual vision of the universe is not simplistic. Besides, we believe in the welfare of all. Our history has developed in a trajectory much different from the West's. Our

Constitution commits our polity to an egalitarian vision for everyone's welfare: it, thus, reflects our philosophical tradition.

2. Hegel, Darwin and Marx believed in the *inevitability* of progress as universal law, which made them impervious to ethical considerations. The norms set forth in the Preamble, the Fundamental Rights and the Directive Principles stress on the *karma* and *kartavya* both towards the individuals and the State. This philosophical dimensions of our 'constitutional socialism' would again come up for reflections in Chapter 24.

[B] Political Dimension

3. Our Constitution reflects the ethos of our Struggle for Freedom in which our nation had participated as a whole: the sacrifice made by the poor was surely more than that of others who had reasons to calculate their profits. Democracy is not just a system to set up a political structure which can be allowed to be captured by vested interests through art or craft; it is, in fact, a system to provide a mechanism to realize the welfare of all, without riding roughshod over the fair and legitimate interests of individuals whatever be the segments to which they belong.

4. The Political Realm is not to be made subservient to the Economic Realm, where the Rule of Corporations and the Market (*Pax Mercatus*) prevails. The State, under our Constitution, cannot roll back its activities as that would be a gross constitutional dereliction. Even the policy changes must conform to the constitutional policies, and our Constitution's principles and provisions

5. There must not be an opaque system, as darkness is never conducive to promote the ideas and the ideals of our Preamble, the Fundamental Right, and the Directive Principles of our Constitution.

6. Our 'Constitutional Socialism' is founded on the fundamental principle of our Constitution's supremacy, and the inevitable subservience of all the organs of the State to the Constitution. As I have already said, this supremacy operates both in the domestic sphere, and at international plane.

[C] Social Dimension

7. Our Constitution is committed to bring about a social revolution to change the unjust stratification of our society which trapped us over the centuries, but this objective cannot be realized if wealth and power get polarized in our country.

8. It is this over-arching egalitarian constitutional vision which conditions the content of such seminal concepts as 'liberty', 'equality', 'fraternity', 'dignity', 'unity'..... 'Liberty' cannot be reduced to a mere license to exploit and loot; and 'equality' cannot exist in grossly unfair and unequal society. 'Fraternity' and 'dignity' cannot be achieved in plutocratic and oligarchic tyrannies of the vested interests.

9. 'Social Justice' is the very purpose of our polity, and the very heart of our Constitution. This requires creation of conditions for all so that quality of life improves.

[D] Economic Dimension

10. Our constitutional socialism contemplates no class struggle: it believes in the welfare of all.

11. Our constitutional socialism does not permit greedy acquisitiveness of capitalism, and believes in an equitable distribution of social resources so that even the so-called 'last man' is not without the basic amenities for existence, and is not

excluded from the conditions needed for dignity, and for the fruition of his natural faculties.

12. The Government is a trustee to promote the welfare of the people by securing and protecting a social order “in which justice, social, economic and political, shall inform all institutions of national life”.

13. The State must ensure that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

14. The natural resources should be managed wholly with egalitarian ideas, and to the exclusion of the gross commercial motives of the market economy.

15. The standard for decision-making in our public spheres should be judged on the talisman given by Mahatma Gandhi¹⁵, so that justice is done even to our ‘last man’.

16. The State must ensure that the integrity of our society is not subverted by consumerism, and the deceit of the vested interests. The State must preserve our value system, education and health so that they are not degraded, polluted, or subverted under this neo-liberal craze generated by the high pressure advertisement.

17. To ensure that we can build our socialist society under the aspect of justice, we must work for peace so that our limited resources are not wasted for the benefit of capitalists, who need wars to sell their armaments, and need an opaque rogue system of ethereal finance; to amass their extractively acquired wealth in dark corners away from people’s gaze, to be laundered back as and when considered expedient.

18. Consumerism is sin till the last man receives just treatment, and is well provided for to live as a human being. Human beings must not be treated as commodities for trade.

19. As planning and market help economic management, these tools be used, but under the critical gaze and supervision of the State ensuring public accountability. The real questions pertain to what sort of Market, and what sort of State (or government) we must have.

20. The State preserves the sovereign space of socio-economic management free from the imperialistic, crypto-imperialistic, and the neo-liberal gladiators and intruders.

21. The government, which is no more than people’s agent, must be under effective popular control and accountability. There must be a system to enforce continuous accountability of all the organs of the State to our people.

(e) Attitudes towards ‘PROPERTY’ under our ‘Constitutional Socialism’

The framers of Constitution had inherited the tradition of our culture which had developed a very mature and discreet view about property. The Western thinking about ‘property’ oscillates between two extremes : the rejection of ‘property’, as we get in the thought of Jesus; and the greedy attachment to property as we see amongst the neoliberals of our day. Even those who strove to further only their ‘enlightened self-interests’, promote, in effect, only their selfish interests. The history of our culture shows that we never looked down upon wealth. Under our pantheon the deity representing ‘wealth’ is Goddess Laxmi. You will find nowhere in our culture anything going near to *Mathew* (6.24) which

says: “You cannot serve God and mammon”. *The Bhagavad-Gita* (III.20) requires everyone to work for public benefit (*Lokasamgraha*). “The words ‘welfare of a nation’ have been used in the same sense in the *Manu Smriti* (7.44). In the light of what I learnt about our cultural tradition I would spell out, in the following tabular form, the two distinct ways of working, and earning wealth.

Subject	Relation <i>inter se</i> Subject & Object	Vector and dynamics	Object
The unwise	Working with 'attachment' to the fruits of work	With a sense of full involvement to further one's desires	Work for own welfare
The wise	Working with a sense of duty	With a sense of full involvement in one's <i>kartavya-karma</i> (duty)	<i>Lokasamgraha</i> (which involves the welfare of all, humans, animals and environment)

(f) The criticism of our Constitution's 'socialist mission' is unwarranted

I was surprised when a Writ Petition against insertion of the word 'socialism' was filed before our Supreme Court [*Good Governance India Foundation v. Union of India* [W.P.(C.) No. 679 of 2007] on the ground that Section 2(a) of the Constitution (42nd Amendment) Act, 1976 violated of the basic structure of the Constitution. I preferred before the Supreme Court my 'Intervention Petition'. It was good that the Supreme Court saw no good reasons to proceed with the Writ Petition.

It was surprising to find Justice B.N. Srikrishna, who spoke for the Supreme Court in *Azadi Bachao Andolan*¹⁶, suggested in his article,¹⁷ while still on the Bench, that the era, when the 'Preamble' of our Constitution mattered, had gone 'due to the liberalization policy adopted by the Central Government from the early nineties'. He even quoted the dictum of Sinha, J. (dissenting) in *State of Punjab v. Devans Modern Breweries Ltd.*,¹⁸ who had shocked us by observing:

“Socialism might have been a catchword from our history. It may be present in the preamble of our Constitution. However, due to the liberalisation policy adopted by the Central Government from the early nineties, this view that the Indian society is essentially wedded to socialism is definitely withering away.”

But *Good Governance* had raised an important point which deserves to be considered by the Election Commission of India. When it registers political parties only when they swear by 'socialism', as required by Section 29A(5) of the Representation of the People Act, 1951, it becomes its duty to derecognize the political parties which “have wrongly sworn allegiance to the socialist ideal despite their contrary objectives as evident from Manifestoes, political speeches, Common Minimum Programmes and other such documents.” If the Election Commission finds later that the declaration by a political party was fraudulent, it must cancel the registration granted to it. As the Election Commission grants certain statutory benefit, it has an inherent power to withdraw that grant on good grounds. Besides, there should be no reason why this Commission cannot

reconsider the permission granted to political parties if there is a culpable hiatus between their sworn statements and their public acts.

III

INTRODUCTORY COMMENTS

When I told Dr. T.B. Smith as to the ‘democratic deficit’ in our country in the exercise of the high executive powers, I had in my mind the way Mrs. Indira Gandhi got the infamous Emergency declared in our country on 25 June 1975. She had announced the infamous Emergency without informing Parliament, or her cabinet. Perhaps she got her precedent in the manner in which King George V declared World War I. A.J.P. Taylor aptly writes: “Formally speaking, the war came as though King George V still possessed undiminished the prerogatives of Henry VIII.”¹⁹ But in this Section of this Chapter, I would develop that point with reference to the Treaty Making power of our government, because this subject has become a most important constitutional topic of the greatest contemporary relevance. Besides, over the whole of the first decade of this century, I devoted much of my time in studying this topic.

(a) ‘Democratic deficit’ in the exercise of our Government’s Treaty-making power

It was just a chance that Shri B.K. Keayla called on me sometime in 2005, and presented to me a copy of the *Peoples’ Commission Report on GATT* by V R Krishna Iyer, O Chinappa Reddy, D A Desai, (all the former Judges of the Supreme Court); and Rajinder Sachar (the then Chief Justice of Delhi High Court). This Commission was a non-official panel of judges. It was a report, drawn up in 1996, on the Constitutional Implications of the Final Act embodying the, Results of the Uruguay Round of Multilateral Trade Negotiations, (to be referred as ‘the WTO treaty’). It had been set up at the initiative of the National Working Group on Patent Laws, a Delhi-based NGO. I agreed with the view suggested in the Report that the WTO treaty was contrary to our Constitution, and the Central Government possessed no power to undertake any obligation under a treaty which offended our Constitution. I felt it was the time to move the High Court to declare the ambit of our Government’s treaty-making power. I was amazed that our Government had even written to the UNO for the information of the whole world that the President’s power to enter into treaties (which is after all an executive act) remains unfettered by any “internal constitutional restrictions.”²⁰ I fully shared the worrisome concern of Joanna Harrington at undemocratic exercise of treaty-making power in the Westminster-style democracies²¹.

I brought²² certain matters to the attention of the Delhi High Court to vindicate our Constitution and the Rule of Law. I filed a Writ Petition, and sought, in public interest, the issuance of appropriate directions, orders or writs in the nature of mandamus or declaration, or any other writ or order to the Central Government so that the executive acts, done even at the international plane, but *ultra vires* the Constitution of India, were held *domestically* inoperative. My complex constitutional arguments at the High Court were founded on certain basic assumptions which I summarize for all our readers to consider and assert in the times to come. Such assumptions, and their corollaries are these:

- ◆ The Sovereignty of the Republic of India is essentially a matter of constitutional arrangement which provides structured government with powers granted under express constitutional limitations.
- ◆ The Executive does not possess any “hip-pocket” of unaccountable powers”, and has no *carte blanche* even at the international plane.
- ◆ The executive act, whether within the domestic jurisdiction, or at the international plane, must conform to the constitutional provisions governing its *competence*.
- ◆ The direct sequel to the above propositions is that the Central Government cannot enter into a treaty which, directly or indirectly, violates the Fundamental Rights or the Basic Structure of the Constitution; and if it does so, that treaty must be held *domestically inoperative*.
- ◆ The Executive’s signing and adoption of the Final Act of the Uruguay Round Final Act in 1994 was a blatant violation of some of our fundamental rights, and certain vital features of the Basic Structure of our Constitution..
- ◆ The signing and adoption of the Final Act bypassed the democratic process as it was neither presented for discussion, nor for an approval before our Parliament despite the fact that it imposed provisions on us grossly against our national laws and Constitution.
- ◆ The Final Act (the WTO treaty) established a ‘totalitarian’ intergovernmental body, and made that the World’s highest Legislative Body and also a supreme Judicial Court for the benefit of the MNCs and other economic gladiators who have succeeded in establishing, through strategy and strata-gem, the Rule of ruthless, faceless and heartless Market (*Pax Mercatus*);
- ◆ The Uruguay Round Final Act virtually subjects our Parliament to morbid coercion and crypto-psycho pressure to legitimize the provisions which the Executive made a *fait accompli*, through a treaty done under an opaque administrative system.
- ◆ The terms of the Final Act are adroitly made to ‘police’ country level economic and social policies thereby making trespass on our nation’s sovereign space reserved for our national government.
- ◆ Many pernicious acts are being done under pressure and persuasion of the WTO and other international fora working for the MNCs and other vested interests. The impact is clear from what have been done, (or are being done) in the matters of the collusive intellectual piracy by MNCs, ‘the derogation of plant breeders rights, the genetic manipulation by the biotechnology giants, the patenting of life forms including plants, animal, micro-organisms, genetic material and human life forms under the TRIPs agreement’.

With reference to the above propositions, I submitted before the High Court how our Constitution was being subverted by many of the provisions under the WTO Treaty (and the Agreements coming within its umbrella) having the effect of prescribing (i) wrongful change in primary governmental functions; (ii) wrongful assignment of the legislative power of Parliament: (iii) wrongful assignment of the Judicial Power: and (iv) wrongful prescription of provisions which have the effect of amending our Constitution. Article XVI(4) of the WTO Charter has the effect of making the WTO the highest legislative and judicial body as it declares:

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

David Korten, after describing the WTO as “the World’s Highest Judicial and Legislative Body”, aptly says²³ :

“The ‘annexed Agreements’ include all the multilateral agreements relating to trade in goods and services and intellectual property rights. Once these agreements are ratified by the world’s legislative bodies, any member country can challenge, through the WTO, any law of another country that believes deprives it of benefits it expected to receive from the new trade rules”.

We have not granted our representatives in Parliament authority to assign legislative power to a foreign fora because through the electoral process we have required our representatives to exercise legislative power themselves. We have not elected the WTO or any other organ at the foreign fora: hence we do not trust them.

A Division Bench of the High Court (Coram: Sanjay Kishan Kaul and Ajit Bharihoke, JJ.) heard the said Writ Petition, and declared their judgment, given in the open court, on November 11, 2009. The High Court made some important observations [see *Shiva Kant Jha v. Union of India* (2009-TIOL-626-H.C.-DEL)]:

“7. One of the serious challenges sought to be raised by the petitioner is that the system of governance in our country has to be satisfied on the touchstone of the Constitution. The Parliament, the Executive and the Judiciary are all creations of the Constitution which is supreme. It is, thus, the submission of the petitioner that it can never be pleaded on behalf of the respondents or portrayed in different forums that this basic touchstone is not to be satisfied while entering into international treaties. In this behalf the petitioner seeks to refer to the principle of “*Reductio ad absurdum*” to canvas the proposition that where one assumes a claim for the sake of argument and derives an absurd or ridiculous outcome then the natural conclusion is that the original claim must have been wrong as it led to an absurd result. As an illustration the petitioner submits that could an executive through a treaty establish any highest legislative or judicial body for India in some foreign land whose writ would run on the constitutional organs of the Republic India The petitioner has also referred to the report published as “Report of the Peoples’ Commission on GATT” on the constitutional implications of the Final Act embodying the results of Uruguay Round on Multilateral Trade Negotiations.

9. “..... insofar as the fundamental question of any act of the Government in pursuance to an international treaty resulting in violation of any provision of the Constitution or not satisfying the test of being in compliance with the doctrine of basic structure is concerned, the respondents do not even dispute the said position and have drawn our attention to their counter affidavit where while dealing with the treaty making power of the Union executive and the Parliament it has been stated in para 1 “it is humbly submitted that the Government of

India can only enter into a treaty in conformity with the constitutional provisions laid down in the Constitution of India”.

As I felt the High Court did not decide some of the core issues, I filed the Special Leave Petition before the Supreme Court. I argued the matter on August 16, 2010. *The Times of India* of August 17, 2010 made some insightful comments under a suggestive title: “Centre’s treaty-making power must conform to Constitution: SC.”²⁴ The comment, I would have made on the observations of the Supreme Court, has been insightfully made by the journalist who said:

“A petitioner, advocate Shiva Kant Jha, complained before a Bench comprising Chief Justice SH Kapadia and Justice KS Radhakrishnan that the executive was going ahead and signing a large number of multilateral treaties to fulfil its WTO obligations and was refusing to adhere to constitutional provisions. When he argued that Delhi High Court had dismissed his petition on the ground that treaty-making power of the executive was not subject to the constitutional framework, the Bench said, “Who says it is not. If you show us that a certain provision was in breach of the Constitution, certainly the apex court can examine it. Such treaties which violate the basic structure of the Constitution will be struck down. This is already stated in the HC judgment.” ... Though the court did not entertain the petition, it surely showed a shift in approach in scrutinizing the constitutional validity of the multilateral and bilateral agreements entered into by India. In contrast, the apex court was not ready to entertain any of the four PILs filed during those days when there was a huge controversy over the India-US nuclear agreement. A Bench headed by then CJI K G Balakrishnan had dismissed the PILs challenging the nuclear deal.”

But the unrestrained power of treaty-making is most delicious to the executive governments. This provides an efficacious way to get round the strict discipline and limitations that laws and constitutions impose. History evidences the executive government’s limitless craze for unrestrained power.

IV

I ILLUSTRATED *REDUCTIO AD ABSURDUM* BEFORE THE DELHI HIGH COURT

Before the Delhi High Court, I criticized the circular of our Government to the UNO that the President’s power to enter into treaties remains unfettered by any “internal constitutional restrictions.”²⁵ So strongly I felt against this perverse view that I went to the extent of arguing on *Reductio ad absurdum*. I wrote in my Written Submissions to the Court:

“Perish the thought: “*Reductio ad absurdum* also known as an apagogical argument, is a type of logical argument where one assumes a claim for the sake of argument and derives an absurd or ridiculous outcome, and then concludes that the original claim must have been wrong as it led to an absurd result. If the Respondents’ view is allowed to prevail, both our democratic polity and the Constitution may get subverted through the Treaty-Making Power.”²⁶

I think I did a right thing in pleading on *Reductio ad absurdum*. It is clear from the Court's Judgment: it caught the point well, and made some meaningful comments in its judgment.

V

MY SUGGESTIONS ON VALID TREATY MAKING PROCEDURE

After much deliberation over years, I have formulated some suggestions for our people to consider. As in this phase of globalization, 'Treaties' have great impact not only on the affairs at the international plane but also in the sovereign domestic space, I consider it high time that certain changes be made in our Treaty-making procedure:

- (i) Treaties, which modify or override the domestic laws, must be ratified only after Parliament's approval through legislation, or on a resolution by the *Lok Sabha* (the way a tax treaty is done in the U.K.).
- (ii) Treaties of domestic operations, affecting the areas for legislative operations under the entries in the Seventh Schedule, should be ratified only after Parliamentary approval is accorded, or the bill is enacted as an Act.
- (iii) Treaties affecting constitutional provisions, other than those affecting the basic features of the Constitution, should be made only after obtaining an advisory opinion of the Supreme Court thereon as to their constitutional validity.
- (iv) Treaties, which affect the basic features of our Constitution, should be subjected to popular referendum, after obtaining the opinion of the Supreme Court thereon.

The following three comments are also worthwhile:

- (i) If the procedure of reference to the Supreme Court is to be avoided, then a treaty should be ratified after Parliamentary approval accorded in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting.
- (ii) Our Constitution does not prescribe recourse to referendum. But people's claim that such treaties be decided through a referendum emanates from the very fact that 'We, the people' have adopted, enacted and given to ourselves the Constitution. Whatever protocol of referendum is chosen it must be an effective plebiscitary device to support the terms of a contemplated treaty.
- (iii) The adoption of the above-suggested procedure would help our country to withstand the pressures to which it is being subjected to in handling the international negotiations. If a particular draft treaty is not approved per procedure described above, the government would have no option but not to proceed further in the matter. Besides, this would make the process of treaty making transparent, and democratic. This would help our government to answer effectively the predatory international financiers by letting them know that the executive government of India works under constitutional limitations, which cannot be ignored or evaded. An idea must be drummed into the ears of all that obligations under a treaty should neither be created in darkness, nor carried out under an opaque system. This would put every body under notice that ratification as such does not entitle anybody to any legitimate expectation before the treaty's incorporation into

domestic law as per procedure suggested. This procedure would inhibit the executive from taking things for granted.

VI

OUR REPUBLIC IS IN CRISIS : WHAT WENT WRONG WITH THE ROMAN REPUBLIC

The Roman Republic lasted for 482 years from c.509 B.C. Its Constitution, though unwritten, established a polity with the broad features which characterize our modern constitutions. Like our Constitution, it bore certain dominant features: (i) the Roman Republican constitution was shaped by a long-drawn struggle between the patricians and the 'plebs' in which struggle the plebs succeeded in being recognized equal in exercise of the state powers; (ii) it illustrated remarkably well the theory of the separation of powers; (iii) it established accountability by ensuring the operation of checks and balances; (iv) it was founded on the shared view that sovereignty inhered in *demos* (people); (v) it was generally accepted that it was the People of Rome who exercised legislative powers through the assemblies; and (vi) it was an excellent product to ensure liberty to people founded on egalitarian ideas so noble that Tiberius, the tribune, reminded the people of their great dignified status in the words capable to give everlasting joy to any republican and democratic society. Yet the Roman Republic sank into morass, and declined through civil wars, power-maneuverings, and the greed of the power-hungry leaders. The death-knell of the Republic was sounded in the battle of Pharsalus, in Thessaly, in 48 B.C. when the forces commanded by Pompey failed to stop Julius Caesar from acquiring brute power. The way he did that is graphically portrayed by the historian H.A. Davies in Chapter XII of his *An Outline History of the World* (Oxford, 1937 ed.):

“He [Caesar] got himself appointed dictator for life and consul for ten years; he filled the Senate with his own supporters and nominees, so that it was always prepared to do his bidding; divine honours were paid to him; and to all intents and purposes Rome was ruled by one man.”

The Republic was almost dead, and military dictatorship had begun. It was 1954, only about four years after the commencement of our Republic's Constitution (the precise date being 26 January 1950), that my teacher of history had expressed his apprehensions that, if things did not go well in our country, our Republic too would not survive. At his instruction, I read H.A. Davies²⁷. It is also not possible to forget that song of a Hindi film which had expressed the most sincere expectations of our freedom-fighters from their countrymen: *Ham layein hain toofan se kashti nikal ke, Is desh ko rakhna mere bachhon sambhalke* ('We have brought our canoe to the coast suffering tempests in our way. We hope, dear children, that you would preserve and protect it.)

I have felt over the years that many things have happened in our country which do not augur well for our Republic. I intend to summarize the features of the Roman Republican polity, and to show how such sinister features are becoming manifest in our country more and more. It is not a mere figment of my mind if I see the ship of our Constitution sinking into the treacherous sea; it is no hallucination for me to hear some silhouette singing the very requiem for our

Constitution. In order to be brief, I would draw up a table setting forth some of the morbid features of the Roman polity which bring to my mind some of the symptoms and features of our present ailing Republic. I am indebted to H.A. Davies, H.A.L. Fisher, and Nehru, from whose books I had profited a lot as a student, and from which I have received my insight into the current affairs of our Indian Republic.

	The features of the decadent Roman Republican Polity	Features marking the polity in the Republic of India of these years
1	<p>The Corruption galore amongst the wielders of the governmental powers.</p> <p>"The supremacy of Rome in the world was now indisputable, but it had been won at a ruinous cost for the majority of the Roman people. The long wars and the resulting conquests caused money to flow into the Roman treasury, and Roman officials were able to enrich themselves at the expense of the conquered provinces."²⁸</p> <p>"The supremacy of Rome in the world was now indisputable, but it had been won at a ruinous cost for the majority of the Roman people. The long wars and the resulting conquests caused money to flow into the Roman treasury, and Roman officials were able to enrich themselves at the expense of the conquered provinces. The city of Rome reflected the new prosperity in the many public buildings that sprang up; the gardens and villas of the rich, filled with sculpture from the cities of Asia and Greece; the reading of Greek books and the sending of Roman youths to Athens to receive a Greek education; and the many fine roads spreading in all directions from the city. But the condition of the Roman farmers was lamentable in the extreme. Military service in Africa and Spain had torn them away from their small holdings, and when they returned it was to find that the holdings of their neighbours had been gradually absorbed by the large estates of wealthy landowners, worked by slaves. The returned soldiers could</p>	<p>Things are happening in public life which were never anticipated before. There are several glaring instances of misuse of power by men in authority and position. This is a phenomenon of which the Courts are bound to take judicial notice. "This Court cannot be oblivious to the fact that there has been a steady decline of public standards or public morals and public morale. It is necessary to cleanse public life in this country, along with or even before cleaning the physical atmosphere. The pollution in our values and standards is an equally grave menace as the pollution of the environment. Where such situations cry out, the Court should not and cannot remain mute and dumb."²⁹ "One, it suggests that corruption is a way of life in India and two, that there is one law for the citizens and another for the rich and powerful who hold or have held political office."³⁰</p> <p>"...the country's economy may "increasingly be dynamic, but our moral universe seems to be shrinking. Graft and greed are on the rise. The principles on which Independent India was founded, for which a generation of great leaders fought and sacrificed their all, are in danger of being negated."³¹ "Gaining inappropriately from a range of sectors, cattle fodder to civil aviation, corruption knows no limits. Its width and depth cut across party lines."³² "The scams have a symbiotic relationship with the black economy. The number of scams is growing and so is the size of the black economy, which has reached a mind-boggling level of 50 per cent of the Gross Domestic Product, that is, it annually generates Rs.33 lakh crore in black income. While the 1980s saw eight major scams, in the period between 1991 and</p>

	The features of the decadent Roman Republican Polity	Features marking the polity in the Republic of India of these years
	<p>not hope to compete with these and it was only a matter of time before their estates were also absorbed and they themselves obliged to drift into the capital, where living was cheap, where candidates for office were ready to buy votes, and where were the distractions of the theatre and the circus. Another circumstance that helped to reduce so many of the Roman people to a swarm of state-fed paupers — for the state also gave doles — was the fact that with the expansion of the Roman Empire great corn ships sailed up the Tiber from Sicily, Sardinia, and the Nile country. The result was that the produce of the small farmers was undersold in the Roman market, and they themselves were forced to sell their lands, and flock into the capital....” (H.A. Davies, <i>An Outline of the History of the World</i> pp. 172- 174)]</p> <p>“Livy’s history of the Roman Republic is no mere record of facts; it is almost a moral treatise, sanctifying such virtues as fidelity to the pledged word and the subordination of personal ambition to public duty, the qualities which made Rome great. Tacitus, on the other hand, exposes the vices which brought her down from her high position : the conservatism of the governing classes, the loss of the old civic spirit, the general apathy and hedonism of the people.” (H.A. Davies, <i>An Outline History of the World</i> p, 202)</p>	<p>1996 there were 26 and during 2005-08, there were around 150.... It is suspected that many have their hands in the till. Included here are Prime Ministers, Chief Ministers, Ministers, top industrialists, military personnel, judges, bureaucrats, policemen, and professionals and so on.... Underlying this vast illegality is a ‘Triad’ involving the corrupt business class, the political class and the executive. Since the mid-1980s, the criminal has also entered this Triad, leading to growing criminalization”.³³ ‘In July 2008 The Washington Post reported that nearly a fourth of the 540 Indian Parliament members faced criminal charges, “including human trafficking, immigration rackets, embezzlement , rape and even murder”.³⁴ In recent years a number of serious scams have disturbed us. Things have become much worse now than what they were in 1980s when our Supreme Court considered it appropriate to make the above quoted observation. In 2010, the Transparency International’s Corruption Perception Index ‘India was ranked 87th out of 178 countries’.</p> <p>Corruptions have much increased, and have become chronic in our country. If you cry against this evil, mighty Satanic forces emerge to destroy such initiatives. Such things have led to the present gloom. Now persons have emerged to justify ‘corruptions’. How ‘development’ and ‘morality’ can go apart can be illustrated with reference to the justification of ‘corruption’ in Korea even in this phase of its great economic growth. It is publicly argued there: “Organized corruption thus quietly served a purpose that open public administration could not.”³⁵ We are not far behind. Their number is increasing fast who consider “corruption” justified and “greed” good.. These so-called intelligent people amass their gains on tiny islands, or in the digitally numbered bank faults in secrecy jurisdictions. They would never think that such islands are close to be</p>

	The features of the decadent Roman Republican Polity	Features marking the polity in the Republic of India of these years
2	<p>The triumph of Consumerism and hedonism.</p> <p>"The city of Rome reflected the new prosperity in the many public buildings that sprang up; the gardens and villas of the rich, filled with sculpture from the cities of Asia and Greece; the reading of Greek books and the sending of Roman youths to Athens to receive a Greek education; and the many fine roads spreading in all directions from the city."³⁶</p>	<p>sucked inside the waters; and such numbers are likely to get lost somehow. 'Mystery', thy name is 'Man'!</p> <p>We find that life is a struggle in which, we, like Sisyphus, keep pushing a stone uphill, knowing that when we stop for a momentary respite "it will roll back down again." Billionaires increase; paupers increase, inequality is growing. Massive propaganda by vested interests have promoted luxury and consumerism in a country in which 'a third of the world's poor' live, and where 'around 7,00,000 Indians die each year from diarrhoea'. The growing hedonistic culture has led the rich to callousness, and they have no sense of fraternity with the rest. The number of starvation deaths can go down substantially if even this growing craze to look beautiful abates, if this ugly fashion of hair colouring goes, and the sale of the hair color refreshers goes down. And all this is happening in a country of which half of children are underweight calling to mind the pathetic conditions of Sub-Saharan Africa.</p>
3	<p>The triumph of the plutocratic oligarchy and the plight of common citizenry</p> <p>"One of the most noticeable features of the time was the increased wealth of the richer classes. This wealth came from the conquered provinces. Most of the Roman governors looked upon provinces as legitimate prey. The unfortunate inhabitants were shamelessly taxed, bribes were accepted without scruple, and a provincial's hope of justice generally depended upon his ability to pay for it. From 73 B.C. to 71 a man named Verres was governor of Sicily, and his exactions during these three years are said to have desolated the island more than the war between Rome and Carthage for its possession."³⁷ '... yet the age which witnessed these dazzling feats of arms was one of</p>	<p>Noam Chomsky, one of the greatest amongst the American intellectuals, says in his <i>Hegemony and Survival</i> (at p. 133): "India ... is governed by a proto-fascist party that is handing the country's resources to foreign multinationals while preaching an ultra nationalist line for domestic purposes... India has a wonderful software industry and sectors of great wealth—uninterestingly, also hundreds of millions of people living under some of the worst conditions in the world, where the plight of women is not very different from life under the Taliban." "In nutshell, the root of money power in Indian politics is essentially its non-representative nature and this is deliberate. It is not that politics needs big money but that money needs to control politics. Black money is a result of a basic contradiction in our system and the elite wish to control the political process for their continued charmed existence."³⁹</p>

	The features of the decadent Roman Republican Polity	Features marking the polity in the Republic of India of these years
	the most unhappy and uncomfortable in Roman history. . It was marked, indeed by a great advance in wealth and luxury, by the growth of huge private fortunes... ³⁸	“Whilst our economy is growing at 9 per cent and the much crafty crony capitalism is working for the elite and the corporations producing the largest number of poor in the world with hundreds of millions earning less than \$1 per day and the billionaires more than the number Japan (when a per capita income in Japan is \$36,000 ‘being roughly 60 times India’s figure of \$600.’). The pathetic conundrum in the 6th decade of Independent India is clear if these facts are turned into metaphors.” ⁴⁰
4	<p>The plight of the Roman farmers.</p> <p>(a) “But the condition of the Roman farmers was lamentable in the extreme. Military service in Africa and Spain had torn them away from their small holdings, and when they returned it was to find that the holdings of their neighbours had been gradually absorbed by the large estates of wealthy landowners, worked by slaves.”</p> <p>(b) “The returned soldiers could not hope to compete with these and it was only a matter of time before their estates were also absorbed and they themselves obliged to drift into the capital, where living was cheap, where candidates for office were ready to buy votes, and where were the distractions of the theatre and the circus..”</p> <p>(c) “Another circumstance that helped to reduce so many of the Roman people to a swarm of state-fed paupers – for the state also gave doles — was the fact that with the expansion of the Roman Empire great corn ships sailed up the Tiber from Sicily, Sardinia, and the Nile country.”⁴¹</p> <p>(d) “The result was that the produce of the small farmers was undersold in the Roman market, and they themselves were forced to sell their lands, and flock into the capital.”</p>	<p>“Dr. Vandana Shiva, Director, Research Foundation for Science, Technology and Ecology has called the suicides of more than 40,000 farmers a genocide. This genocide is a result of deliberate policy imposed by the WTO and the World Bank, implemented by the Government, which is designed to destroy small farmers and transform Indian agriculture into large scale corporate industrial farming. The suicides are a result of debt and debt is a result of a rising cost of production and falling prices, both linked to free trade and trade liberalization policies in agriculture. Sonia Gandhi, the Congress President has cautioned the Prime Minister to not rush head long into Free Trade Agreements in the context of farmers suicides.” (http://www.navdanya.org/news/06may08.htm) Our government may break new grounds for resources by granting lands to the corporate zamindars, by granting right to exploit our resources by conferring licenses and franchises to corporations to rule the country. If water resources are exhausted, riverbeds can be leased or auctioned. When all these are exhausted, human beings, now fast becoming commodities can be sold in international market. After all, under the WTO regime it is the Market which rules.⁴² India’s Constitution, it is possible to argue, stands repealed to the extent it con-</p>

	The features of the decadent Roman Republican Polity	Features marking the polity in the Republic of India of these years
		flicts with the commands of Market, and the WTO.
5	<p>The Corruption at the highest judicial level</p> <p>“As chief judge he (Verres) sold all his decisions, and he plundered the farmers of their crops, keeping the proceeds for himself. He was fond of art, and as he journeyed through the island he stole pictures, statues, vases, and any other objects of value which appealed to him from both private houses and temples. He crucified on the beach a trader who resisted his demands, so as to discourage similar conduct in others. Asked if he did not fear judgement when he returned to Rome, he replied that he intended to use two-thirds of his wealth to bribe the lawyers and judges, and that the third which remained would be quite sufficient to make him rich for life.”⁴³</p>	<p>Never had we heard so much being said by so many against the integrity of the judges. It is no solace for us that the Judges of the United States are no better, or even the great British Judiciary has been bitten by the vice of our time. Even the judges are not seen to appreciate that when serious allegations are made by persons, not subjecting themselves to credible investigation, can have only one result: the charges made would stand amply proved in public mind.</p>
6	<p>Reforms by Tiberius and Grachus, and the morbid response of the ungrateful Roman citizenry. The plight of those who work for public weal.</p> <p>(i) ‘Tiberius and Grachus, realizing how the real strength of Rome was being sapped and undermined, endeavoured to improve the situation by limiting the amount of land which any one could hold (in accordance with the <i>Lex Licinia</i> of 367 B.C.) and redistribution what was left over among the poorer citizens, as property which could not be alienated and for which they paid a nominal rent to the state.’</p> <p>(ii) ‘In his desire that the poorer classes should reap the benefits of empire [Caius Grachus] set up great corn depots in Rome, where they could purchase corn at an exceptionally low price.’</p>	<p>“It was during the struggle for independence that it had been realized that political independence without social and economic freedom was not enough. The cultivators of land should acquire ownership rights. The Congress Agrarian Reforms Committee had prepared a blue print of the abolition of intermediaries of all kinds.” “The Planning Commission noted the existence of impediments of the pre-independence agrarian system and realized that their removal was necessary to bring about changes in the agrarian structure to realize the constitutional objective of a just social order.”</p> <p>“The Constitution (Twenty-fifth Amendment) Act, 1971 inserted a new Article 31C in the Constitution to protect legislations enacted to give effect to directive principles contained in Article 39(b) and (c) against a challenge on the ground of alleged inconsistency with fundamental rights guaranteed....The Supreme</p>

	The features of the decadent Roman Republican Polity	Features marking the polity in the Republic of India of these years
(iii)	<p>'He also proposed to pay the citizens for their share in government, a scheme that worked well under Pericles. But Rome was not Athens.'</p> <p>"When Tiberius became tribune in 133 B.C. he tried to rouse the Romans to a sense of their position: <i>'The beasts which roam over Italy', he declared, 'have each his den, his resting-place; they who fought for Italy have only light and air as their share in it ... called masters of the world, you have not really a clod to call your own.'</i> But the work of Tiberius and his brother Caius ended in failure: senatorial authority was too strong; the Roman mob was little better than <i>canaille</i> utterly demoralized and unprincipled; it was easy to work upon their ignorant prejudices; and at the end of his year of office in 133 B.C. Tiberius Gracchus was murdered by them, while eleven years later his brother Caius experienced the same fate..... His unselfish soul never dreamed that those who shouted for their own freedom would deny liberty to others....."</p>	<p>Court from beginning till today has upheld the validity of agrarian reform legislation against all kinds of attack." But we have forgotten all those ideas and ideals. Who remembers Art 51A of our Constitution: "to cherish and follow the noble ideals which inspired our national struggle for freedom". The Zamindari system (we may call it 'corporate zamindari') is back. The Special Economic Zones, and other ventures in the Special Economic Zones are negation of our constitutional commitments. Farmers are dying in thousands: how many of them are dead is a matter for speculation for our Stock-Market-ruled Government. Our people have forgotten their commitments to the great cause, perhaps believing as the decadent Romans had once felt: "no point in steadfast adherence to a cause, when no cause is important or has a chance of stable victory... The man, whose virtue has no source except a purely terrestrial prudence will, in such a world, become an adventurer if he has the courage, and, if not, will seek obscurity as a timid time-server."</p>
7	<p>The greatest irony of history is that the 'great beast', the <i>demos</i>, could be easily befooled. "The only result of paying the citizens of Rome was to turn them into the most shameless species of paupers, ready to support Gracchus when he gave them what they wanted, but quite as ready to go against him when a fellow tribune named Drusus, put up to it by the Senate, outbid him in the Comitia with wild promises which he never intended to fulfil."</p>	<p>The political realities in our world's some of the greatest so-called democracies reveal themselves the political morality of the wielders of political power. Harold Pinter has aptly said: ".... the majority of politicians, on the evidence available to us, are interested not in truth but in power and in the maintenance of that power." Here, in our country the cleavage between practice and precepts is so shockingly wide that a candid reflection on the situation becomes difficult. [But Indian genius deserves to be understood well. The common Americans might have appeared "great beast." to Alexander Hamilton, the common people of our country have insight, critical sense, and competence to see through games.]</p>

OUR CONSTITUTION AT WORK

	The features of the decadent Roman Republican Polity	Features marking the polity in the Republic of India of these years
8	During the declining years of the Roman Republic the popular representative institutions lost vigour, creativity and assertiveness. The Senate of the Republic even persuaded to appoint Caesar the dictator. After the battle of Pharsalus, it had a short melodramatic existence but ever bleeding fast to death.	The Executive government thinks its Treaty-making power is not under our Constitution's discipline. It could enter into the WTO Treaty without Parliament's approval. Our Parliament could not inhibit the Executive assigning legislative powers to the WTO. Our Constitution does not permit assignment or outsourcing of legislative or judicial powers. The Indian citizens do not vote for the WTO.
9	The republican democracy was dead. "Roman was thus an aristocratic republic." ⁴⁸ Carthage was 'the great commercial republic.' ⁴⁹	Our democracy is critically ill. "Indian democracy appears to be tottering. Corruption charges have been leveled against chief ministers and prime ministers. With no one owning responsibility, democracy is taking a beating...." ⁵⁰ "The foundations of the Constitutions have been shaken by the <i>folly</i> of the people, the <i>corruption</i> of our politicians and the <i>negligence</i> of the elite" ⁵¹ "India, the republic, is now on sale. Participating in the auction is a group of powerful individuals, corporate houses, lobbyists, bureaucrats and journalists." ⁵² "Under the present-day neoliberal paradigm, powerful vested interests have transformed the present-day republics into oligarchic republics. We see with what nakedness the corporate oligarchy calls shots even in our own country."
10	Decline of Senate "More important was a decline in morale, a loss of heart, evident even in the Senate, the body which should have led the Commonwealth in the civic virtues of honour and independence, courage and patriotism. No contrast can be more tragic than the picture which Levy paints of the Roman Senate in the days of its glory during the Punic Wars, and the image of the same assembly abasing itself in servile adulation before the somber Tiberius, which Tacitus presents to his readers." ⁵³	Decline of Parliament I would set forth my reflections on our Parliament at work in the next Chapter.

VII

WE ARE, WHEN ALL IS SAID, INCORRIGIBLE OPTIMISTS

I have drawn up the portrait of our plight with the sole objective to stimulate our great people to think of our sad comedown. I am sure that we can set our affairs right. If we assert with wisdom and creativity, we can prove our worth, and make our country great. Time has come to realize :

*Uddhared atmanatmanam
Natmanamavasadayet
Atmaiva hyatmano bandhur
Atmaiva ripur atmanah.*⁵⁴

[We can lift ourselves through our endeavours alone.
We must not degrade ourselves through our actions or inactions.
We are ourselves our friends, and are ourselves are our foes.]

Prometheus in Shelley's *Prometheus Unbound* establishes the triumph of the moral order ensuring Hope despite all the sufferings of being bound on the wheel of fire. Demogorgon, who overthrew the tyrant Jupiter, whose wrath Prometheus suffered, comes to tell people to struggle to save what we cherish : the weal of all :

To suffer woes which Hope thinks infinite;
To forgive wrongs darker than Death or Night;
To defy Power which seems Omnipotent;
To love, and bear; to hope, till Hope creates
From its own wreck the thing it contemplates. . .

To decide what is '*karyakarya-vyavasthiti*' (meaning prudence is to decide what should be done, and what should not be done), we must interpret our Constitution in accordance with ethics of a democratic republican polity. Joseph Storey had aptly said in *The Miscellaneous Writings of Joseph Storey*; "Frame constitutions of government with what wisdom and foresight we may, they must be imperfect, and leave something to discretion, and much to public virtue." Art. 20(4) of the Constitution of the Federal Republic of Germany goes to say:

"All Germans have the right to resist any person seeking to abolish the constitutional order, should no other remedy be possible."

Though our Constitution does not say such a thing in so many words, such commitments are implied in our Constitution; also as this Constitution has been made by 'We, the People' in whom the unalienable ultimate political authority vests. Our Constitution makes certain high constitutional functionaries to swear to 'uphold' our Constitution. But it is the ever abiding duty of the political sovereign, 'We, the People', to keep even them under critical vigilance. Ultimately the people alone can protect, preserve, and destroy the Constitution they have framed through their representatives. Only time would judge us and our institutions whether our wisdom matches with the responsibility which our Destiny has cast on us. How infinitely wise was Sachchidananda Sinha, provi-

OUR CONSTITUTION AT WORK

sional Chairman of the Constituent Assembly, in quoting the words of the great Joseph Story who, after praising the features of his country's Constitution, warned its keepers:

'The structure has been erected by architects of consummate skill and fidelity;.... It may, nevertheless, perish in an hour by the folly, or corruption, or negligence of its only keepers, THE PEOPLE. Republics are created – these are the words which I commend to you for your consideration – by the virtue, public spirit and intelligence of the citizens. They fall when the wise are banished from the public councils because they dare to be honest, and the profligate are rewarded because they flatter the people in order to betray them.'

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3. Bernard Schwartz, *Some Makers of American Law* Tagore Law Lectures p. 37
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5. Oppenheim, *International Law* (Peace) fn 6 at p. 125
6. Noam Chomsky, *The Essential Chomsky* p. 165 (Penguin Books)
7. Shiva Kant Jha, *Judicial Role in Globalised Economy* p. 24 (Wadhwa, 2005)
8. Noam Chomsky, *The Essential Chomsky* p. 59 (Penguin Books)
9. Noam Chomsky, *The Essential Chomsky* pp. 59-60 (Penguin Books)
10. H.G. Wells in his *A Short History of World* pp. 264-265
11. See my article on 'Constitutional Socialism' at: http://shivakantjha.org/openfile.php?filename=articles/constitutional_socialism.htm
12. Russell, *History of Western Philosophy* p. 613
13. Also at http://shivakantjha.org/openfile.php?filename=articles/constitutional_socialism.htm
14. Bertrand Russell, *History of Western Philosophy* p. 750
15. See quoted in Chapter 19.
16. AIR 2004 SC 1107
17. Entitled 'Skinning a Cat' (2005) 8 SCC (J) 3
18. (2004) 11 SCC 26 at SCC p. 148, para 307
19. Taylor, *English History 1914-1945* Chapter 1.
20. [U.N. Doc. ST/LEG/SER.B/3, at63-64 (Dec. 1952) (Memorandum of April 19, 1951) quoted in *National Treaty Law and Practice* ed. Duncan B Hollis, Merritt R. Blakeslee & L. Benjamin Ederington p. 356-357 (2005 Boston).
21. For the undemocratic procedure of treaty-making, see 'The Role of Parliaments in Treaty-Making' by Joanna Harrington in *The Fluid State* edited by Hillary Charlesworth.
22. *Shiva Kant Jha v. Union of India* [W.P.(C) 1357/2007]
23. David Korten, *When Corporations Rule the World* p. 174
24. <http://timesofindia.indiatimes.com/india/Centres-treaty-making-power-must-conform-to-Constitution-SC/articleshow/6320822.cms>
25. [U.N. Doc. ST/LEG/SER.B/3, at63-64 (Dec. 1952) (Memorandum of April 19, 1951) quoted in *National Treaty Law and Practice* ed. Duncan B Hollis, Merritt R. Blakeslee & L. Benjamin Ederington p. 356-357 (2005 Boston).
26. "1. Can the Executive, through treaty terms, saddle this nation with an obligation to conscript its young men and women to combat as the 'strategic partners' of a foreign state to sacrifice themselves for the ignoble cause of protecting the economic interests of the *Pax Mercatus* promoted and protected by corporate *imperium* ?
2. Can the Executive, through its treaty-making power, introduce corporate *zamindari* to turn common men into slaves by gladly putting the organized rural culture to flame by providing a few chips to be looted again by generating desires for consumerism, or a few petty jobs sure to turn them into serfs, even worse than the Third Estate of the French society before the French Revolution ?"
27. Quotations are from, and the exposition of the situations in the Roman Republic, as discussed in, Chapter XII (The Roman Republic) of *An Outline History of the World* by H.A. Davies (Oxford, 1937 ed. Reprint 1950)
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29. *Shivajirao Nilangaker Patil v. Mahesh Madhav Gosavi*, AIR 1987 SC 294 at page 311 and 306 (repeated in *R. S Das v. Union* AIR 1987 SC 593 at 598).
30. The Statesman, 27 Sept. 1992. in C.R. Irani, Caveat p.33
31. Smt. Sonia Gandhi, as reported in the Times of India dated Nov. 20, 2010 (Patna edition)
32. The editorial in the *Times of India* dated Nov. 18, 2010 (Patna edition)
33. Prof Arun Kumar of JNU, 'Honesty is indivisible' (*The Hindu* of Jan 30, 2011)
34. Wikipedia. Accessed on March 18, 2010
35. Alan Beattie, *False Economy* P. 222 (Viking, 2009)
36. H.A. Davies, *An Outline History of the World* p. 172
37. H.A. Davies, *An Outline History of the World* p. 183
38. Fisher, *A History of Europe* P.77
39. Prof. Arun Kumar, *The Black Money Economy of India* Ch. 5

OUR CONSTITUTION AT WORK

40. Quoted from my Intervention Petition in *Good Governance India Foundation v. Union of India* W.P.(C.) No. 679 of 2007 before the Supreme Court of India
41. H.A. Davies, *An Outline History of the World* p. 174
42. The WTO admits that 'Overall, the results of the negotiations provide a framework for the long-term reform of agricultural trade and domestic policies over the years to come.' "The terms, tone and temper of the Agreement on Agriculture, under the WTO umbrella no different from those which had been shown by the imperialists in such treaties as the Treaty of Allahabad, the Treaty of Nanking, the Treaty of Wanghia and the Treaty of Whampoa while spreading imperialism in the 18th and the 19th centuries." "It was during the struggle for independence itself that the Indian National Congress had realized that political independence without social and economic freedom was not enough. It was also accepted that the permanent settlement of 1793 must be repealed and actual cultivator of land should be granted ownership rights. The Congress Agrarian Reforms Committee had prepared a blue print of the abolition of intermediaries of all kinds." [Prof. M.L. Upadhyaya, *Law, Poverty & Development* (Taxman) p. 104];. "The Planning Commission noted the existence of impediments of the pre-independence agrarian system and realized that their removal was necessary to bring about changes in the agrarian structure to realize the constitutional objective of a just social order." [ibid] "The Constitution (Twenty-fifth Amendment) Act, 1971 inserted a new Article 31C in the Constitution to protect legislations enacted to give effect to directive principles contained in Article 39(b) and (c) against a challenge on the ground of alleged inconsistency with fundamental rights guaranteed....The Supreme Court from beginning till today has upheld the validity of agrarian reform legislation against all kinds of attack." ⁴² [Prof. M.L. Upadhyaya]. "The effect of the Agreement on Agriculture is in utter forgetfulness of our constitutional commitment of binding nature. The constitutional commitments have been given up under the WTO instructions/influence. Zamindari system is back." "The Special Economic Zones, and other ventures in the Special Economic Zones are negation of our constitutional commitments. Farmers are dying in thousands: how many are dead is a matter for speculation for our Stock-Market ruled Government". [all are the extracts from my Writ Petition (c) 445 of 2006 that I had filed before the Supreme Court of India].
43. H.A. Davies, *An Outline History of the World* p. 184
44. H.A. Davies, *An Outline History of the World* p. 174
45. Bertrand Russell, *History of Western Philosophy* p. 237
46. H.A. Davies, *An Outline History of the World* p. 175
47. Chomsky, *Hegemony or Survival* p. 5
48. H.A. Davies, *An Outline History of the World* p. 164
49. H.A. Davies, *An Outline History of the World* p. 166
50. Prof. Arun Kumar, *The Black Money Economy of India* Ch. 5
51. Nani Palkhivala, *Selected Writings* p. 75 (Bhartiya Vidya Bhavan, 1999)
52. Nani Palkhivala, *Selected Writings* p. 75 (Bhartiya Vidya Bhavan, 1999)
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22

OUR DEMOCRATIC REPUBLIC AND ITS GREAT INSTITUTIONS

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

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

Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I

DEMOCRACY

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

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

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

The classical Hindu political thought stagnated after the advent of Islam. Islam left no impact on our political thought⁶. But the sclerosis that set in during

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

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

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

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

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

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

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

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

(iii) The Western view of 'Democracy'

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

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

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

(iv) The nature and parameters of the Western Democracy

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

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

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

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

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

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

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

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

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

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

II

PARLIAMENT

(i) Expectations and achievements

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

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

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

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

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

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

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

(iii) The widening role of the Executive Government

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

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

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

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

I had many occasions to examine the above reasons. I examined at length in my *Final Act of WTO: Abuse of Treaty-Making Power*²¹, and in my Writ Petition²² before the Delhi High Court. The points that Shri Pranab Mukherjee presented against Mr. Baby's proposal were non-sustainable. They constituted a contempt of Parliament, and also an insult to India's citizenry. I would make two comments:

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

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

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

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

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

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

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

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

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

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

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

(vi) The Plight of Parliament

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

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

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

- (b) “During the last fifty years or so³¹, a further development took place, owing to the Prime Minister’s power of dissolution and to the increasing strictness of party discipline. The majority in Parliament now decides which party shall be in power, but, having decided that, it cannot in practice decide anything else. Proposed legislation is hardly ever enacted unless introduced by government. Thus the government is both legislative and executive, and its power is only limited by the need of occasional general elections.”³²

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

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

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

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

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

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

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

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

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

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

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

(vii) Our Parliament at work

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (C) In Chapter 21, I have written about Milo's Rome which was corrupt to the core. Even their representative body had sunk into sleaze, and the persons went up in power through pigsty! Our heart sinks when we hear about rampant corruption in our polity. I would touch only two events, though many others are in public domain.
- (i) The Narasimha Rao Government (1991 to 1996) had adopted the neoliberal agenda with aggressiveness. It is said that when a system degenerates, its degeneration has the propensity to self-perpetuate. In some form, that happened in our country. In my assessment, the period of naked corruption began during Rao's regime, but the evil has grown in the years thereafter. We felt ashamed that our most important political leader's name had been dragged in many scandals: Rao's reputation was tarnished in public view despite the fact the cases against him ultimately foundered on this or that ground. The grossest dereliction which smeared the image of our Parliament pertained to the JMM Scandal which got a quietus at our Supreme Court in *P. V. Narsimha Rao vs. State (CBI/SPE)*, (AIR 1998 SC 2120). It was alleged that bribe was received by four Members of Parliament, belonging to the Jharkhand Mukti Morcha, before the 'No Confidence Motion' against the Government of Shri Narasimha Rao, moved on July 28, 1993. "By a majority decision the Court arrived at the conclusion that while bribe-givers, who were members of Parliament, could not claim immunity under article 105, the bribe-takers, also members of Parliament, could claim such immunity if they had actually spoken or voted in the House in the manner indicated by the bribe-givers."³⁹ The logic of the decision is beyond comprehension. Bribe givers and takers were both guilty, and deserved punishment. This would have accorded well with common people's sense of justice.
 - (ii) G. K. Chesterton was amazed how certain peoples lose "the power of astonishment at their own actions". But when astonishments keep on overtaking us so frequently, we cease to remain responsive and reactive. We all came to know that the UPA Government was in crisis over the 'no confidence' motion in Parliament in 2008. This crisis occurred on account of the withdrawal of the support of the Communist Party of India (Marxist)-led Left Front to the UPA over the Indo-US Nuclear Deal. I had seen in 2008 the spectacle on my TV how wads of currencies were being flashed in Parliament to prove the allegations. I saw the spectacle on my TV. The Government adopted the strategy to evade the issue. Writing about corrupt ways of the government, Thomas Mann wrote in his novel *Death in Venice* a very pregnant

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

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

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

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

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

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

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

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

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

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

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

(x) I Pray

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

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

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

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

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

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

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

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

III

OUR POLITICAL PARTIES

(a) The nature of our polity

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

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

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

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

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

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

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

The assessment of the role of political parties

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

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

We are aghast at seeing our political parties taking advantages under the Representation of the People Act, 1951, but not adhering to our Constitution's socialist mission prescribed by the Act. Our political parties have not shown dedication to remove 'democratic deficit' in treaty-making power, nor have they striven to frame law to govern the formation and implementation of treaties. Whatever they may say for public consumption, they are seen committed only to the neoliberal approaches. They are indifferent to the question of 'moral deficit', as they, for reasons we all know, are not interested in controlling corruption and black money. The ever-growing scams, and the allegations of corruption have shown that all the mighty political parties have behaved almost the same way by selecting tainted leaders, by facilitating the criminals to remain comfortable, by delaying and frustrating legal actions thereby frustrating punitive actions against the culprits.....Inequality in matters of income and opportunities has grown. As both the Congress and the BJP have accepted the neoliberal paradigm, there is now no effective actions to make our society egalitarian. I would mention in Chapter 23 how both the two major political parties helped the Mauritius route to be utilized, against our national interest. Both of them have been indifferent to the rampant corruptions going on our country. Neither of these parties made sincere efforts to bring about effective anti-corruption law. Both these political parties have shown lackadaisical attitudes in *implementing* the United Nations Convention against Corruption. Both the major major political parties of our country have tried to appease the USA. The BJP was dominant in the alliance that had provided government from 1998 to 2004. Noam Chomsky has observed writing about India:

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

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

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

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

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

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

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

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

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

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

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

On the Anna Hazare Movement

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

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

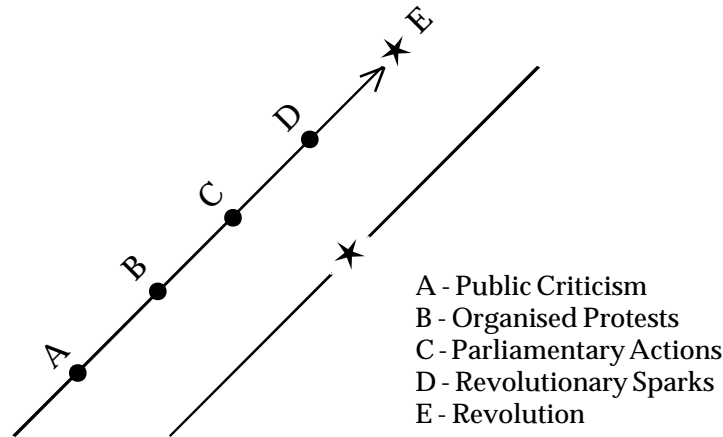
I remained glued to my Television watching the protests going on at Jantar Mantar, and listening to the fiery words of protests from Anna and Swami Ramdev. I grew apprehensive as I was not sure about the wisdom of our Government. I felt that if it committed the foolishness of ignoring such a protest,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

The Grammar of Revolution

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

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

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



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

I suggest that time has come to Restructure our Polity

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

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

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

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

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

NOTES AND REFERENCES

- 1 www.youtube.com/watch?v=4wH2HDy_kkg&list=MLGxdCwVVULXcRIT265Ooz5SnM6XA78fsj
- 2 Shiva Kant Jha, *Bharat ki Aitihasik Jhalak* Part II p. 62 (1954) [now out of print].
- 3 Sigmund Freud, *Civilization, Society, and Religion* p. 67
- 4 Bertrand Russell, *Autobiography* p. 726-27
- 5 Kiran Tandon, *Sanskrit Sahitya mein Rajaniti: Sri Krishna aur Chanakya ke Sandharvha mein*. pp. 67-68 (Eastern Book Linkers, Delhi [The extract is the English rendering by me from the Hindi text.]
- 6 P.T. Raju 'The Concept of Man in Indian Thought' in *The Concept of Man* (edited by S. Radhakrishnan & P.T. Raju p.. 207 (HarperCollins, India)
- 7 Hayek, *The Constitution of Liberty* quoted by Peter Watson, *A Terrible Beauty* p.518
- 8 Till the passing of the Middle Ages, Parliament was controlled only by the Landlords and property-owners. During the Renaissance the powerful property-owners and commercial adventurers emerged which helped the king to fight against the nobles and the greatest of all the capitalists the Church; and the emerging class was helped to go on hunting for wealth. Common people simply did not matter. These trends in the western thought have never ceased; and can be illustrated by a few quotations expressing the attitude towards 'man' that the dominant interests had developed..
 (i) The Phase of the Reformation. Luther said—
 "This article would make all men equal and so change the spiritual kingdom of Christ into an external worldly one. Impossible! An earthly kingdom cannot exist without inequality of persons. Some must be free, others serf, some rulers, other subjects." (Nehru, *Glimpses of World History* p. 284).
 (ii) The Age of Enlightenment. Even the great thinkers of this phase were the defenders of 'property' rights of the Haves, and looked down upon common people. "In any case, the *philosophes* could not bring themselves to trust the people. They even felt that to keep the masses from rebelling, religion was necessary." (Bronowski & Mazlish, *Western Intellectual Tradition: from Leonardo to Hegel* p. 301).

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

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

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

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

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

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

OUR DEMOCRATIC REPUBLIC AND ITS GREAT INSTITUTIONS

- 23 Keynes, *The Economic Consequences of Peace*. P. 41
- 24 *The Times of India* April 17, 2011
- 25 Chomsky, *Hegemony and Survival* p. 138
- 26 Nehru, *Glimpses of World History* p. 825
- 27 Nehru, *Glimpses of World History* p. 935
- 28 Expressions quoted from Chomsky, *Hegemony and Survival* p. 7
- 29 Joseph Stiglitz, *Making Globalization Work* p. 279
- 30 Noam Chomsky, *The Essential Chomsky* p. 165
- 31 Russell's book came out in 1946, and its second edition in 1961.
- 32 Bertrand Russell, *History of Western Philosophy* p. 615
- 33 *Samsher Singh v. Punjab* AIR 1974 2192
- 34 *Jawaya Kapur v. Punjab* AIR 1955 SC 549 1955 S.C.R. 225
- 35 AIR 1955 SC 569
- 36 G. R. Elton, *F. W. Maitland*, pp.65-66 (Weidenfeld and Nicholson, London)
- 37 2 L Ed 60 (1803)
- 38 Jawaharlal Nehru, *Glimpses of World History* (at p. 943)
- 39 *The Report of the National Commission to Review the Working of the Constitution* (5.15.4)
- 40 See *Raja Ram Pal v. Speaker, Lok Sabha* (2007) 3 SCC 184
- 41 Besides, the doctrine of diplomatic immunity has undergone very restrictive interpretation. One may go through for principles : *Trendtex Trading Corp. v. Credit Suisse* [1977] Q.B. 529, and *Alcom Ltd v Republic of Colombia* (1984) 2 All ER 6 H.L.
- 42 <http://commons.wikimedia.org/wiki/File:Corrupt-Legislation-Vedder-Highsmith-detail-1.jpeg>
- 43 Noam Chomsky writes, after quoting Ocampo in his *Failed States* p. 219
- 44 Noam Chomsky writes, after quoting Ocampo in his *Failed States* p. 219
- 45 H.A. Davies , *An Outline History of the World* p. 175
- 46 (1955) SC S.C.R. 236-237
- 47 AIR 1986 SC 111
- 48 Bronowski & Mazlish, *Western Intellectual Tradition: from Leonardo to Hegel* p. 210
- 49 Chomsky, *Failed States* p. 223
- 50 Prof. Arun Kumar, *The Black Economy in India* p. 189 (Penguin)
- 51 Noam Chomsky, *Hegemony or Survival* p. 160
- 52 Noam Chomsky, *The Essential Chomsky* p. 339
- 53 Chomsky, *The Essential Chomsky*, p. 258
- 54 [1956] 1 QB 702 at 712.
- 55 'Where there is Righteousness, there shall be Victory'

23

PROFILE OF A PUBLIC INTEREST LITIGATION IN REVENUE MATTERS (The abuse of the Indo-Mauritius Double Taxation Avoidance Convention Case)

“The nations seem caught in a tragic fate, as though, like characters in a Greek drama, they were blinded by some offended God. Bewildered by mental fog, they march towards the precipice while they imagine that they are marching away from it.”

Bertrand Russell, *The Basic Writings of Bertrand Russell* p.
687

Glories like glow-worms, afar off shine bright. But looked to near, have neither heat nor light.

John Webster, *The Duchess of Malfi* (IV. ii)

Introduction

The three Chapters 23 (‘The Profile of a PIL in Revenue Matters’), 24 (‘Our World-view and the trends of our times’), and 26 (The Realm of Darkness: the Triumph of Corporatocracy’) constitute a triplet of ideas forming a common spectrum of thought. They would help you to reflect on ‘the moral deficit’ and ‘democratic deficit’ of our times. Whilst the first tries to answer Juvenal’s question: *Quis custodiet ipsos custodes?* (Who will watch the watchers?), the second explores the trends and tendencies shaping our world-view, and the third would show how ‘the instruments of darkness’ “win us with honest trifles, to betray’s in deepest consequence”¹ to create circumstances for the triumph of Corporatocracy, which can smother Democracy, can wither our Republic, and can build a structure of deception that can catch us the unwary! The logic of contextual relevance has made me transpose some of my reflections, pertinent to this Chapter, to Chapter 26: these are: (i) the nature of the tax havens (or the secrecy jurisdictions), (ii) the Structure of Deception and the neoliberal states system replacing the classical states system, and (iii) the Doctrine of Lifting the Corporate Veil. Chapter 24 portrays the world that we are building through our deeds, and ideas. In these Chapters, I have tried to shed some light so that the ‘shadow’ that falls ‘between

the idea and reality, between the motion and the act' is removed. You can access the documents pertaining to this PIL at my www.shivakantjha.org where I have placed them for the information of our citizenry whom I had represented before the courts. For me, it was only a labour of love.

Throughout the course of this PIL, my youngest daughter, Anju Jha Choudhary², herself an advocate of the Supreme Court Bar, assisted me with her extraordinary competence; and she received well-deserved appreciation from the Court, and the counsels of the Respondents. I received some help in preparing the case from some distinguished jurists, viz. Mr. John Cary Sims³, Ray August⁴, and Dr M. L. Upadhyaya⁵, and Prof Sol Picciotto⁶.

I wish you read this Chapter to decode the metaphors of events, to see through them, even things not discussed in so many words. Joseph Conrad in the preface to *The Nigger of the 'Narcissus'* (1897) had aptly told his readers; "My task which I am trying to achieve is, by the power of the written word, to make you hear, to make you feel — it is, before all, to make you *see*." My task here is no different.

I

PIL IN THE REVENUE MATTERS: A PARADIGM SHIFT

I felt that it was wrong on the part of the Government of the day to see its power of taxation the way the autocrats of the long dead past had seen theirs. Their people had only the obligations to pay, and they only the rights on the resources of people. It took centuries to come to the day when the eminent British Judge Lord Hewart could say that the duty of the tax-gatherers was "in the interests of the general body of the taxpayers", and the tax-gathering was "a public process directed to public ends".

With the emergence of the democratic ideas, the public interest in the resources of the state and their deployment came to be acknowledged. It first manifested itself in the assertion of the Public law view of *locus standi* meaning "the right to be heard in a court of law". Now the claim for taxation was not exclusively a matter between the Government and the individual taxpayers, but it had become a matter of great concern for the people in general. In effect, with the gradual removal of 'democratic deficit' in polity, law registered remarkably great strides. And the credit for such bold assertions goes to the British judiciary. We have followed that view, though not with that steadfast zeal. I felt, in 2000, that it was the right time to drive home to our Government that it must realise that in some situations, its acts could be questioned by any public-spirited person before the courts of law. So taxation has ceased to be a 'sovereign function' in tandem with the notion of 'sovereignty' that has undergone a radical change in our times. First, I would tell you about the British case which inspired me to launch PIL litigation before the Delhi High Court questioning the validity of certain administrative acts of the Central Board of Direct Taxes. Such acts pertained to the administration of the Indo-Mauritius Double Taxation Avoidance Convention (to be referred as the 'Indo-Mauritius DTAC', or 'tax treaty', for short).

Lord Denning refers to an article published in the *New Law Journal* ([1980] NLJ 181) as ' *Locus standi*: The major problem in revenue law ... Who can challenge the legality of a tax concession?' Lord Denning's view of the public law character of

locus standi was upheld in the celebrated decision of the House of Lords in *Inland Revenue Comrs v. National Federation of Self-Employed and Small Businesses Ltd.* ([1981] 2 All ER 93 HL). Our Supreme Court relied on this decision, while determining the frontiers of Public Interest Litigation (PIL for short) by widening the province of *locus standi*, in *S.P. Gupta v President of India* (AIR 1982 SC 149). Justice Bhagwati quoted with approval Lord Diplock's observations that have become *locus classicus*:

“It would, in my view, be a grave lacuna in our system of public law if a pressure group, like the federation, or even a single public-spirited taxpayer, were prevented by out-dated technical rules of *locus standi* from bringing the matter to the attention of the Court to vindicate the rule of law and get the unlawful conduct stopped....”

The Judgment rules that the court can intervene to provide remedy (i) if the Revenue's conduct is unlawful or *ultra vires*; (ii) if the principle of fairness in dealing with the affairs of taxpayers is breached; (iii) if the duty to collect 'every part of inland revenue' is considered a duty owed exclusively to the Crown in the light of *the Treasury case* of 1872; and (iv) if the attitudes towards tax law is unresponsive to the fast changing times and social mores.

As a prelude to this story, I would tell you about my plight in conducting this PIL. The Delhi High Court commended me in the penultimate paragraph of its Judgment (coram: S.B. Sinha, Chief Justice and A.K. Sikri J.)⁷:

“We would however like to make an observation that the Central Govt. will be well advised to consider the question raised by Shri Shiva Kant Jha who has done a noble job in bring into focus as to how the Govt. of India had been losing crores and crores of rupees by allowing opaque system to operate.”

But our Government, whose cause, in effect, I had espoused before the Court, never thought it fit to seek my help. After all what was there to ask me? What was there which our Government did not know? I am an old man: my mind goes to T. S. Eliot's *Gerontion*, which expresses the feelings of a man in his closing years who had seen enough of things in the locust-eaten years after World War I:

After such knowledge, what forgiveness? Think now
History has many cunning passages, contrived corridors...

The Division Bench of the Supreme Court reversed the High Court in *Union of India vs. Azadi Bachao Andolan*⁸ (coram: BN Srikrishna, Ruma Pal JJ.). It made a remark that cut me without mercy for raising “sound and fury... over the so called ‘abuse’ of ‘treaty shopping’”⁹, and considered it fit to say that the Petition was “said to be by way of public interest litigation.” Whilst the expression ‘sound and fury’ brought to my mind Macbeth's:

‘...it is a tale
Told by an idiot, full of sound and fury,
Signifying nothing’,

the expression “said to be” drove me into the dilemma of Shakespeare's *Hamlet*: ‘To be, or not to be, that is the question’. How well did David Hume say: ‘Beauty is no quality in things themselves: It exists merely in the mind which

contemplates them'. I consider it prudent to be reticent, but I would reveal myself by quoting a well-known *shloka* from the famous *Panchtantra*:¹⁰

नरपतिहितकर्ता द्वेष्यतां याति लोके
जनपदहितकर्ता त्यजते पथिवेन्द्रैः
इति महति विरोधे वर्तमाने समाने
नृपतिजनपदानां दुर्लभः कार्यकर्ता

I would tell you what I experienced in our Supreme Court. When I appeared alone on August 16, 2010 before the Chief Justice's Court in response to the Court's notice to appear and plead my Review Petition, I felt embarrassed that under some administrative instructions all the PIL Petitioners, while in the Court to present their cases, were to remain under the close vigil of a guard. So I was in the Court under the vigil of a guard standing close. What pained me most was the insult to the common citizens of our Republic who were not trusted to behave well in own court. We had seen Bharat Mata and persons like Savarkar in chains and irons during the era of servitude. It was difficult not to lose poise on finding oneself addressing the Court under the shadow of an imperious guard when that endeavour, in my 70s, was wholly a labour of love. I felt so bad that I immediately expressed my mind in strong words to the Secretary General of the Supreme Court, and later raised this issue in the Review Petition. But all in vain.¹¹

II

HISTORICAL PERSPECTIVE: THE TROJAN HORSE ON MARCH

As our country has become almost a reflecting mirror of the dominant western economic thoughts, it is important to mark the two phases in this post-World War II period. "Since World War II, international economy has passed through two phases: the Bretton Woods phase in early 1970s, and the period since, with the dismantling of the Bretton Woods system of regulated exchange rates and control on capital movement. It is the second phase that is called "globalization," associated with the neoliberal policies of the "Washington consensus". The two phases are quite different."¹² It is the second phase which gets illustrated in the triplet which Chapters 23, 24 and 26 constitute.

During her last term as the Prime Minister, Smt. Indira Gandhi was becoming less and less assertive in our nation's economic policies. The Emergency had surely taken a toll on her. The lobbyists left no stone unturned in pleading that on relaxation of the rules under the Foreign Exchange of Regulations Act, 1973, a lot of foreign investments would come from the non-residents of the Indian origin to save the country from the financial crisis that loomed over us. Sri Pranab Mukharjee, the Finance Minister, as he then was, promoted this idea with adroitness. There was an industrial slow-down causing much worry. The Government was all for loan from IMF to overcome the balance of payment crisis assuring, those who mattered, our country's readiness to effect structural changes in the economy. Sri Pranab Mukharjee told the Lok Sabha that the India would not suffer like Mexico and Brazil on account of increasing dependence on the IMF.¹³ In his Budget 1982, the share market investment rules were relaxed in favour of

the non-resident Indians, and the companies and trusts which they owned at least sixty per cent. The rules provided that they could invest directly and could repatriate their funds from India. How this scheme was misused was widely known even in the early 1980s. It facilitated some Indians to float companies in tax havens, like the Isle of Man, to bring investment into their Indian companies. All the features, we notice in the 'shelf companies' or 'paper companies' or 'conduit companies' operating through Mauritius, were clearly evident in the companies which had operated from the Isle of Man: similar profile of directors, analogous capital structure in floating such companies, similar share-holding patterns by a narrow group of shareholders serving the deeper purposes to access the benefits of a tax treaty for an assortment of purposes. Such things were widely known; and we can reasonably infer that they were known to the then Congress Government. You may read something about it in Hamish McDonald's *Ambanis & Sons* (2010). Swraj Paul was a close observer, and also a participant in the show then going on. In his memoir *Beyond Boundaries* he has recorded an interesting account revealing the culture of the economic management and administration in the early eighties. He highlighted the nexus that existed between economic power and political power. He mentioned how in 1982 there were serious efforts to invite NRI investment. Dr. Manmohan Singh, then Governor of the Reserve Bank of India, was all for promoting the policy of NRI portfolio investment. We all know that the most misused Indo-Mauritius Double Taxation Avoidance Convention was done in 1983 when Shri Pranab Mukherjee had been the Finance Minister, and Dr. Manmohan Singh had been the Governor of the Reserve Bank. McDonald's book would show how even in those early years of the onset of the so-called liberalization, scandalous receipts had intruded into our country through craft and collusion.

My reflections on what came into our public domain in early 1980s lead me to think that in contriving the structures of deception through creation of companies, the craftsmen followed the same hackneyed plot which was the subject-matter of Charles Mackay's *Extraordinary Popular Delusions and Madness* (1841) discussed in Chapter 25 of this Memoir. The subsequent craftsmen have tried the old strategy with varying measures of success mostly in proportion to the political patronage they received.

India's contacts with Mauritius were deep and wide. In the general election of 1982 Aneerood Jugnauth became the Prime Minister and Paul Berenger was made the Minister of Finance in August 1982. Prime Minister Mrs. Indira Gandhi visited Mauritius. She supported its claim over the Chagos Archipelago. The Indo-Mauritius DTAC was negotiated in August 1982 though the Government of India notified its commencement in the domestic jurisdictions in 1983. Both India and Mauritius had reasons to adopt the OECD Model of tax treaty. The obvious reason was that both the countries were facing balance of payments crisis. Mauritian economy was under severe economic constraints. "For its size, Mauritius was one of the world's most indebted nations."¹⁴ The great possibilities of this DTAC were noticed; and greed, as the prime-mover in the capitalist system, led the MNCs, their beneficiaries and lobbyists, and many top politicians and mighty bureaucrats, to develop a studied strategy to misuse the said tax treaty. It is different matter that what was just a trickle in the early eighties became a flood in the 1990s, and thereafter. Besides, the misuse (or abuse) of the tax treaty

depends on the capacity of misusing which differs from time to time because of political and economic circumstances, and the opportunities to evade and escape. After the wholesale opening up of our economy, this treaty was turned into a rouge's charter.

While talking to Dr. Manmohan Singh, when my PIL was being heard before the Delhi High Court (in 2001), I got it that the prime object of the Indo-Mauritius tax treaty, when it was made in 1983, was to have more of foreign exchange as India was needing that most at that time. I brought out this fact before the Supreme in the text of my Writ Petition¹⁵, and I mentioned therein that my researches had led me to believe that the maelstrom of the financial crisis in the early eighties was largely stage-managed to provide a free play for the corporate *imperium* which in the early eighties had established its sway, thanks to the policies set afoot by Ronald Reagan, the U.S. President under the pressure and persuasion of the U.S. corporate interests. There could have been less precarious ways to get over the crisis. But the 1982 debt crisis was used as a device, dexterously devised by the experts, the corporate interests, and the masqueraders of all sorts, to achieve the agenda of the neoliberal economic ideology.

The model for the tax treaty with Mauritius was adopted to promote the policy of wooing the foreign investors. The foreign investors had their own agenda to pursue. The model adopted for the said tax treaty was the OECD model. None thought: whether the model conformed to our law and Constitution. If this model was to be adopted for a tax treaty, it should have been considered essential to seek legislative approval before the notification giving effect to that was issued. In effect, a tax treaty must be a legislative act as it is in the U.S.A., the U.K., Canada, Australia, and France etc. The words of Section 90 of the Income-tax Act, 1961, are not wider than the corresponding provision in the British Income-tax Act, yet a tax treaty is made there by the Crown only when the House of Commons approves the terms of a tax treaty through a resolution. The procedure accords well with a great Constitutional principle establishing exclusive Parliamentary control on 'taxation'.

III

MATERIAL POINTS IN THE PROFILE OF THE INDO-MAURITIUS DOUBLE TAX AVOIDANCE CONVENTION ('DTAC', OR 'TAX TREATY', FOR SHORT) [As we noted them in 2000]

Here I have no intention to summarise the provisions of the Indo-Mauritius DTAC. As its title goes, it is meant to avoid 'double taxation of income' both by India and Mauritius by the fact that both the countries possessed power to tax income on account of the earners' *residence*, and the *source* of income earned. The concept of Double Taxation has been explained in *Black's Law Dictionary*: "The imposition of comparable taxes in two or more States on the same tax payer, for the same subject-matter or identical goods." On close analysis, the definition contains the following ingredients:

- (i) The imposition must be of *comparable taxes*;
- (ii) The incidence of tax should be on the *same taxpayer*;
- (iii) The *subject matter* (or the taxable event) should be the same subject matter.

Total 'exemption' from taxation, causing wrongful gains to one, and loss to the other, is not warranted by this expression. To say that it warrants even that can be only on the authority to which Lord Atkin referred in his famous dissent in *Liversidge v Anderson*¹⁶:

"I know of only one authority which might justify the suggested method of construction. 'When I use a word' Humpty Dumpty said in rather scornful tone, 'it means just what I chose to mean, neither more nor less'. 'The question is,' said Alice, 'Whether you can make words mean different things'. 'The question is,' said Humpty Dumpty, who is to be the master—that is all."

This Convention was bilateral: only for the benefit of the residents of India and Mauritius. The residents of the third States could not get access to such benefits. George Schwarzenberger (in his *A Manual of International Law* 5th ed. p.160) rightly says: "Treaties confer no legal rights and impose no legal duties on non-parties" If mere incorporation under a Mauritian Law, or mere grant of a Certificate of Residence, be enough, then nothing would prevent Mauritius from providing that status to any person from any country. But if this happens then all other bilateral tax treaties would be reduced to irrelevance and the income-tax law would become a paradise for marauders leaving the people of India to rue their lot. This is not a figment of my imagination. It has already taken place. In *XYZ/ABC Equity Fund, In re*, [2001] 250 ITR 194, the Authority for Advance Rulings had to give its ruling in an interesting case. The Applicant was a collective investment vehicle resident in Mauritius. In modern commerce, such a vehicle means: "a privately controlled company through which an individual or organization conducts a particular kind of business, esp. investment" The Authority records in its order:

"It has allotted a large number of shares on a private placement basis to a limited number of prospective investors spread over Belgium, France, Germany, Hong Kong, Japan, Kuwait, the Netherlands, Singapore, Switzerland, the United Kingdom and the United States of America."

If in the spacious "vehicle" an assortment of persons from such large parts of the globe can sail together across the Indian Ocean to India, then why not construct a vehicle, registered in Mauritius, wide enough to be a Noah's ark where all the treaty-shoppers from all the parts of the globe can be accommodated rendering all other agreements irrelevant and otiose. The Indo-Mauritius DTAC could become the vanishing point of all other tax treaties. It is strange that what could have been a mere *reductio ad absurdum* has already happened with the culpable complicity of our own Government!

The provisions pertaining to the 'avoidance of double taxation' cannot mean creation of 'no-tax situation' for the residents of one country. Capital gains in the hands of the Indian residents are taxable, but these in the hands of the Mauritian residents bear no incidence of tax. 'The doctrine of reciprocity in the tax treatment of their respective citizens' is breached. Under the eye of our laws, income generated through transactions in India, is taxable in India. If a particular assessee wants to escape the incidence of taxation, he must establish with reasonable evidence that he has got a valid case for tax-exemption or tax-mitigation. The

Assessing Officer has the jurisdiction to investigate facts and decide issues. If he finds that the person claiming benefit is not the resident of the States party to the treaty, he must reject the plea for benefit under the treaty. Those residents of the third States, who masquerade as the Mauritian residents are fraudsters causing wrongful loss to India. We call them 'treaty-shoppers' as they shop the benefits under tax treaties to which they have no legitimate claim. When some Indian residents launder their money back to India from Mauritius, their affairs become circular: they are the so-called 'round-trippers'. The tax is charged on the beneficial owners: so the Assessing Officers are under duty to discover them. In *Gee Vee Enterprises v. Addl. CIT*¹⁷ the Delhi High Court aptly held that their statutory and quasi-judicial duties are "to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry." Mauritius had all the typical 'tax haven' features: the facilitation of tax evasion and avoidance of laws, and dense secrecy which could be utilised even for criminal purposes.

IV

AN INSTANCE OF THE TOUCH OF COMUS, THE FRAUDSTER

John Milton's *Comus* was a 'Mask Presented at Ludlow Castle'. It tells us how the spell of deception was cast by Comus on the young Lady through his necromancy and sophistry. Milton contrived the plot to show that she ultimately escapes from the trap. Comus declared, to quote from Milton; "T is only daylight that makes sin." Our Supreme Court refers to it in *Shrisht Dhawan v. Shah Bros*¹⁸. When I think of this enchanted castle, my mind goes to many modern versions of Ludlow Castle built in the tax havens where the Rogue Finance waxes high, and plays the role of financial wizardry facilitated by a host of global financial wizards, chartered accountants, lawyers, and the experts in geopolitics of micro and macro states, and those skilled in exploring all the possibilities of the Cyberspace. I would revisit this topic in Chapter 26. Here I would shed light on one instance so that you can see how the financial wizardry works; and how a nation of intelligent people is taken for a ride. The general pattern of operation of a 'tax haven' has been well described by Prof. Sol Picciotto¹⁹, who had interviewed me on the misuse of the Indo-Mauritius route, and referred to this PIL in some of his articles presented at international fora. He says :

"The basic principles of tax avoidance through a haven are relatively straightforward. It simply consists of establishing one or more legal entities (company, trust or partnership) in convenient jurisdictions, through which to channel an income flow derived from international investment or business activities. The deployment of a combination of intermediary entities can reduce or eliminate taxation both at source and in the jurisdiction where the intermediary is resident, while insulating the ultimate beneficiary from tax liability (Picciotto 1992, 135-141). It is also possible, especially since the lifting by most countries of exchange controls, for a resident in a country to 'export' funds and return them as investments into the same country, which is generally referred to as 'round-tripping'. This enables a resident to

benefit from tax advantages as well as other inducements offered to foreign investors. Thus, for example, a large proportion of foreign investments into India are routed through Mauritius, due to favourable provisions in its tax treaty with India, and it is suspected that a proportion of these derive from Indian residents.”

On a conjoint appeal by our Government and a ‘tax haven’ company, our Supreme Court reversed the Delhi High Court’s decision quashing the Circular No. 789 of 2000 issued by the Central Board of Direct Taxes. The Supreme Court decided to ignore the facts which the Income-tax Department had gathered in the Assessment Orders (passed by the Assessing Officers in Mumbai) in the case of about 24 assessee. At times facing facts becomes difficult. The High Court ignored them, but took them into account in its judicial deliberations, even without mentioning them in so many words. But our Supreme Court just ignored them lock, stock, and barrel.

After 1991 the ‘treaty shopping’ grew more and more but our Central Government took no notice of that. In the early nineties some bright officers in the Income-tax Department took steps to prevent ‘treaty shopping’. I heard that there was a reference to the Central Board of Direct Taxes stating the impropriety of ‘treaty shopping’ as it caused big loss to the country. It was an administrative reference. A matter of this type generally goes to the Secretary and to the Minister of Finance. It was talked about that our diplomatic mission in Mauritius and the Ministry of External Affairs were against departing from the practice under which the misuse of the tax treaty went unnoticed. The reference was quenched by the issue of the CBDT Circular No. 682 of March 30 of 1994. The subject-matter of the circular is mentioned as: “Agreement for avoidance of double taxation with Mauritius Clarification regarding”. The Circular is mere paraphrase of Article 13 of the Indo-Mauritius DTAC. There was no obvious logic in transmitting down the line a mere paraphrase of Article 13. By countering an important query thus, it was unequivocally suggested that the past practice was to be allowed to operate, the loot of the nation must go on.

But facts speak clear and loud: so I summarise the facts of one of such Assessment Orders. Such orders tell you how the craft of Deception works in this ‘globalised’ world. The great H.W. Fowler aptly observed in the second edition of the *Concise Dictionary of English*: “Define, and your reader gets a silhouette; illustrate, and he has it ‘in the round’”. Hence, I would illustrate with reference to the facts of one of such assessee. The facts that I summarise are from the Assessment Order that had been placed before the Delhi High Court. As the name of the assessee is not material, I have decided to avoid that.

M/s. XY Ltd. filed income-tax return for assessment year 1997-98 as a non-resident in the status of company (FII). The Assessing Officer investigated the case and computed the assessee total income at Rs. 3,88,72,822 which included short term capital gains to the tune of Rs. 2,91,76,094 and long-term capital gains to the tune of 22,56,817. The assessee’s claim that it was entitled to the benefit of the Indo-Mauritius Tax treaty was considered, but the benefit under the treaty was denied. Under Article 13 of the Indo-Mauritius DTAC the capital gains are chargeable in the country of residence. As capital gains are not chargeable in Mauritius, the Mauritian residents do not pay tax on capital gains. The company was registered with the SEBI as a FII, and the assessing officer made assessment

in terms of section 115 AD of the Income-tax Act, 1961 and initiated proceedings for concealment of income. M/s. XY Ltd. was incorporated in Luxemburg. There was no Double Taxation Avoidance Agreement between India and Luxemburg at that time. If the Luxemburg investor had earned on the Indian Stock Market, it would have been treated as a non-resident *simpliciter* and charged to tax as such. The company decided to create a fully owned subsidiary company incorporated in Mauritius. It contacted M/s. A.B. International Management (Mauritius) Ltd., a body professional consultants licensed by Mauritius Offshore Business Activities Authorities, to work as offshore management company. They handled pre-incorporation formalities for incorporation of offshore Mauritius Company. They also provided two professionals to be placed on the Board of Directors. After completing all these formalities. A subsidiary was got incorporated in Mauritius. After incorporation of a Mauritian subsidiary, M/s. International Management (Mauritius) Ltd. was appointed to work as its Administrator, Registrar and Company Secretary. M/s. C.D. Bank AG, a company incorporated in and operating from Switzerland, handled the management of investment which was the sole business of the assessee company. The object clause of Memorandum of Association of Assessee Company made the following provision.

“The object of the company specified in the Memorandum shall be carried on outside Mauritius.”

The Assessing Officers examined the assessee's plea that its effective control and management was in Mauritius; and also evaluated the company's various other contentions. The Assessing Officers found:

- (i) that the effective control was in the hands of the holding company with power to override all decisions taken by the Mauritian Directors who were only professionals;
- (ii) that the Board meetings in Mauritius were mere façade to keep the certificate of incorporation alive;
- (iii) that the records in Mauritius were managed as a façade because the conduit company transacted on the instructions of its global custodians and Indian custodians, both outside Mauritius;
- (iv) that the secretaries and the auditors in Mauritius were only for the limited purpose of complying with formalities;
- (v) that the assessee was not allowed to operate Bank Accounts in Mauritius in Mauritian Rupee. [A Dollar account in Mauritius branch of a non-Mauritian bank was maintained by the assessee with the sole purpose to transfer funds from global custodian to Indian custodian through Mauritius branch by telegraphic transfer. This routing of funds was done as a condition for keeping the incorporation certificate of Conduit Company alive.]
- (vi) that the real control of the assessee company remained in the hands of the holding company, and the source of fund was outside Mauritius;
- (vii) that the certificate of incorporation was granted with certain overriding conditions, to mention:
 - (a) it could not acquire any property in Mauritius;
 - (b) it could not deal with any resident of Mauritius;
 - (c) it could not raise any fund in Mauritius;
 - (d) it could not make any investment in Mauritius; and

- (e) it could not conduct any kind of business activity or gainful activity in Mauritius;
- (viii) that the investment managers were group concerns of the holding company and were at the pleasure of the holding company; and
- (ix) that the company was one of the several conduit companies set up for 'treaty shopping' formed after enactment of MOBA in 1993 when Mauritius became a tax haven.

In view of the above facts the Assessing Officer held that the assessee company was not a resident of Mauritius but was a mere 'treaty-shopper' not entitled to the benefits under the Indo-Mauritius DTAC. Mauritius knew about the nature of juristic person that was created by the holding companies of some third country.

Storm in the tea cup: the context and the *casus belli*

For years the resources of the country were looted. Everybody knew but inertia prevailed. Any query, which the Assessing Officer made, put the powerful lobbyists on high alert. It was believed that their tentacles of influence worked at all levels. Some remarkable officers passed certain Assessment Orders in 2000 as such proceedings were to get barred by limitation on March 31, 2000. These Orders had the effect of volcanic eruptions on the Stock Market and the corporate world. Assuming that the M/s XY Ltd. (and all others sailing in the same boat) had a valid grievance, it could have gone on statutory appeal, or could have sought appropriate constitutional remedy from our superior courts. The lobbyists painted the lurid picture of the melodrama of the collapse of the Stock-Market. They adopted dexterously their old and tested strategy of advancing threats and crypto-psycho pressure whenever their wishes were not fulfilled. They pleaded that the wealth of the nation would vanish, hot money would go into hot air, and the high GDP would decline to drag India down into gutter! They worked overtime to plead their well-crafted brief. The politicians were made to realise that the nation was in crisis, and our economy was at the point of its doom. And then it happened what happens these days always. Our sovereign government thought it prudent to bend. Efforts had to be made to wipe their tears, to soothe their ruffled feelings, and to tell them in confidence that the government existed for them though at times it had to pretend to be doing something also for the 'great beast' we call *aam aadami* waiting tongue-tied for the 'trickle-down effect' from the phoney wealth that the Stock Exchange creates!! As always, the pressure worked, the persuasion worked, the magic worked. The Finance Minister became their Good Samaritan. Perhaps, it was felt that selective amnesia was at times good. The CBDT acted post-haste: it issued its Circular 789 of 2000 to satisfy the angry plutocrats and their minions. It forgot the Income-tax Act, 1961, it forgot the Constitution, it forgot that it had no power to dispense with the law by creating, through administrative directions, an insurmountable bar in a legal proceeding by creating 'a conclusive presumption' which are always created only by the legislative acts. We were back to the days of the Stuarts!

The Central Board of Direct Taxes issued a Circular number 789 dated April 13, 2000. The effect of the Circular can be summarised in the following propositions :

- (i) Incorporation in Mauritius makes, *per se*, a company an entity "liable to tax" under the Mauritius treaty law, and therefore to be considered as resident of Mauritius in accordance with the DTAC.

- (ii) A Certificate of Residence issued by the Mauritian Authorities “will constitute sufficient evidence for accepting the status of residence”.
- (iii) A Certificate of Residence issued by the Mauritian Authorities “will constitute sufficient evidence for acceptingbeneficial ownership for applying the DTAC.”
- (iv) The “FIIsetc., which are resident in Mauritius, would not be taxable in India on income from capital gains arising in India on sale of shares as per paragraph 4 of Article 13”.
- (v) The circular “shall apply to all proceedings which are pending at various levels.”

The statutory Assessing Officers investigated, and framed many Assessment Orders under the Income tax Act, 1961 rejecting the claims of many wrongfully trying to access benefits under the Indo-Mauritius DTAC. The Circular No. 789 invalidated them, and the authorities were required to go under blinkers.

V

MAURITIUS MAKES HAY WHILE THE SUN SHINES: THE CIRCUMSTANCES HELPED THE EMERGENCE OF THE ENTENTE CORDIALE OF COLLUSION AND FRAUD.

Mauritius transformed its legal regime and administrative culture in the full view of the world, but our Government refused to see what was happening there, and the purpose for which that was happening. Mauritius became a tax haven by way of design. Mauritius knew that her native resources were not sufficient to invest in India either as foreign direct investment or as portfolio investment. But it could become a good route for making investments by the residents of other countries. In 1992, Mauritius underwent great change to become tax haven. It structured its legal regime for that purpose.

Our diplomatic mission did not give good account of itself

After 1994, the Income-tax Department kept on drumming into the ears of the Central Government that the Indo-Mauritius route was being abused under the colour of the tax treaty but nothing was done to prevent it. India had a strong diplomatic mission in Mauritius. It was the imperative role of the mission to take note of the events taking place there, and to report them to the government of India along with their careful analysis and evaluation from the point of view of India's national interests. The Indo-Mauritius DTAC was negotiated in 1982. By 1992 Mauritius was all out to establish a legal regime by enacting several laws to transform herself into a tax haven. The Indo-Mauritius DTAC was founded on a profile of facts which underwent a sea change. The change, brought about through the laws newly enacted, and the administrative style, shaped by push and pressure of tax haven culture, was so fundamental that the Government of India was duty bound to consider them to see if the *consensus ad idem* which had produced the treaty was still surviving: if not, whether some action was called for in view of the material changes in circumstances. It was the duty of the diplomatic mission to take note of the misuse of the Indo-Mauritius DTAC by those not entitled to the benefits under the bilateral tax treaty²⁰. The abuse was so flagrant, so staring, and so massive that not taking note of such things was an evident

dereliction of duty. But such lapses had become endemic. Hamish McDonald refers, in his *Ambani & Sons* (at p. 145) to the efforts of Mr. Bhure Lal, the Director in the Enforcement Directorate, to find out someone's financial trails, but failed because everything was shrouded in darkness. McDonald was led to comment on the role of our embassy in words which are saddening:

“India's own embassies in foreign capitals were worse than useless. In a later note on his 1986 inquiries, Bhure Lal complained that any information given to Indian mission was usually passed on to the suspect.”

VI

THE PUBLIC INTEREST LITIGATIONS

(a) The Abuse of a Tax Treaty Case before the Delhi High Court²¹

I spent half a decade (2000-2005) conducting the so-called ‘the Abuse of a Tax Treaty Case’. I decided to move a Writ Petition before the Delhi High Court challenging the Circular 789 of 2000 which could delight the denizens of the world of Finance and the Stock Market, because the secrecy it ensured and the presumptions it created, came to help greatly the tax-evaders, money-launderers, and fraudsters. They could also be utilized to facilitate the operations of crooks, narco-criminals, corrupt politicians and bureaucrats, and the terrorists of all sorts. I felt something must be done to bring to the Court's notice this administrative remissness. Besides, I felt the provisions of the said Circular were contrary to the law that authorized the CBDT to issue circulars for the purpose of the administration of the Income-tax Act, 1961. Such a power had not been conferred to subvert the statute by preventing the statutory authorities from exploring facts of the cases in which claims were made for the benefits under the tax treaty. The law never conceived an administrative circular to become the vanishing point of the tax law. I got light and inspiration from *A Rickshaw Puller vs. A Rickshaw Puller*, about which you can read in Chapter 27 of this Memoir. I argued before the Court (Chief Justice S.B. Sinha, and Justice A.K. Sikri) for a week, and ended with my peroration quoting Lord Nelson's words expressed through light signal to his forces in the Battle of Trafalgar: “England expects that every man will do his duty”. I cannot forget that subdued and much-restrained smile writ large on the face of the Chief Justice. Again I ended my *Judicial Role in Globalised Economy* (2005) with those words lacing the quote with my gloss: India expects everyone to do his duty.

The legality of the Circular No. 789 of 13th April, 2000 was specifically questioned, though I made broad spectrum submissions. The High Court decided all the issues upholding my position. It quashed the said Circular, and held, among others:

1. The power of CBDT to issue instructions to subordinate authorities was only for *proper administration* of the provisions of the Income-tax Act, and not otherwise.
2. The government cannot, through an international treaty, lay down a procedure or evidentiary value of document clearly *dehors* the provisions of the Income-tax Act.

3. The Assessing Officers' function is judicial in nature which "can be regulated but cannot altogether be prohibited".
4. The residential certificate issued by the Mauritian authorities could not stop the tax authorities in India from discharging their statutory duty to investigate and decide cases.²²
5. The authorities have jurisdiction to lift the corporate veil of the corporations to observe the operative realities where it is fair to do so.
6. The tax treaty must conform to section 90 of the Income-tax Act, 1961: no transgression could be permissible. .
7. "An abuse of the treaty or treaty shopping is illegal and thus necessarily forbidden." "No law encourages opaque system to prevail."
8. The judicial attitude towards 'tax avoidance' has undergone change to protect the public interest in revenue.

(b) The Supreme Court reverses the High Court on Appeal : A critique

[*Union of India & Anr. v. Azadi Bachao Andolan & Shiva Kant Jha.*
(2004) 10 SCC 1]

The Union of India appealed to the Supreme Court where, at the persuasion of Sri Arun Jaitley, Senior Advocate, 'a tax haven' company was allowed to become a co-appellant! I was amazed that Mr. Harish Salve, Senior Advocate, who had appeared in this case before the Delhi High Court, as our country's Solicitor General, represented the Mauritius Company before the Supreme Court. Mr. Soli Sorabjee the Attorney General, represented our Government making common cause on all points with the co-appellant. He had appeared in *McDowell's Case* and lost it to the Government of India, but now as India's Attorney General he pleaded against that, and saw to it that the Court turned critical of that decision, even went to the extent of ridiculing that Constitution Bench decision by calling it 'a hiccup' and 'temporary turbulence'! The bastion of the Revenue suffered a quake. It was a strange spectacle to see how a deep fraternity between the 'tax-haven' company and our Government grew. At the end of the day, the Division Bench of the Supreme Court overruled the Delhi High Court by dubbing it as one in which the High Court had 'erred on all counts in quashing the impugned circular'.

In course of that litigation, I had many situations which amazed me as a citizen of this Republic. Some of these were the following:

- (i) The Delhi High Court had decided in *Shiva Kant Jha & Anr v. Union of India*²⁴ only one issue: the validity of CBDT's Circular 789 of 2000. The Court observed in so many words in its judgment:
"From the discussions made hereinbefore we are of the opinion that the statutory power of the assessing authority cannot be taken away by reason of the impugned circular. Be it recorded that counsel for the parties have argued before us at great length and raised before us a large number of questions which have been noticed hereinbefore, but keeping in view the fact that only an interpretation of the statute *vis-à-vis* the impugned circular. We are of the opinion that we need not go further and leave the other contentions for being determined in an appropriate case."

As the High Court had decided only the legality of the impugned Circular, it was not proper for this Supreme Court, on appeal, to decide in *Union of India v. Azadi Bachao Andolan & Anr*²⁵ wholly extraneous issues of 'treaty-making' power by invoking concepts of 'sovereignty' and 'political question'. Over the decades the Supreme Court has held that no constitutional issue should be decided unless it is *essential* for the actual decision of the case.²⁶ In *Naresh Shridhar Mirajkar and Ors. v. State of Maharashtra and Anr*²⁷ our Supreme Court had observed:

"As this Court has frequently emphasized, in dealing with constitutional matters it is necessary that the decision of the Court should be confined to the narrow points which a particular proceeding raises before it. Often enough, in dealing with the very narrow point raised by a writ petition wider arguments are urged before the Court, but the Court should always be careful not to cover ground which is strictly not relevant for the purpose of deciding the petition before it. Obiter observations and discussion of problems not directly involved in any proceeding should be avoided by courts in dealing with all matters brought before them: but this requirement becomes almost compulsive when the Court is dealing with constitutional matters."²⁸

So, it can be said, on sound reasons, that all the observations on 'Treaty-Making' issues in *Azadi Bachao* are mere *obiter* observations not needed for the actual decision.

- (ii) It was not proper to exclude from consideration the facts found in the statutory assessment orders on the ground that those assesseees were not before the Court. The Court failed to appreciate that the Petitioner's grievance was against the wielders of the public power in our country, not against any beneficiary of the public power. It was amazing to see that concrete facts establishing fraud, both *actus reus* and *mens rea*, were ignored on the ground that the company was not before the Court to answer. I had felt that such companies could never be the necessary parties²⁹ in the PIL, because the grievance was only against our Government, not against X or Y or Z. If an unauthorized house is demolished under a legal order there is no reason to bother about what happens to the rats and cockroaches which swarmed in the house. The effect of what the Court did by circling out the factual substratum was to destroy the very foundation of the case without which the judicial perspective could neither be concrete, nor correct. Didn't a character in John Webster's *The Duchess of Malfi* find it difficult to stand the ravishing beauty of the dead Duchess? He uttered: 'Cover her face; mine eyes dazzle; she died young.' My mind goes to Act V Scene 2 of Shakespeare's *Othello* where before killing the most gracious Desdemona, Othello says :

Yet she must die, else she'll betray more men.
Put out the light, and then put out the light:

If someday someone sees facts, truth would surely prevail. I have given in this Chapter only some silhouette of those facts.

- (iii) It is an interesting point to note how one's 'role perception' determines one's decision. *Azadi Bachao* narrowed the Court's 'judicial role perception' by invoking the ancient doctrine of "*Juices est. jus dicer, non dare*" (the duty of

the Court is to decide what law is, and then to apply it; not to make it). The Bench narrowed its role, and decided not to be creative to promote what Justice demanded. It is commonplace to say that when the perception of the role itself is wrong, the decision is bound to be wrong. If the 'observation-post' is wrong, things observed can never be right. The Court illustrated the neo-constitutionalism of the neo-liberals by not providing remedy against the fraud of 'treaty-shopping', and by not subjecting the executive process to the sunshine. In effect, it has fostered the opaque system to go on in our country. It simply wished our government and Parliament to provide remedies against the abuse of treaties, but till now its *cri de coeur* (a cry from the heart with some appeal) has been just all in vain. We see things around us which keep on drumming into our ears that when the interests of the plutocrats and corporations are involved, the unholy alliance of the politicians, top bureaucrats, and the world of Business would never allow the *cri de coeur* to have any effect. The narrowing of the Judicial Role led to a sad consequence. The Court failed in providing judicial remedy against abuse of the tax treaty. In many jurisdictions, the courts have judicially evolved anti-abuse provisions. At my request, Prof. Ray August³⁰ of Washington State University and the author of *International Business Law* (4th ed. 2004) had written to me:

“In countries that do not have specific anti-abuse legislation, the problem of treaty shopping is attacked using general principles of equity. Common law countries (including Australia, Canada, and the United Kingdom) use a “substance over form” approach. That is, their tax authorities attempt to determine if the movement of income between foreign affiliated companies is based on legitimate commercial reasons or if it is merely a sham set up in order to obtain treaty benefits. Civil law countries (including France and Germany) use an “abuse” approach. In other words, their tax authorities ask whether a particular arrangement of companies constitutes an abuse, a misuse, or an improper use of a tax treaty.”³¹

- (iv) I was amazed to see that the Court uncritically adopted the ideas of an 'interested' person's book by quoting three long paragraphs. The serious breach of Natural Justice was on account of relying on Roy Rohatgi's *Basic International Taxation*. This author had been a partner of the infamous M/S Arthur Andersen for many years. The book was published in 2002 when the matter was before the Supreme Court. It was being written when the PIL was being pursued before the Hon'ble Delhi High Court. Its author was an advisor to many tax haven companies. It was written from the point of view of the OECD and tax havens. India is not a member of the OECD despite the occasional honeymoon we see between the spokespersons of India Incorporated and the OECD. In my considered view, it was this book which led the Court to express ideas so apparently flawed as these:
- “There are many principles in fiscal economy which, though at first blush might appear to be evil, are tolerated in a developing economy, in the interest of long-term development....”

Had this book been ever brought into focus in course of hearing, the Court could have been persuaded to agree that such a book could not ever be the basis of a judicial decision.³² Reliance on a book of this type was contrary to the principles of Natural Justice. Lord Bridge L.J. in *Goldsmith v. Sperrings Ltd.* [1977] 2 ALL ER 566 at 590 had aptly observed:

“....But the fourth and most important reason is that this part of the Master of Rolls’ judgment decides against the plaintiff on a ground on which Mr. Howser, for the plaintiff, has not been heard. This is because Mr. Comyn never took this point, and the Court did not put the point to Mr. Howser during the argument. Hence there is a breach of the rule of *audi alteram partem* which applies alike to issues of law as to issues of fact. In a court of inferior jurisdiction this would be ground for *certiorari*; and I do not think that this Court should adopt in its own procedure any lower standards than those it prescribes for others.” (Italics supplied)

The principles, which guide the courts in selecting textbooks for reliance, are well settled. *Hood Phillips’ Constitutional and Administrative Law*, (7th ed.) at p 24, states:

“Whether a text-book will be treated as authoritative this special sense is determined by the tradition of the legal profession and the practice of the courts, and depends on such factors as the reputation of the author and the date when the book was written”.

*Oppenheim’s International Law*³³ states:

“...the work of writers may continue to play a part in proportion to its intrinsic scientific value, its impartiality and its determination to scrutinize critically the practice of States by reference to legal principle.”

- (v) The Court’s obsession with the procedures in other countries made it impervious to see what differentiated us from them. It borrowed its perspective from the OECD jurisdictions and the OECD Commentaries. Sir Francis Bacon, the Lord Chancellor of England (1618-21), had rightly noted the fallacy in one’s analogical reasoning³⁴ (quoted in Chapter 22 of this Memoir). The technique of an analogical reasoning works well only when all the relevant factors are taken into account, and the irrelevant ones are excluded; and then the inclusions and exclusions are given due importance in the decision-making process without allowing pre-conceived notions, inhibitions and stock responses to intrude into the process.
- (vi) It is great that the Judicial Role Perception of *Azadi Bachao* has been disapproved by the Constitution Bench of our Supreme Court in *Standard Chartered Bank*³⁵. In *Standard Chartered Bank* our Supreme Court (Coram: N. Santosh Hegde, K.G. Balakrishnan, D.M. Dharmadhikari, Arun Kumar and B.N. Srikrishna, JJ.) reversed the view, taken in *Assistant Commissioner of Income-tax v. Velliappa Textiles & Ors*³⁶, on the role of judiciary. In *Velliappa*, the Court had taken the same view of its judicial role as it had taken in *Azadi Bachao*. Hon’ble Justice B.N. Srikrishna, who had delivered the Court’s

judgment in *Azadi Bachao*, said in his dissenting Judgment in *Velliappa* (on behalf of Justice N. Santosh Hegde and himself):

“The interpretation suggested by the learned counsel arguing against the majority view taken in *Velliappa*, which has appealed to our learned brothers Balakrishnan, Dharmadhikari and Arun Kumar, JJ., would result in the Court carrying out a legislative exercise thinly disguised as a judicial act.”

VII

MY MOST HUMBLE COMMENTS MOST HUMBLY SUBMITTED

The Supreme Court’s decision in *Azadi Bachao* received some insightful comments from our experts. Many articles criticising the decision in *Azadi Bachao* came out, but I do not think it worthwhile to refer to them. India is not the U.K. where the criticism by Prof. Glanville Williams had led the House of Lords to overrule its recent decision in *R v. Shivpuri*³⁷ observing: “If a serious error embodied in a decision of this House has distorted the law, the sooner it is corrected the better”. I quote from what Shri Murlidharan wrote in *the Hindu Business Line* of Dec. 27, 2003:

“ The Delhi High Court, in *Shiva Kant Jha v. UOI* (2002) 256 ITR 536, seized the moral high ground when it quashed CBDT Circular 789 of April 13, 2000, by permitting the tax authorities to lift the corporate veil and find out whether assessee-companies registered in Mauritius were doing real business there or were only resorting to treaty-shopping so as to take advantage of the beneficial provisions of the Indo-Mauritian treaty *vis-à-vis* the one applicable to them. The Supreme Court has poured cold water on the Delhi High Court judgment by reversing it in *UOI v. Azadi Bachao Andolan* [2003] 263 ITR 706....”

(A) What shocked me most; what a comedown for our great nation!

I had several reasons for my agony in course of the conduct of the PIL about which I have written in this Chapter. But the agony of having a barbed iron in my soul was most acute in certain situations, a few of which I mention by way of illustrations.

- (a) Our Government argued before the Delhi High Court that it saw no basic difference in granting tax benefits between the Indian residents and the foreigners. Mr. Salve, the then Solicitor-General of India, waxed wide on this point, but got a deserved curt judicial comment from the High Court:
- “So far as submission of the learned Solicitor General to the effect that Mauritius route may be taken recourse to for gaining benefit as is done by the industrialist setting up industries in M.P or some other place in the country where tax benefits are given is concerned, the same is stated to be rejected. ” [2002] 256 ITR p. 583.

Our Government seemed to have forgotten that the Indians live to swim or sink with the lot of our country, and can never be its mere fair weather

friends. If the Government's morbid assumption is interiorized by our people, all patriotic ideas would vanish exposing us to the servitude of some hegemonial power, be that a foreign State, oligarchic institution, or the corporations, whatever be their structure. And then no power would be able to bring our past back to us to inspire and enlighten us, and even the light at the end of the tunnel would get extinguished.

- (b) When I read the decision in *Azadi Bachao*, I felt aghast that the Court considered it fit to quote three long paragraphs from Roy Rohatgi's book *Basic International Taxation*. As Thomas Hobbes, in his *Leviathan*, whored his intellect to propagate the ideas of the foolish James I, as Prof. Hayek and Milton Friedman theorized for the neo-liberal paradigm, the authors, like Roy Rohatgi, acted merely as the apologists for the present-day Finance in love with secrecy jurisdictions for understandable reasons. They illustrate what Prof. John Kenneth Galbraith said in his *A Short History of Economics: The Past as the Present* (at p. 236):

"Here another great constant in economic life: as between grave ultimate disaster and conserving reforms that might avoid it, the former is frequently much preferred."

One of the three paragraphs quoted in the Judgment runs thus:

"Developing countries need foreign investments, and the treaty shopping opportunities can be an additional factor to attract them. The use of Cyprus as a treaty haven has helped capital inflows into eastern Europe. Madeira (Portugal) is attractive for investments into the European Union. Singapore is developing itself as a base for investments in South East Asia and China. Mauritius today provides a suitable treaty conduit for South Asia and South Africa."

If the principle of "proportionality" is an attribute of wisdom, the comparison of India with Cyprus, Madeira (Portugal), and Singapore is a sacrilege. If the doctrine of toleration of Evil "in the interest of long term development", is allowed to have a grip over our thinking, even God would leave us to groan only under the Slough of Despond. This sinister doctrine has always worked as the supreme justification for what the dictators, tyrants, crooks, and scamsters have done in all times, and in all lands. Mrs. Gandhi justified the ignominious Emergency by telling us the shibboleth of Necessary Evil. The reasoning founded on such comparison, appears to me to suffer from the grossest error that the Fallacy of Similitude can ever beget. The analogical reasoning with reference to Madeira, Cyprus, and Mauritius is shocking. It would be the end of our tradition if we degrade our nation down to such a dunghill as to deserve comparison with Madeira, a tiny piece amongst the terrestrial tiny tots well-known only for what is the best in wine. Our Sanskrit grammarians too had felt that one could easily go on merry errands after taking मदिरा (*madira*, wine).

- (c) After quoting three long paragraphs from *Basic International Taxation*, the Division Bench of our Supreme Court set forth its reasons for upholding 'treaty shopping' in these words:—

"There are many principles in fiscal economy which, though at first blush might appear to be evil, are tolerated in a developing

economy, in the interest of long term development. Deficit financing, for example, is one; treaty shopping, in our view, is another. Despite the sound and fury of the Petitioners over the so called 'abuse' of 'treaty shopping', perhaps, it may have been intended at the time when Indo-Mauritius DTAC was entered into.A holistic view has to be taken to adjudge what is perhaps regarded in contemporary thinking as a necessary evil in a developing economy.”³⁸

As the above paragraph seems to be the very synopsis of Roy Rohatgi's book, I must express my agony at ideas expressed in such masterly tone:

- (i) One cannot 'tolerate' or 'encourage' an unworthy practice. A nation 'tolerates' what is unworthy only when it is turned a slave [as Germany had to do for some time after the Treaty of Versailles]. 'Treaty shopping' cannot be 'encouraged' as it is a fraud.
- (ii) How can something which is 'unintended, improper or unjustified', be tolerated by our Republic so long our values do not get destroyed, and our Constitution does not become a mere scarecrow.
- (iii) Under whose authority what is 'unintended or unjustified' can be tolerated ? Are we being ruled by some sinister Shadow from some opaque and foggy world? The tsunami of economic globalization has subordinated the political realm (to which our judicial institutions belong) to the economic realm (ruled by the economists³⁹, corporations and 'the the protagonists of the Rogue Finance') established under the overweening majesty of *Pax Mercatus*. Robert L. Heilbroner says:

“Perhaps of greater importance in perceiving Smith's world as capitalist, as well as market-oriented, is its clear division of society into an economic and a political realm.”

- (iv) Roy Rohatgi justifies his greed-stuffed thesis that 'treaty shopping' is considered justified for “other non-tax reasons”. And those reasons, they say, are known only to the “Invisible Hand” of Adam Smith fast turning into a vampire for the society of the common people running the risk of losing their soul, self, liberty, and property. The Paris-based *Financial Action Task Force on Money Laundering*⁴⁰, in its Report on the Laundering Typologies 2003-2004, had aptly pointed out how the 'politically exposed persons' (an euphemism for the persons holding public offices) concealed their ill-gotten wealth, and how many 'accountants and lawyers assist in a money-laundering scheme': 'legal professionals facilitate in money laundering', and the 'accountants provide financial advice'. They advise and lobby how to organize the structures of transactions to become the instruments of darkness. 'A lawyer uses offshore companies and trust accounts to launder money' and 'a solicitor uses his client's account to assist money laundering'.
- (v) Rohatgi allows 'treaty shopping' 'unless it leads to a significant loss of tax revenues'. Who has the legitimate authority to say that it can go on unless it leads to a significant loss of tax revenues? 'Significant' by whose assessment? Why were the Delhi High Court, and the CAG and

the JPC not trusted when they had reasons to hold that massive loss of resources had been caused? Why were the facts of heavy concealment of income and evasion of tax, evidenced through more than 20 Assessment Orders, distrusted, and ignored? Facts speak, and facts must be allowed to speak. Why was the propriety of those Assessment Orders not allowed to be tested before our tribunals and courts? Why should we facilitate Fraud to have the last laugh? It is amazing that the following statement was appreciated:

“Moreover, several of them allow the use of their treaty network to attract foreign enterprises and offshore activities.”

But whose voice is this?: of the ‘high net worth looters’ with chest outside the country, or of the creeping, cowering and cringing ‘crushed’ millions we call ‘We, the People’?

- (vi) The expression *holistic* is meaningless unless we know whether the common suffering souls of this country are within this *holos* (the whole), or they are out of it! In Rohatgi’s *holos*, Gandhi’s talisman stands sold for a pebble. General J.C. Smuts, the author of *Evolution and Holism*, would have shuddered at the use of this word: *holos*. It is quite understandable, for the former partner of Arthur Anderson to invoke holism to drape his agenda. But it baffles us most when it rings in the judgment of our Supreme Court for which we have highest admiration, and from which we have the greatest expectation.
- (d) It cannot be a matter of honour for the people of the Republic of India that Fraud is allowed to masquerade on the unseemly ground of ‘Necessary Evil’ Long back Jawaharlal Nehru had aptly said: “Evil unchecked grows, evil tolerated poisons the whole system.” And Einstein said: “No man is justified in doing evil on the ground of expedience.” The common people of our country believe that ‘Tolerance of evil is always Satan’s delight’. And ‘Good for whom? good for the common people of this country, or for the big corporations and the ‘High Net Worth Individuals’? The central light of the Budapest Sunday Circle⁴¹, George Lukas, like Kant, endorsed the primacy of ethics in politics⁴². This is what Mahatma Gandhi had said, in his edict on the board in Gandhiji’s *Wardha ashram*⁴³. To justify something on the specious plea of ‘Necessary Evil’ is to reject the central ideas of John Rawls expressed in *A Theory of Justice*, often referred to by the courts in our country. The effect of the flawed view led the Court, in *Azadi Bachao*, to uphold the Fraud of ‘treaty shopping’.
- (e) It was strange to see that craze for foreign investments for promoting private profits prevailed over the claims of our Consolidated Fund. I fail to understand the wisdom to starve our Consolidated Fund, meant for welfare of our nation, by crafting such terms in the Double Taxation Agreements which facilitate our country’s loot, even unmindful of national security issues, thus creating the evident conditions for the emergence of two Indias: one of the common-run of ‘We, the People’, the suffering millions whose existence is being fast forgotten, and the other, the ‘High Net Worth Individuals’, corporations, fraudsters, tricksters, masqueraders operating

through mist and fog from various tiny-tots of the terra firma and cyberspace. I would come to this in Chapter 26 ('The Realm of Darkness: The Triumph of Corporatocracy')

(B) The futility of the Court's *cri de coeur*

The Division Bench of the Supreme Court (Coram: B. N. Srikrishna and Ruma Pal, JJ.) considered 'treaty shopping', bad but did not provide a remedy against that abuse. The Court sustained "treaty shopping" but made a *cri de coeur* to the Executive and Parliament to provide remedies against the abuse! *Azadi Bachao* was decided on 7 Oct. 2003, yet nothing has yet been done either by our Parliament or the Executive government to stop this abuse. Our Parliament made several statutory changes after that date, but no step has been taken to stop the evil of the treaty abuse. Parliament inserted some provisions in section 90 of the Income-tax Act, 1961, by the Finance Act, 2003, and again it inserted section 90A by the Finance Act, 2006. Our Executive government implemented the provisions pertaining to the Mutual Agreement Procedure provided in the DTAC to settle disputes at the executive level. This step subverted the role of the statutory authorities in order to provide scope for the settlement of claims under the opaque administrative system. Our Government keeps on asserting that it has taken steps against the abuse of the tax haven routes. Should we believe such claims? I think: "No". The obnoxious Circular No. 789 of 2002 still continues ensuring the operation of an opaque system. It ousts the statutory jurisdiction to examine the correctness of the facts presented. It prevents our statutory authorities from discharging their public duties. Our Government, I believe, wants the treaty abuse to go on. Instead of withdrawing that Circular, it is planning to bring that sort of provision in the Act itself. The *cri de coeur* is lost in the wilderness. Our Supreme Court should consider this as the price for trusting the executive government overmuch. I have discussed in Chapter 17 how the Direct Taxes Code Bill, 2010 proposed to incorporate the core provisions of that Circular 789 of 2000 in the statute itself to ensure the continuance of secrecy provisions, and uninhibited operation of the strategy of deception. It is not difficult to understand our Government's schizophrenic response to the taming of the gross abuse. One can see an evident hiatus between the words and deeds of our Government. Even the legislation is made skewed to protect the interests of a few whose silhouettes alone we can see in the poor visibility procreated by the system. Such things happen only in 'a failed' state. Are we moving towards that?

(C) The Role of the Lobbyists in tax matters: The inscrutable workings of Providence: Weren't the Furies at work somewhere some way?

It was surprising that the Union of India and the 'tax haven' company, the co-appellant before the Supreme Court, sailed together working hand in glove with each other. I saw how the lobbyists acted imperiously, and they acted fast. The corridors of the North Block were abuzz with rumours that if nothing was done to make the tax haven and its beneficiaries comfortable, our country would face economic disaster. I had argued before the Supreme Court that a tax treaty could be entered into only in exercise of power under section 90 of the Income-tax Act, 1961; not under the exercise of executive power (in terms of Article 73 of our constitution). 'Taxation' had gone outside the Executive's domain long back. I

had argued before the Supreme Court that the Indo-Mauritius DTAC went beyond the ambit of the objective for which the treaty could have been made under the legal provision. Section 90 of the Income-tax Act, as it stood then, did not authorize the government to enter into a tax treaty to promote trade and investment. Hence, the treaty went wrong by promoting extraneous objectives. This argument could not be answered by the Attorney General; and the Mauritian company stood wholly checkmated. But the unseen and mysterious Aeschylean Furies (I would call them the 'super fast-lobbyists') acted with skill and aggressiveness. The Finance Act, 2003, brought about an amendment to remove this vulnerability from which the said Agreement suffered. This is how governments are made to act these days. Whilst conducting the PIL, I often wondered which Furies haunted our government so effectively. The CBDT issued the Circular 789 of 2000 which went against the Department's own position over years. The High Court's decision was wholly in our government's favour. I could not know which Furies drove our Government to come to the Supreme Court to lose what it had rightfully gained. What I saw reminds me of what a distinguished person so aptly said: "The nations seem caught in a tragic fate, as though, like characters in a Greek drama, they were blinded by some offended God. Bewildered by mental fog, they march towards the precipice while they imagine that they are marching away from it."

VIII

"QUIS CUSTODIET IPSOS CUSTODES? (WHO WILL WATCH THE WATCHERS?)"

During the BJP regime, it was widely talked about that Sri Yashwant Sinha, the then Finance Minister, was responsible for getting the Circular 789 of 2000, issued. It was in the air that one of his relations had been a portfolio manager⁴⁴ for some foreign investment funds handling Indian operations. And the then Prime Minister turned a blind eye to all that was going on (reported in the Indian Express of June 5, 2000).

I was surprised when the Attorney General, representing our Government, and Shri Salve, representing the Global Business Institute Limited of the Cathedral Square, Mauritius, submitted before the Supreme Court that the use by the third country resident of the Mauritius tax treaty was "perhaps" "intended at the time when Indo-Mauritius DTAC was entered into". But the Court did not decide the point suggested: but the probability of this assertion colouring the judicial approach could not be ruled out. The unstated, but dexterously suggested, idea was just to free the BJP government (and its then Finance Minister, Mr. Sinha) from the remissness in promoting 'treaty shopping', and to put the blame on the Congress as the Indo-Mauritius DTAC had been signed when Mrs. Gandhi had visited Mauritius in 1982 along with Mr. Pranab Mukherjee. It was unbecoming of both the counsels to suggest this, even in pregnant aside. As the Petitioner, I contradicted them, and even asserted in my Curative Petition: "This conclusion is based on no material."⁴⁵ In my letter to Shri Jaswant Singh, the Minister of Finance (during 2002-04) in the BJP Government, I brought to the knowledge of the Government how things had moved, and I requested the then Finance

Minister to take appropriate actions: to consider whether some legislative change was worthwhile, or whether it was feasible to move the Supreme Court for a reconsideration of its decision in *Azadi Bachao* so that public revenue and public values were not jeopardised. In the penultimate paragraph of that letter I wrote to then Finance Minister:

‘This letter is just *pro bono publico* in the interest of the common people of this country with per capita income just U.S. dollars 440 [when in Mauritius it is U.S. dollars 3,540]. We can forget only at our peril Gandhiji’s *talisman*: “Recall the face of the poorest and weakest man whom you have seen and ask yourself if the step you contemplate is going to be of any use to him. Will he gain anything by it?”’

But the Government took no action. Even the letter went unacknowledged. The reasons for inaction were understandable.

Under the UPA regime, things were no different. The Common Minimum Programme of the Congress-led United Progressive Alliance, formed in 2004, formulated as one of the items in its programme: “Misuse of double taxation agreements will be stopped.” I thought that the Supreme Court’s veiled deprecation of the misuse of the Indo-Mauritius DTAC, in *Azadi Bachao*, would bear some fruits. I felt the Court’s *cri de coeur* would receive a good response, and our Executive, or our Parliament, would take effective remedial steps in the matter. But nothing happened. In the recent months we have witnessed a lot of Brownian motion where things seem to move, but do not move.

One of its effects is that, despite all the sound and fury, the major political parties promote only the capitalist agenda where tax havens constitute strategic devices for tax evasion, tax-mitigation, and amassing ill-gotten wealth. The tax havens or secrecy jurisdictions function as the veritable Alsatia (a sanctuary for criminals), and centres for money-laundering. The *Wikipedia* concludes that Mauritius based “front companies of foreign investors are used to avoid paying taxes in India utilising loopholes in the bilateral agreement on double taxation between the two countries, *with the tacit support of the Indian government*”.⁴⁶

Whether it is Mrs. Gandhi, or Atal Bihari Vajpayee, whether it is Pranab Mukherjee or Yashwant Sinha, the fate of the country is the same: to suffer. It was suggestively said by someone: if Raja Ram becomes the King, Sita is banished, if Duryodhana rules, Draupadi is openly humiliated: Sitas and Draupadis have suffered this way. Bharat Mata’s plight, as our deeds attest, is no better. It is the duty of every citizen to think about it. I would be the happiest person if my distressing conclusions are proved wrong. We must not forget what Thomas Jefferson said: “Eternal vigilance is the price of liberty”. And we wish that the persons in power keep in their mind what Walt Lippman said :

“Those in high places are more than the administrators of Government bureaux. They are the custodians of a nation’s ideals, of the beliefs it cherishes, of its permanent hopes, of the faith which makes the nation out of a mere aggregation of individuals. They are unfaithful to their trust when by word and example they promote a spirit that is complacent, evasive and acquisitive”.⁴⁷

In *Liversidge v Anderson*⁴⁸, the dissenting Judge Lord Atkin referred to the court “being more executive-minded than the executive”. I saw in the course of

the PIL that our Government was more corporate-minded than corporations! I also found evidence sufficient to appreciate what Prof. Allen said: "There is, apparently, something in the tranquil atmosphere of the House of Lords which stimulates faith in human nature."⁴⁹ I appeal to the brooding omnipresent Justice to ensure that someday Truth triumphs, and Dharma rules. I hope someday the Judgment, which failed to provide remedy against our nation's loot, would be overruled with the comment that *Liversidge's Case* [1942] AC 206 had deservedly received from Lord Diplock in *R. v. Rossminster*⁵⁰: "this House were expediently and, at that time, perhaps, excusably wrong,"

Dear reader, I have just told you in brief certain aspects of one of the PILs I conducted experiencing anguish at the ways our Government behaved. I never considered myself a party to the litigation. I, "a single public-spirited taxpayer" had brought the matter before the court to "vindicate the rule of law and get the unlawful conduct stopped"; and thereafter, I acted only *pro bono publico* to assist the court as an ordinary citizen of the Republic.⁵¹ I had used Chesterton's observation as an epigram in Chapter 12 of this Memoir. I would end this Chapter hoping that our nation would never become "one vast vision of imbecility".

NOTES AND REFERENCES

1. Shakespeare, *Macbeth* (Act I scene iii)
2. Her photograph with me and Mr. Sims can be seen on my website <http://shivakantjha.org/openfile.php?filename=photographs/photographs.htm>
3. Shiva Kant Jha, Mrs. Anju Jha Choudhary, Advocate and Mr. John Cary Sims, Professor of Law at McGeorge School of Law, Sacramento, USA
4. Professor of Business Law, Washington State University and the author of *International Business Law* (4th ed. 2004)
5. Prof. (Dr.) M.L. Upadhyaya Ph. D. former Professor & Dean of the University of Calcutta, now Professor & Vice President, Amity Law School, New Delhi
6. Lancaster University Law School
7. *Shiva Kant Jha vs UOI* (2002) 256 ITR 536
8. (2003) 263 ITR 706 SC
9. "Treaty shopping," is a wrongful access to the benefits under a tax treaty. When the residents of the third states intend to derive benefits under a bilateral treaty, in the scope of which they do not come, they are called 'treaty shoppers'. In doing so, they are the masqueraders. The Indo-Mauritius DTAC is bilateral tax treaty between India and Mauritius. If the residents of the third States adopt the device to access benefits under this treaty, they cause wrongful gains to themselves, and wrongful loss to others.
10. I would translate the *shloka* thus: If one works only in the King's interest, people have reasons to get angry, if one works in the interest of people, the King becomes wrathful. Good workers, working *pro bono publico*, suffer between Scylla and Charybdis, and find it difficult to survive.
11. Review before the Supreme Court of India in the Special Leave to Appeal (Civil) No(s).19751/2010.
12. Noam Chomsky, *The Essential Chomsky* P.. 334
13. The Hindustan Times, July 27, 1983
14. *Britannica Book of the Year* 1984, p. 521
15. Writ Petition (C)No.445 of 2006 before the Supreme Court of India
16. (1942) A.C. 206, at 245
17. (1975) 99 ITR 375 at 386.
18. *AIR* 1992 SC 1555
19. Prof. Sol Picciotto, Lancaster University Law School at <http://www.tni.org/crime-docs/picciotto.pdf>

PROFILE OF A PUBLIC INTEREST LITIGATION IN REVENUE MATTERS

20. For the functions of a diplomatic mission see Art. 3 of the *Vienna Convention on Diplomatic Relations of 1961*.
21. *Shiva Kant Jha v. Union of India & Ors* [Reversed in *Union of India vs. Azadi Bachao Andolan & Anr.* (AIR 2004 SC 1107)]
22. "The core issue is as to what should be done when, on investigation, it is found that the assessee is a resident of a third country having only paper existence in Mauritius without any economic impact with a view to take advantage of the double taxation avoidance scheme. No attempt has been made to answer the question on behalf of the Central Government."
23. (1985)154 ITR 148.
24. (2002) 256 ITR 563 (Delhi).
25. 2003-(263)-ITR -0706 -SC
26. *Basheshar Nath v. CIT* (AIR 1959 SC 149).
27. *Naresh Shridhar Mirajkar and Ors. v. State of Maharashtra and Anr* AIR 1967 SC 1 (Bench of 9 Hon'ble Judges)
28. AIR 1967 SC 1 at p. 7 para 16.
29. "Necessary parties are parties "who ought to have been joined", that is, parties necessary to the constitution of the suit without whom no decree at all can be passed "In order that a party may be considered a necessary party defendant, two conditions must be satisfied, first, that there must be a right to some relief against him in respect of the matter involved in the suit, and second, that his presence should be necessary in order to enable the Court effectively and completely to adjudicate upon and settle all the questions involved in the suit." (Mulla in his CPC 14th ed at p 868)
30. Professor of Business Law, Washington State University and the author of *International Business Law* (4th ed. 2004). The extract from his e-mail to Shiva Kant Jha.
31. Deloitte, Haskins & Sells International, *Treaty Shopping: An Emerging Tax Issue and its Present States in Various Countries*, p. 7 (1988).
32. *Hood Phillips' Constitutional and Administrative Law* (7th ed) at p 24; *Oppenheim's International Law* (9th ed.) at p. 43; Shiva Kant Jha, *Judicial Role in Globalised Economy* (2005) , Chapt. 8 : 'Reading with Discrimination on the use of a textbook in a Judicial proceeding'.
33. (9th Ed.) at P. 43.
34. "I found in my own nature a special adaptation for the contemplation of truth. For I had a mind at once versatile enough for that most important object—— I mean the recognition of similitudes—and at the same time sufficiently steady and concentrated for the observation of subtle shades of difference." Legouis & Cazamian, *A History of English Literature* p. 368
35. [2005] 275 ITR 81 (SC).
36. [(2003) 184 CTR Reports 193].
37. [1986] 2 All ER 334 H.L. (Lord Hailsham of St. Marylebone L C , lord Elwyn-Jones, Lord Scarman, Lord Bridge of Harwich and Lord Mackay of Clashfern).
38. (2003) 263 ITR 706 , 753.
39. Robert L. Heilbroner rightly observed in his article in the *Encyclopedia Britannica*: "Thus did the appearance of capitalism give rise to the discipline now called economics."
40. contact@fatf-gafi.org.
41. Its other members were Arnold Hauser, Karl Mannheim, Bela Balazs, Anna Leznai, Bela Bartok.
42. Arpad Kadarkay, *George Lukas, Thought and Politics* p. 195 (Oxford).
43. Quoted in Chapter 3.
44. *The Indian Express* of June 5, 2000 : "One reason for the allegations against Sinha was that the fund for which his daughter-in-law works has done exceedingly well compared to 135 other Mauritius-based funds.."
45. Curative Petition of 2004 in Review Petition No (Civil) 1917-1918 of 2003 before the Supreme Court
46. http://en.wikipedia.org/wiki/Tax_haven
47. Quoted in the *Shah Commission of Inquiry*, Interim Report II P. 143
48. (1942) A.C. 206
49. Allen, *Law and Orders* 3rd ed. p.297
50. (1980) A.C. 952
51. The quoted expressions are from Lord Diplock's speech in the House of Lords in *Inland Revenue Comrs v. National Federation of Self-Employed* referred in the section I of this Chapter.

24

OUR WORLDVIEW & THE TRENDS OF OUR TIMES

And take upon 's the mystery of things, As if we were God's spies.

Shakespeare, *King Lear*, Act V, scene 3

Introduction

Shelley viewed 'history' as a "cyclic poem written by Time upon the memories of men" where the Past is the rhapsodist. We have the choice to hear, or not to hear. It is even possible to evade its inexorable logic by treating it just a mere 'dust-heap' (as Augustine Birrell considered it), or 'a pack of lies', (as Sir Robert Walpole thought). Bernard Shaw quoted Hegel in his *The Revolutionist's Handbook*: "What experience and history teach is this— that people and governments never have learnt anything from history, or acted on principles deduced from it." But on deeper reflections on realities of our changing times, Winston Churchill struck a more optimistic note in his *The Gathering Storm*; saying categorically : "...it is wrong not to lay the lessons of the past before the future." All that we did, all that we are doing, shall surely condition and determine all that we shall be doing and facing in times to come. T.S. Eliot said in his *Four Quartets*:

Time present and time past
Are both perhaps present in time future,
And time future contained in the time past.

With this perspective, I intend to see and evaluate the oeuvre of our collective and individual deeds on our fast changing times. I have immensely enjoyed my odyssey on "the stream of Time", which we 'can neither create nor direct', but upon which we can 'steer with more or less skill and experience.'¹

In this Chapter, I intend to reflect on our worldview, and the dominant ideas which have shaped our human conditions and destiny. I would divide this Chapter in several short, but distinct, sections, each dealing with topics of importance.

I

UNDERSTANDING THE GRAMMAR OF THE DOMINANT WESTERN WORLDVIEW

As the Western ideas have shaped the worldview of our elite, I would reflect on them to show how, on core points, the West has not outgrown from the ancient Judeo-Christian tradition. It is a strange irony of history that the intellectual sub-structure of the Western thought is still in its old groove. With Abraham began the history of Judaism. He was at the apex of the family in which at later times Jesus and Mohammad were born. They shared common Arabic tradition, and grew to become revolutionaries having divergent outlook on life. The Judeo-Christian tradition of thought shaped not only the religio-cultural thoughts of Christianity and Islam, it also shaped the materialistic ideas of Karl Marx. I have reflected on them in Chapter 20 of this Memoir.

Bertrand Russell has rightly pointed out in his *History of Western Philosophy* that one can understand the well-known concepts of Marxism by understanding certain fundamental concepts from the Judeo-Christian tradition. Russell has observed insightfully that the Jewish “pattern of history, past and future, is such as to make a powerful appeal to the oppressed and unfortunate at all times.”² St. Augustine was most influential in developing the Western Christianity which grew on the assumptions much different from the simple assumptions of the messianic Jesus of the early tradition. St. Augustine conceived the Church as the spiritual City of God, and the realm of the temporal powers as the Earthly City, the former was supreme in matters spiritual, and the latter, in the worldly affairs maintaining unflinching obedience to the City of God. Both grew to provide models for the polity in the Western world in many ways: (i) by providing a pattern in which the organizations for powers, spiritual and temporal, could interact; and (ii) by providing structure for their inner realms. The structure of the City provided models to the ‘nation states’ and the ‘corporations’ to organize their structure. Besides, the subservience of the Earthly City to the City of God provided, in this phase of Economic Globalisation, a model for subjugating the nation states to the economic realm, led by the ‘corporations’. It seems Christian worldview never went much beyond that point. We have seen three clear phases in the history of the West: (i) the Phase of the Church domination, (ii) the Phase, after the Reformation, when the native states became supreme, (iii) and, now, the Phase when the corporate oligarchy is becoming triumphant: first it was the mighty Church, then the powerful states, and now the rule of corporations.

After examining various factors and vectors in the Western thought, Russell drew up a precise eschatological statement, Russell found that St. Augustine adopted the Jewish pattern of history to Christianity; and Marx, to express his own philosophy of Socialism. He tells us that to understand “Marx psychologically” “one should use the following dictionary”:

Yahweh = Dialectical Materialism
The Messiah = Marx
The Elect = The Proletariat
The Church = The Communist Party
The Second Coming = The Revolution

Hell = Punishment of the Capitalists

The Millennium = The Communist Commonwealth

“The terms on the left give the emotional content of the terms on the right, and it is this emotional content, familiar to those who have had a Christian or Jewish upbringing, that makes Marx’s eschatology credible.”³ I would draw their corollaries, and would briefly mention how some of these ideas are different from those held under our Hindu religio-cultural tradition, and also the points where they come close.

- (i) Russell has aptly stated that “the Jewish pattern of history, past and future, is such as to make a powerful appeal to the oppressed and unfortunate at all times”. I have mentioned in Chapter 20 of this Memoir how many persons considered Krishna and Jesus great revolutionary role-models for the oppressed and unfortunate.
- (ii) The Judeo-Christians believed in God that could create, whereas in the Hindu Philosophy God does not create anything; the creations are the outcome of the interactions of *prakriti* and *purusha* emanating from God. So, philosophically speaking, it was impossible for the Hindus to conceive that *Ishwara* (God) could help anyone anyway in acquiring political power, or in setting up the structures in the political or economic spheres.
- (iii) The entire Judeo-Christian thought is essentially dialectical. In the earliest phase it was represented by the conflicting forces of God and Satan; and in the Marxist philosophy, it becomes dialectical materialism. For Marx the “history of all human society, past and present, has been the history of class struggle”. His dialectic works with a measure of inevitableness. If under the Judeo-Christian thought, the favoured few were “the Elect”, in Marxism, the “Proletariat” became the Elect. The Hindu worldview does not contemplate such conflicts. I have discussed this aspect of the matter in Chapter 20.
- (iv) The eschatological statement, that Russell gives, explains certain core ideas about the socio-economic management in the Western society. The idea of Yahweh was articulated as the concept of the Supreme Creator who was also the Supreme Regulator. Marx substituted for that the idea of Dialectical Materialism. The terms Marx used, as presented by Russell with their suggestive and approximate equivalence in the Judeo-Christian thoughts, are so well known that no elaboration is needed for the purposes of my reflections in this Chapter.
- (v) The core concepts of the Judeo-Christian thoughts shaped the Islamic and the Christian thoughts producing certain ‘family resemblances’ between the two. Their ideas were, of course, shaped in later times by the political and economic factors and the dominant interests in the changing contexts of times. The track they adopted led them to evolve a worldview that helped those who dabbled in power politics to become the ‘empire builders’ of the later times. As Christianity was used for long time to promote imperialist designs of the European countries, Islam too had been used by the empire-builders in certain phases of history to promote their imperial interests. Francis Fukuyama, in *The End of History and the Last Man* (1992) believes that Christianity is more ‘evolved’ religion than the other faiths as it considers all men equal and morally free to choose between right and wrong.⁴ This is

- a plea for saying that Christianity is more relevant to the present-day neoliberal culture, than any other faith.
- (vi) The Hindu religio-cultural thought had adopted an entirely separate trajectory; and its rich oeuvre shows the following features emerging from the Hindu society's 'cultural consciousness':
- (a) It maintained a balanced view maintaining right equilibrium between one's material requirements, and spiritual needs. It conceived human life to evolve at two levels: one spiritual and other material. But it never saw between the two any dichotomy. An individual's life has two movements, like the earth's rotation and revolution: one suggesting spiritual evolution and the other the material progress.
 - (b) It neither rejected wealth, as Jesus had done, nor accepted it with the passion of attachment, as the Church had done, or as the corporate world is doing now. It valued 'property' only when fairly acquired and justly held on trust for all.
 - (c) The Hindu religio-cultural thought could never promote economic expansionism, and capitalism on the Western pattern, which had led to the old-style colonialism and imperialism, and their present-day variants at work in the neoliberal architecture.
 - (d) The Hindu religio-cultural thought helped us to evolve a worldview in which consumerism and hedonism have no place. 'Social Justice' became the core principle in the utilization of society's material resources. Under this view, the importance of a man was not for the wealth he possessed, but for the efforts he made to evolve spiritually, and for his acts for the welfare of himself and all others. As it saw divinity everywhere, in nature and in man, its thoughts and ways became dedicated to the egalitarian ideas which, in my view, had shaped the perception of the makers of our Constitution. This worldview led them to love our earth (*Prithvi*) which was personified as a deity for whose welfare, as the *Srimad Bhagavat Mahapurana* tells us, Krishna had come to the world. Under this worldview, we never thought of misusing or polluting the natural resources for extracting profits, or for seeking unrestrained pleasures.

The above exposition leads me to conclude that the western intellectual traditions tread in the old groove. By adopting unilinear view of history, they think they are progressing towards a better future. They harbour the hubris that they are scaling new heights of culture. But this claim is not sustainable when we think about Neros, Genghis Khans, and Hitlers; the devastations wrought by the World Wars, and the way circumstances are being crafted to drive the humanity towards World War III; the lustful promotion of greed, and such senseless acts as the Bhopal Gas-leak, the Chernobyl and the Fukushima disasters; the greedy extraction of the natural resources and the pollution of our environment; the hurry with which we are moving towards our doom, and the worry with which we carry the burden of life towards destination we do not know. This also takes our mind to the 'moral deficit' in the economic management of our times. I have discussed in Chapter 20 this syndrome of decadent morality in a fast-changing technological society.

We in India find ourselves at a strange cusp, at a baffling crossover point. We are wrenched by the memory of the past when we see how in our times several national and multinational actors are working hard to erase our past to allow the 'Invisible Hand' of this economic globalization to write the text authored by the corporate oligarchy, and their patron institutions. We come to live in this phase when our vision is blurred, and our worldview confused by uncritically borrowed ideas from the West. We find ourselves in a situation that brings to mind the first sentence with which *A Tale of Two Cities* by Charles Dickens begins:

“It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair, we had everything before us, we had nothing before us, we were all going direct to heaven, we were all going direct the other way.... “

II

THE TRENDS OF OUR TIMES

The Mahabharata War was over. Destructive devastation had been wrought. Even the victors were sad. The great Vyasa told the King Yudhishthira to reflect on the way Time had choreographed events: पश्य कालस्य पर्ययम् (See, what Time has done). The events on the stream of Time cannot be ignored. In this Part of this Chapter, I intend to measure the wisdom with which the modern world has unfolded itself. I would first mention the lessons that many political thinkers learnt on evaluating what they saw in the early phase of imperialism and colonialism in the 18th century. Their ideas deserve consideration because, though they did not receive acceptance by the Great Powers of the world then, they have become dominant ideas promoting the neoliberal paradigm after World War II. In this Part, I intend to reflect on what led to the two World Wars, and also on the circumstances which might drive our World towards a more devastating World War III. I would also focus on certain factors which seem to be at work to bring about, perish the thought, our collective doom.

What they learnt from Modern History

(Great Realization in the mid-19th century: The Responses of the Great Powers)

(i)

(a) India's First War of Independence: Its subtext as the imperialism's think-tanks and the cheer-leaders read

I have told you in Chapter 8 my reasons for considering the so-called Indian Mutiny of 1857-59 as our country's First War of Independence. The castle of power that the British imperialism built through the wands of stealth and craft, and through brutalities, cracked under the seismic waves set in motion by our patriotic people. My teacher, Dr. Kalikinkar Datta, crisply stated the effect of the event: “For more reasons than one, the Revolt marks a turning-point in the

history of India.” “I wish,” remarked the late Lord Cromer, “the young generation of the English would read, mark, learn and inwardly digest the history of the Indian Mutiny; it abounds in lessons and warnings.”⁵ The English imperialists took a spate of measures to ensure the continuance of their *imperium*, perhaps till eternity; but insightful Russell, the *Times* Correspondent in India, observed in his Diary that “the mutinies have produced too much hatred and ill-feeling between the two races to render any mere change of the rulers a remedy for the evils which affect India, of which those angry sentiments are the most serious exposition....”⁶ I may hasten to mention that the English imperialists saw numerous trouble-spots spurting around the globe. The revolutions of 1848 left Europe divided. The interventionist British government noticed the restiveness in China though it had succeeded forcing the Chinese ports open for the British goods; and had acquired Hong Kong under the Treaty of Nanking after the first Opium War (1839–42). The imperial hubris reached its climax when Palmerston justified his intervention in the domestic affairs of a foreign country to protect the commercial interests. I need not develop this point as I have already discussed it in Chapter 26(iv)⁷.

(b) The Lessons that they learnt

The think-tanks of the imperialists learnt certain lessons from the realities which were obvious in the mid-19th century. The *Encyclopaedia Britannica* notes: “In the middle years of the century (the 19th century) it had been widely held that colonies were burdens and those materials and markets were most effectively acquired through trade.”⁸ Commenting on it, I wrote in 2005 in my *Judicial Role of Globalised Economy* (at p. 17): “What was then scripted on the five inches of ivory has become in the Uruguay Round Final Act a plot wrought by self-seeking corporate oligarchs. And “trade” is now receiving such a wide semantic widening that, perhaps, everything would become nothing but *res commercium* in a wider gestalt.” The imperial powers felt, as Paul Kennedy put it, that those “colonial acquisitions were unnecessary, being merely a set of ‘millstones’ around the neck of the overburdened British taxpayer.”⁹

Paul Kennedy has perceptively underscored the evident contradictions in the ideas of the think-tanks and the desires of the imperialist politicians of that time. He pointed out that “the fact was that the empire continued to grow, expanding (according to one calculation) at an average annual pace of about 100000 square miles between 1815 and 1865.” If ‘capitalism’ led to ‘imperialism’, ‘colonialism’ was its overbearing bastard. And “the appearance of capitalism give rise to the discipline now called economics.”¹⁰

The imperialists over the most part of history have worked through some cloak. The cleavage between what they said, and what they did was always wide. “Thus in 1784, the British Parliament announced that “to pursue schemes of conquest and extension of domination in India are measures repugnant to the wish, honor, and policy of this nation.” Shortly after, the conquest of India was in full swing.”¹¹ But in the Eurocentric world, the imperialists pursued the aggressive imperialism in the old protocol with two variants; (i) formal (as in India), and (ii) informal (as in China and South America).

What led the ideas of the aforementioned think-tanks to be shelved by the politicians-in-power was thus brought out by Asa Briggs in the *Encyclopaedia Britannica* Vol. 29 (15th Ed. P. 84):

“His [Disraeli] first ventures in “imperialism” —a speech at the Crystal Palace in 1872, the purchase of the Suez Canal shares in 1875, and the proclamation of the queen as “Empress of India” —showed that he had abandoned the view, popular during the middle years of the century, that the colonies were millstones around the mother country’s neck.”

(c) The emergence of the syndrome of the ‘Sponsored State’

The western imperialists had come to India not to promote any altruistic purpose. The imperialists had learnt that the best strategy was to capture market for trade leaving political power with the native factotums. In the early history of British India, two models of imperialism were minted: in one the imperialist powers controlled the administration and the markets leaving the façade of the Nawab’s government intact to receive all the brickbats from his people for things getting wrong; in the other no such pretence was maintained, and power was directly assumed over the people who could see, even see the targets of their wrath, straight within their sight. I called the first model of imperialism the system of ‘Sponsored State’. I had spelt out its core features in my *Judicial Role in Globalised Economy* (2005):

“Under the sponsored state system which Clive set up he found that despite the dewani which enabled to promote the commercial interests of the East India Company with no holds barred, it was essential to manage the system of governance from inside the ramshackle and truncated political structure over which Mir Jafar or Mir Kasim presided as nawab. Clive pursued this objective with a stroke of stealth by securing for Rida Khan, who was Clive’s deputy dewan, the post of the nawab’s deputy. The inevitable consequence was the emergence of powerful coterie of bureaucrats and self-seekers who worked for the Company whilst swore loyalty to the nawab.”

The first model of covert vampirism won approval of the think-tanks of the imperialists. This model came in for appreciation in this neoliberal phase of the present-day Economic Globalisation. It facilitates the capture of the markets and the economic resources of the target countries. The IMF-World Bank strategy illustrates what the early imperialists had adopted, but later on gave up that approach for direct and conspicuous control. The Uruguay Round Final Act, setting up the WTO, is also designed to promote the system of the ‘Sponsored State’. This situation can become alarmingly shocking even in a democracy. The democratic election process can be engineered to provide the structure of governance to promote the neoliberal agenda for the corporate welfare.

(ii)

(a) From the Hall of Mirrors to World War I: the folly of the governments

We all know how in the Congress of Vienna (1815), the leading European powers divided their spheres of dominance round the world. They behaved as if they were dividing an apple placed on the golden platter on the round table which the Tsar of Russia, Castlereagh of England, Metternich of Austria and

Talleyrand of France attended in their efforts to mould the Europe after their own image. They held republicanism and democracy in utter contempt, and did everything their mind could invent in their quest for total security for the monarchs and their empires. The old game continued, and continued till the circumstances begotten by their deeds and notions, drove this Eurocentric Europe to World War I.

(b) The tragic error of judgment

The World Wars proved Bloch's *The War of the Future* (1898), and Norman Angell's *The Great Illusion* (1910), wrong in stating that "new economic factors clearly prove the inanity of war". Henry Noel Brailsford had felt that in Europe "the epochs of conquest is over" and had felt "that there will be no more wars among the six great powers." The World Wars proved that the "commercial disaster, financial ruin and individual suffering" couldn't stop a war. I wonder if our Peter Pans would ever "admit with Hamlet that human reason is limited and surrounded by great mystery."¹²

Errors are often the cause of destruction. The World Wars I and II were wrought by 'the error factors'. 'By the 1930s moderate historians had concluded, with Lloyd George, that no one country was to blame for the war: "We all stumbled into it."¹³ World War II too was substantially the outcome of indiscretion, and gross miscalculations. It "came because Britain and France dithered between appeasement and resistance," leading Hitler to miscalculate; and thus they exposed the world to hazards. "The British historian Anthony Adamthwaite concluded in 1984: "Hitler wanted war, and Western and Soviet policies throughout the 1930s helped him to achieve it"¹⁴.

After analyzing what led to the Great War of the Mahabharata, the great poet 'Dinkar' spelt out the two factors which had caused the War: one was hubris breeding megalomania, and the other was 'greed' generating demonic lust. It is appropriate to appreciate the wisdom the poet conveys in these lines:

युद्ध का उन्माद संक्रमशील है, एक चिनगारी कहीं जागी अगर,
तुरत बह उठते पवन उनचास हैं, दौड़ती, हंसती, उबलती आग चारों ओर से?
और तब रहता कहाँ अवकाश है, तत्त्व चिंतन का, गंभीर विचार का?...
युद्ध को तुम निन्द्य कहतो हो, मगर, जब तलक हैं उठ रही चिनगारियां
भिन्न स्वार्थों के कुलिश-संघर्ष की, युद्ध तब तक विश्व में अनिवार्य है...

[The maddening passion for war is infectious, and it spreads. Once the conflagration begins, other factors creep in to enhance that into a fiery conflagration. And then none can find time for cool reflections to weigh things to determine what is right. You condemn war; but can it be avoided till the selfish interests keep on colliding with ferocity?]

It is often said that the capitalists are interested in peace only because they can promote their trade. They can protect their wealth only when wars are avoided. Bertrand Russell has written about the attitudes of the capitalists towards wars. I would quote him to set out my reservations on some of his ideas. He said¹⁵:

“Those who adopted a utilitarian ethic, on the contrary tended to regard most wars as folly. This, again, at least in the nineteenth century, brought them into alliance with the capitalists, who disliked wars because they interfered with trade.... The attitude of capitalists to war, it is true, has fluctuated. England's wars of the eighteenth century, except the American war, were on the whole profitable, and were supported by businessmen; but throughout the nineteenth century until its last years, they favoured peace. In modern times, big business, everywhere, has come into such intimate relations with the national State that the situation has greatly changed. But even now, both in England and in America, big business on the whole dislikes war.

Enlightened self-interest is, of course, not the loftiest of motives, but those who decry it often substitute, by accident or design, motives which are much worse, such as hatred, envy, and love of power.”

The capitalists are interested only in their gains: they seldom think of larger issues pertaining to humanity. They serve democracy, autocracy, and fascism; They have been happy with the patriots, and also with those who work to sell the honour of the country. The history of India has had many instances of such things. If wars promote power and provide opportunities to garner wealth, war is good, otherwise it is bad. Common people have always been against wars because they only suffer, whilst the unworthy prosper. And the Big Business can sow seeds of discord make them grow on account of their growing greed that breeds anger. I wonder how Bertrand Russell missed the lessons of history whilst he evaluated Locke's or the Utilitarians' self-comforting thesis. Human history attests the operation of an inexorable principle which, with an uncanny insight, H.A. L. Fisher stated in the Preface to *History of Europe*, which I admired from my undergraduate days for soundness of judgment, intellectual perception, linguistic felicity and the economy in the treatment of subjects without ever economizing with truth. He very perceptively said:

“I can see only one emergency upon another as wave follows upon wave; only one great fact, with respect to which, since it is unique, there can be no generalizations; only one safe rule for the historian: that he should recognize in the development of human destinies the play of the contingent and the unforeseen”.

Major wars have often minor proximate causes. But numerous reasons conspire to drive things go off the precipice with catastrophic effect. Circumstances take new and amazing turns. The Uncertainty Factor works not only in physics, as Heisenberg showed, but also in life we live. But it is an irony of history that Hitler thought that the principle of certainty would work in his favour always. It is again an irony of history that in our days the economists are prone to believe that the Certainty Factor would always work in favour of their assumptions of the present-day economic fundamentalism.

(c) The Great Wars as the Metaphors for us to reflect: World War I

World War I ended with the Treaty of Versailles which was signed on 28 June 1919 in the Hall of Mirrors in Versailles. They signed this Treaty in the Hall of Mirrors, but had no wisdom to see themselves and the emerging world in the

mirrors of history. What an irony! The empires had crumbled, and the map of Europe was re-drawn. Phillip Snowden, who later became Viscount Snowden, and a Cabinet Minister in England, made the following insightful comment on the Treaty:

“The Treaty should satisfy brigands, imperialists, and militarists. It is the death-blow to the hopes of those who expected the end of the war to bring peace. It is not peace treaty, but a declaration of another war. It is the betrayal of democracy of the fallen in the war. The Treaty expresses the true aims of the Allies.”¹⁶

We could tell such leaders: “You are one of those that will not serve God, if the devil bid you.” (Shakespeare, *Othello* I.i.108).

On good grounds it was said that the seeds of World War II were sown in the Treaty of Versailles; and World War II was, as Lipson rightly says, “in continuation of World War I”. If we reflect on the drama between the two World Wars, their prologue and dénouement, we find the events as an allegory to show that the law of *karma* operates as much in the Palaces and Castles, as in the cottages of the lowliest and the humblest.

(d) The royal road to World War II: Scripting human destiny sans wisdom, sans foresight.

The greedy powers, fire-eating narrow nationalists and power wielders led Europe to World War II. The ideologies of dictatorship, democracy and communism provided intellectual underpinnings to their diverse deeds all driving the molten lava up to erupt in 1939.

Everything that begins comes to end. So World War II ended in 1945. It was a pyrrhic victory recalling ‘Pyrrhus of Epirus who defeated the Romans at Asculum in 279 BC, but sustained heavy losses.’¹⁷ The real victorious power that emerged from the cauldron of World War II was the United States of America. Paul Kennedy, in his *The Rise and Fall of the Great Powers* (p. 464-65), says:

“‘American experience’, exulted Henry of Luce of Life magazine, ‘is the key to the future....America must be the elder brother of nations in the brotherhood of man’.¹⁸Whoever was so purblind as not to appreciate that fact — whether old-fashioned British or Dutch imperialists, or leftward-tending European political parties, or the grim-faced Molotov — would be persuaded, by a mixture of sticks and carrots, in the right direction. As one American official put it, ‘It is now our turn to bat in Asia’¹⁹; and, he might have added, nearly everywhere else as well.”

To conclude World War II, the USA dropped atom bombs on Japan (at Hiroshima and Nagasaki) compelling it to surrender. It was a horrendous act with terrifying consequences. This decision could have been avoided. What led to this act, for which the United States was wholly responsible and would be remembered in infamy, has been thus stated with utmost brevity by A.J.P. Taylor:

“They wished to demonstrate to Congress that the money spent had not been wasted Many also were actuated by scientific curiosity; having prepared an experiment, they wished to see the results.... War

*suspends morality.....When Truman heard the news from Hiroshima, he was excited and said: "This is the greatest thing in history."*²⁰ [italics supplied]

We realize that if there is no ceiling on excellence, there is no bottom to degradation. Human stupidity has no confines.

(e) World War II: the *Mahabharata* provides perspective which the world must not overlook

When the bombs were dropped in 1945 at Hiroshima (on August 6) and Nagasaki (August 9), I was of eight years. My father, after having undergone rigorous imprisonment on account of his participation in the Quit India Movement, had founded M.C.H.E. School at Darbhanga, and was functioning there as its headmaster. But my house had become a rendezvous of some well-informed persons who never missed to scan the way World War II was unfolding itself both on the western and the eastern theatres. As if I were a self-appointed rapporteur, I noted events in my mind to narrate them, as best as I could do, to my mother when we sat every evening on straw-made mat in the light of an earthen lamp. Hearing about those incidents, she told me two stories from the *Mahabharata* which I intend to recall here though I do not have her knack of storytelling. I would make some comments to highlight their contextual relevance. Now the stories :

- (i) Raja Drupada performed with great sanctity *aputrakami yagna* to get a son who could destroy the great Acharya Drone who, Drupada felt, had humiliated him once in the past causing excoriating agony. They had been good friends. He got a son called Dhrishtadyumna who had done the military formation in the battle-field of Kurukshetra. It was he who killed Drone considered invincible, almost immortal. Later on, this story made me reflect over the course of the European politics between the two World Wars. The Treaty of Versailles humiliated Germany, saddled that country with debts, made it bleed with reparations after holding it guilty of crimes of waging the First World War. A cat or rat might tolerate being laughed at, not a great nation of high creativity and verve. The great German people reacted, and forged the course that led to World War II.
- (ii) Ashwatthama, the son of Dronacharya, exercised the ultimate weapon of destruction, the *Narayanashtra*, in the great battle of Mahabharata, to destroy all the Pandavas in a moment. This weapon could have decided the fate of the battle in favour of the Kauravas on whose behalf he fought. It was only to counter that weapon that Arjuna used *Pashupatastra* which he had got from Lord Shiva Himself. The collision of these two weapons would have destroyed the whole animate world. So he withdrew his weapon. The greatest amongst the wise men, Vyasa, had to intervene to persuade Ashwatthama to withdraw his weapon too. The great Vyasa told him: "Look, Arjuna was a master-operator of this weapon of destruction, but he did not exercise it against you. He used his weapon just to neutralize the impact of your weapon already used; and he withdrew it before it could become destructive." This story, in my later years, led me to view that the dropping of atom bombs on Japan in World War II was a horrendous act. America had no valid reason to exercise this ultimate weapon. Besides,

America did not withdraw the weapons once used; it did not know how to recall or control the weapon once exercised. Krishna punished Ashwatthama with a curse which distressed him for three thousand years undergoing sufferings and loneliness. What verdict Destiny would cast on the United States for such indiscreet acts, remains to be seen.

After the 1945 event, Bertrand Russell gave a timely warning to the world in the course of his speech in the House of Lords against the hazards of a nuclear war. This great warning by the great seer went in vain. "The nuclear peril", said Russell, "represented a danger which was likely to last as long as governments possessed nuclear weapons, and perhaps even longer if such destructive objects get into private hands."²¹ Russell has drawn our attention to two points which we cannot afford to ignore:

"There is a motive which is stronger than self-preservation; it is the desire to get better of other fellow. I have discovered an important political fact that is often overlooked, as it had been by me; people do not care so much for their own survival —or, indeed, that of the human race —as for the extermination of their enemies."²²

How abiding this tragic trait in our human species is can be well understood by considering what was shocking in World War I, and also in World War II. Reflecting on the First World War Bertrand Russell aptly observed:

"I had supposed until that time that it was quite common for parents to love their children, but the War persuaded me that it is a rare exception. I had supposed that most people liked money better than almost anything else, but I discovered that they liked destruction even better."²³

III

(a) The World at the tinderbox: Towards World War III

I have felt shockingly amused by the foolishness of some of our noted politicians, and the bureaucrats at the helm of affairs, who believe that the economic interdependence and integration of the present-day economic globalization would rule out the possibility of World War III. In 1928 Sidney B. Fay of America found the core reasons for World War I in "the alliance systems, militarism, imperialism, nationalism, and the newspaper press" to which could be added finance capitalism. I have believed that World War II too had similar morbid drivers. The technological advancement and the proficiency acquired in the tactics of destruction are fast exposing us to World War III.

We all know how in the second half of the first decade of this century, Dr. Manmohan Singh worked so aggressively for the Indo-US Nuclear Deal. Like many others in our country, I considered that it was an unfortunate pursuit as it would make more and more countries to adopt aggressive nuclear programmes. It could expose us to World War III, and also our common people to the hazards much worse than the shocking Bhopal Gas Leak Tragedy. What made that Deal so noxious was the way the Executive Government concealed for long the treaty-terms, depriving our people to assess the implications and effects of the Nuclear Deal. Even after great hue and cry against the way the Government moved in the

matter, our people could get no more than peripheral information about the Deal. We know how the Executive Government had accepted the WTO obligations by signing the Uruguay Round Final Act in 1994 without posting our Parliament and people with the knowledge of that devastating treaty which has gone a long way to subvert our Constitution.²⁴ I wrote 15 articles critical of the Nuclear Deal. These were then published at www.taxindiaonline.com; and you can read them at <http://shivakantjha.org/openfile.php?filename=articles/articles.htm>. I had good reasons to make comments like these:

- (i) "Why should the country be exposed to the evils of secret diplomacy promoted through secret treaties?.... Why should we take massive strides, through a structure of deception, towards World War III? And under the operative realities of our times it is not difficult to realize that once caught in the octopus-grip of the obligations flowing from an open ended treaty of this sort, there would be no exit left, and we would reap the consequences of our morbid actions and culpable inactions...."
- (ii) "They brag that if the Indo-US Deal is delayed or given up, the image of India as a democracy would suffer. The Indian Prime Minister says that the whole Deal is non-negotiable. These assertions are most painful. The image of India would emerge great if on popular demand the government bends, or even breaks. The assertion by the leader of the Executive that nothing is now negotiable is clearly fascist in tone. None should forget what the history of India has taught us all: in India government is optional. Thomas Balogh said in *The Irrelevance of Conventional Economics*: "The modern history of economic theory is a tale of evasions of reality."
- (iii) "They can explore the possibilities of the alternative sources of energy. This author believes that all resources are limited, hence the best engineering to manage our scarce resources is to reduce consumption in the sectors where plenty of wealth has begotten shameless extravagance and gaudy consumerist culture."

We have seen how many destructive events have taken place by mistake. Miscalculations have often misled us. Besides, it is not always possible to take into account all the factors, and the nature and operation of the Uncertainty Factor. Besides, human hubris stands in the way of right comprehension, and right assessment of the causative factors and events. What distressed me most was the uncritical assertiveness displayed in going in for the Nuclear Deal under the corporate pressure, under the U.S. leadership. We were brilliant in measuring the growing needs for electricity in the coming years, but showed no interest in developing a life-style which did not consume electricity so much. Besides, hardly any sincere effort was made to find out alternative sources for obtaining electricity. Besides, the missionary zeal of Dr. Manmohan Singh, the then Prime Minister, illustrated an aspect of his economic fundamentalism. It was difficult to understand how a suave and reticent scholar turned so aggressive and loquacious. The approach of our government was medieval and unscientific. Peter Watson rightly highlighted the overriding norm for decision-making in a scientific society. He said: "While it has revealed to us some of the fundamentals of nature, science has also taught us that the pragmatic, piecemeal approach to life

is by far the most successful way of adapting. We should beware grand theories.”²⁵

In this context, I wish to mention certain blemishes in the decision-making process of governments. The constraints of this Memoir do not permit me to go into details, but I would quote two short extracts which reveal the defects with remarkable candour and exquisite felicity: one from Nehru, and the other from Harold Pinter –

“Men in authority —kings, statesmen, generals, and the like – are advertised and boomed up so much by the Press and otherwise that they often appear as giants of thought and action to common people.....A famous Austrian statesman once said that the world would be astounded if it knew with what little intelligence it is ruled.”²⁶

“Political language, as used by politicians, does not venture into any of this territory since the majority of politicians, on the evidence available to us, are interested not in truth but in power and in the maintenance of that power. To maintain that power it is essential that people remain in ignorance, that they live in ignorance of the truth, even the truth of their own lives. What surrounds us therefore is a vast tapestry of lies, upon which we feed.”²⁷

To my mind, the above mentioned blemishes result from the most worrisome factor we have seen at work in the decision-making process of the persons at apex in the structure of power. This is mainly on account of our deficiency in developing “the capacity to analyze the sources of current difficulty and to devise (when possible) workable solutions for their benign resolution.”²⁸

**Our illusion : that the economic globalization is a
sufficient Guarantee against a major war**

Mankind suffers from many tragic traits: one of which is not to realize the limitations on human reasons, and the possibilities of the factors of which even the most intelligent persons cannot get a prevision. They all forget what Shakespeare had so suggestively made his Hamlet say:

There are more things in heaven and earth, Horatio,
Than are dreamt of in your philosophy.

Greed and lust, foolishness and knavery, error and chance, and the ways of destiny spin the trap from which even the mightiest of the mortals cannot escape. It is good to think of human frailties when we think of human achievements.

Besides realization of the human limitations, we must know how to stem the growing craze for armaments. We had seen how in the years leading to the World Wars, the capitalists reaped super profits from the armament industries which they promoted through bribe and deception by invoking trained lobbyists to operate at all levels. All the voice of wisdom against disarmament, even when joined by some of the finest specimens of humanity, was all in vain. The things after World War II are no different. We all know how Einstein’s heart had bled on seeing his efforts for disarmament fail, and how he sought some counselling from Freud to assuage his ruffled feelings. He had written to Freud;

“They” [the politicians and statesmen] have cheated us. They have fooled us. Hundreds of millions of people in Europe and in America, billions of men and women yet to be born, have been and are being cheated, traded and tricked out of their lives and health and well-being.”

He was assuaged by Freud in his comprehensive reply. In effect, the great psychologist told the great scientist that his sorrow was natural as that sort of depression generally awaited people who worked for the benefit of humanity. Einstein did well for humanity because of his own cultural attainments, but humanity had not developed so high as to appreciate such efforts. Hence, those who work for public weal need not get dismayed if frustration comes as the reward. Even great Vyasa had iron in his soul. Towards the end of the great *Mahabharata*, his heart bled in these words of gnawing agony:²⁹

I raise my both the hands to tell
That it is *dharma* alone which ensures salvation,
That it confers, besides, wealth and pleasure.
But none listens to me consternating me with amazement:
Why my words are going all in vain!

We all know the several efforts which have been made in our times to bring about nuclear disarmament. But there must be some sinister reasons restraining the mighty Five even from implementing the obligations under Art. VI of the NPT, which says:

“Each of the Parties to the Treaty undertakes to pursue negotiations in *good faith* on *effective measures* relating to *cessation of the nuclear arms race* at an early date and to *nuclear disarmament*, and on a *treaty on general and complete disarmament* under strict and effective international control.” (Emphasis supplied).

Now we have reached a phase where this forgetfulness might invite our doom which we shall not be able to ward off. In the ‘Arannya Kand’ (the Canto describing events in the forest) of the *Valmikiya Ramayana*, Goddess Sita tells Sri Rama: अग्नि संजोगवद्धेतुः शस्त्र संयोगकारणम् (it conflagrates if weapons are close at hands). This applies more to the benighted and hubris-driven mortals who determine our destiny in this world of baffling complexities, well-crafted deceptions, and most insincere strategies taking us towards misery and destruction. Mayr wrote that ‘the history of life on Earth ... refutes the claim that “it is better to be smart than to be stupid,” at least judging by biological success: beetles and bacteria, for example, are vastly more successful than humans in terms of survival.’³⁰

They say that the ‘democratic’ countries do not fight; “some argue more controversially, democracies do not go to war with one another.”³¹ But the basic question is: What sort of ‘democracy’? ‘Sham democracy’ generates hatred and hostilities: it makes many turn either hostile, or feel insignificant and dispensable. Human beings, wrenched by the sense of injustice, can seldom repose faith in ‘democracy’. A ‘democracy’ requires an effective parliament, representing people on free and fair election, where all the vital decisions are made by people effectively present there through their representatives. ‘Democracy’ rejects outright this noxious post-modernist thinking that the general good can be promoted

best only by the syndicate of great investors, financiers, high net worth individuals, and corporations from the theatres of their choice; anywhere on this planet or somewhere in the cyberspace. They say: the needs of common people are well served best by the “trickle-down effect” of wealth under the ownership and management of those born with great fortune and great endowments. They even say that there should be no intrusion to know how they acquire their wealth, and how they manage that. For them, the concept of ‘equality’ is unacceptable. When I read John Milton’s *Paradise Lost* and *Paradise Regained*, I discovered that in the craft of logical pleading, God is no match to Satan, the greatest of all logicians that the West ever produced. Some economic sophister consoles the *demos*: “a rising tide floats all boats”. No ‘democracy’ can succeed if its citizenry develops a conviction that life has no purpose, and the virtual world is the only sphere for the ‘wish fulfilment’. I would resume this thread of my thought later in this Chapter, in the context of ‘our cultural crisis’.

We see how the ensemble of the corporations, the propagandists, the lobbyists for the capitalism, and their hirelings at the seats of power, are skillfully at work. Our Constitution’s ‘socialistic mission’ has been ignored, and a neoliberal gloss has been imposed on it. This sort of ‘democracy’ can become a mere structure of deception. Noam Chomsky has highlighted the vectors and drivers seen at work. He concludes describing what ails the present-day Western democracy:³² He says :

“What remains of democracy is largely the right to choose among commodities. Business leaders have long explained the need to impose on the population a “philosophy of futility” and “lack of purpose in life,” to “concentrate human attention on the more superficial things that comprise much of fashionable consumption.”³³

(b) Institutions for international peace, and the operation of international law

The efforts to build international institutions were made mostly by the Eurocentric Christian countries. Lipson points out: “The Holy Roman Empire was the vision of Isaiah —a world united in peace.” And we know why it crumbled? It crumbled because of its plutocratic and exploitative culture where morality had decayed, and excessive luxuries had debased social values. In modern Europe, after the establishment of the Westphalian states system in 1648, a great effort was made to set up an international institution to promote peace and co-operation. It was the establishment of the Concert of Europe to ensure the operation of the European public law. Alliances, both holy and unholy, were made under its umbrella, but Europe invited World War I. Again a great institution for peace was established in the form of the League of Nations. It was an integral part of the Treaty of Versailles (1919). The League was an attempt to cultivate amongst the mighty powers of that time ‘peace mentality’. But this again was a failure, and the humanity was exposed to World War II. The reasons for the failure of the League were many, but the core reason was, to say in the words of Lipson:

“The conclusion which may be drawn from the history of the League is that *the moral progress of our age has lagged far behind its mechanical progress*,”³⁴ (italics supplied)

After World War II, the great international institution, the UNO, was set afoot with high hopes for promoting international peace and co-operation. It is yet to pass through testing times. It has numerous structural blemishes, operational faults, and ideological roadblocks. Even in this short span of career, its shortcomings are more evident than its success. It is again an irony of our times that whilst the international political institution, the UNO, is somehow surviving accumulating failures, the economic and commercial organizations, which originated in the post-World War II phase (like the World Bank, the IMF, and, later, the WTO), have grown in power and impact. They have become most powerfully intrusive into the domestic spheres. Commenting on these institutions, David C. Korten has rightly observed:

“The needs of the world’s largest corporations are now represented by a global body with legislative and judicial powers that is committed to ensuring their rights against the intrusions of democratic governments and the people to whom those governments are accountable.”³⁵

When ‘We, the People’ of India had created and adopted our Constitution, we believed that international law would help us establish global peace, co-operation, and fair play. So in Article 51 of our Constitution, we expressed our determination to promote international peace and security by taking steps including the fostering of respect for international law and treaty obligations. Unfortunately, the international realities, in this era of Economic Globalisation, have jolted our conviction in the role of international law.

Georg Schwarzenberger said that the supremacy of international law over a country’s internal law is the *amour propre*³⁶ of international lawyers’. I have said something about it in Chapter 21. These so-called ‘international lawyers’ are the corporate pleaders, ‘tax haven’ advisors, neoliberal spokesmen, and paid hirelings deployed to promote the interest of the super-rich.

When we invoke Article 51 of our Constitution, it would be imprudent for us not to notice how the World’s hegemonial power, the USA, is looking at international law. It is essential to think about this aspect of the matter when we are getting closer and closer to that power, and there are good reasons to believe that secret diplomacy and secret alliances are back again, though under deeper opaqueness. Noam Chomsky tells us about the US attitude to international law and treaties:

“‘The basic problem with the World Court and the world, so we learn from UN ambassador John Bolton, is that they misinterpret international law. Bolton writes that “in the rest of the world, international law and its ‘binding’ obligations are taken for granted”. But no such binding obligations can apply to the United States. Treaties are not “legal’ obligations for the United States, but at most “political commitments””

Michael Glennon considered international law just “hot air”. John Dewey aptly described politics as the “shadow cast on society by big business”. Condoleezza Rice explained the U.S. indifference to the International Court of Justice decision in *Nicaragua Case* as it went against the U.S. interests.

IV

THE CLASH OF CIVILIZATIONS

The article on 'International Relations' in the *Encyclopedia Britannica* (Vo. 21 p.897: the 15th ed.) concludes with the following observations:

“that the world might soon be rent by a “clash of civilizations” pitting the democracies against militant Islam and an imperial China; by the spread of “chaos” as millions of refugees from the southern half of the world invaded the wealthy lands of the north; by ecological and demographic disasters touched off by the spread of industry and disease in the developing world; or by the spread of nuclear and missile technology into the hands of terrorists.”

It is most unfortunate that a lot of foolish persons have theorized pretending to provide intellectual underpinnings to the ideas which have the inevitable effect to aggravate this “clash of civilizations” On 26 August 2005, I addressed a gathering of intellectuals, presided over by Justice D. P. Wadhwa, a former Judge of the Supreme Court of India, at the India International Centre, New Delhi on the occasion of the release of my book, *The Judicial Role in Globalised Economy*. I mentioned in my speech how hubris of the capitalism's think-tanks led Francis Fukuyama, in *The End of History and the Last Man* (1992), to consider the liberal democracy of the Globalised Economy of our day as the 'endpoint of mankind's ideological evolution'. I said:

“It is said that the civilization of India, Pakistan, Iran, Malaysia, and Indonesia is medieval and decaying. Arrogance reaches its nauseating height when it is shamelessly stated that Christianity is more “evolved” than other religions and philosophies. The days have gone when Bloomfield considered *Panini* the greatest monument of human intelligence, when Frederich Schlegel marveled at Indian philosophy and Schopenhauer (1788-1860) preferred religions of India. Gone are days when Spangler and Toynbee saw great light in the East, when Aldus Huxley and Isherwood found in the *Vedant* the culmination of human thought, when T.S. Eliot and Somerset Maugham got most stimulating and illuminating thought in Indian Literature.”

The theory pertaining to the 'clash of civilizations' was developed, in the early years of 1990s, with a measure of paranoia by Huntington in *The Clash of Civilizations and the Remaking of World Order* (1996). The neoliberal thinkers were angry with those civilizations which had austere commitments to their values which made those societies the potential challengers of the present-day consumerist society of the West. It seems that whilst they intended to use Christianity to promote their brand of capitalism (as they had done right from the heydays of the Roman Catholic Church), they feared the passionate commitment of the Hindus and the Muslims to their values, and religious thoughts capable to enable them to withstand all the strategies of the neoliberals and the global corporations. They know that the Hindus are largely introverts. The Hindus have great inner strength to remain faithful to their values, but are, when all is said, conspicuously deficient in assertive responses to challenges. The Islamic society has had

enormous inner strength of deep commitments, and also external assertiveness turning into combativeness.

My reflections have led me to conclude that the whole idea of the 'clash civilizations' is baseless, mischievous, and unfortunate. As a student of world's major civilizations, I am of the considered view that civilizations never clash: they co-exist enriching each other through interactions. Clashes are brought about only by those who use cultural values (of which one species is 'religion') for extraneous and unworthy purposes. The great Islam, in itself, is perfect, and is; capable of promoting peace and welfare of people under the aspects of justice. I have developed my position on this point in Chapter 20 in the Section dealing with 'Krishna and Muhammad'. The ideas of Jesus are as great as those of the *Qur'an*, or of the *Bhagavad-Gita*. The imperialists had used Islam or Christianity for their own purposes in the changing contexts of history right from the Middle Ages.

It is extremely saddening and most unfortunate that some of us exhibit idiocy which might aggravate cleavage between, or amongst, the great civilizations of modern times. I read with shock and surprise in Chomsky's *Hegemony or Survival* (at p. 160) that some Western powers saw "Hindus and Jews (plus Christian) as forming a 'strategic alliance' against Islam and Confucianism."³⁷ It is unwise to think that way. The Hindus, the Islamic people, and Christians must live to co-exist and promote peace and justice. We must treat the story of crusade closed, and closed for ever, and wholly forgotten. Our tender modern world would remain disturbed, running the risk to turn into smithereens, unless we resist the emergence of such ideas.

To Octavio Paz, it was a surprise that Hinduism and Islam have co-existed over centuries. "Between Islam and Hinduism there is not only an opposition, but incompatibility."³⁸ But his surprise was only on account of ignorance of facts. I have dealt with the factors in Chapter 20 to show how Hinduism and Islam are the fraternal faiths. Paz wondered how the monotheism of Islam could co-exist with the polytheism of Hinduism. I wish someone would have told him that Hinduism's most fundamental idea is absolute monism of *Brahma*. Other gods are themselves the creations subject to the cyclic process in time. Shankaracharya believed in absolute monism. But such metaphysical differences easily get resolved in harmony. Paz should have considered why Christianity and Islam, the two flowers of the same tree, have carried on conflicts which seem unresolved even to this day. I pray to God that our world leaders and our intellectual heavyweights would have the wisdom to see the pros and cons before they brag such things. The French Emperor could have solved his people's problems, and saved his own head during the French Revolution. But he did not do that: and there was a deluge that washed him away. Nehru has insightfully commented on the Fall of Bastille in the French Revolution:

"It is curious how these people become even more foolish as the crisis deepens, and thus help in their destruction. There is a famous Latin saying which just fits them — *quem deus perdere vult, prius dementat*, whom God wishes to destroy, he first makes mad. There is an almost exact equivalent in Sanskrit — *vinash kale viparit buddhi*."³⁹

In the *Mahabharata*, the great Vyasa tells Arjuna: भवन्ति भवकालेषु विपद्यन्ते विपर्ययं (when bad times come, wisdom and intelligence depart).

In fact, the grammar of the *Bhagavadgita* is fully shared by Islam at the fundamentals. Rather, I believe that there is no religion in the world, no scientist anywhere, that does not share the vision of life and the creation that we get in the *shlokas* 18 and 28 of Chapter 11 of the *Bhagavadgita*. Their import has been thus stated by Dr. S. Radhakrishnan: to quote —

“Thou art the Imperishable, the Supreme to be realized. Thou art the ultimate resting-place of the universe; Thou art the undying guardian of the eternal law. Thou art the Primal Person, I think.” (Chapt. XI.18)

“As the many rushing torrents of rivers race towards the ocean, so do these heroes of the world of men rush into Thy flaming mouths.” (Chapt. XI.28)

V

OUR CULTURAL CRISIS

In my view, our country is exposed to the worst cultural crisis in our history. It is usual for imperial powers to subjugate and subvert the culture of the people they want to keep under their servitude. We all know the strategies which the British rule had adopted in our country. The objectives they had pursued in India would be amply evident from the following quotes, one from Macaulay's 'Minute on Indian Education' (1835), and the other from Dr. Duff's address (1835). Their ideas had shaped the educational philosophy of the British India:

- (i) “English is the language spoken by the ruling class. It is spoken by the higher class of natives at the seats of Government. It is likely to become the language of commerce throughout the seas of the East.... We must at present do our best to form a class who may be interpreters between us and the millions whom we govern; a class of persons, Indian in blood and colour, but English in taste, in opinions, in morals, and in intellect.”
- (iii) “But the most important communication which the Hindu could receive through the medium of our language would be the knowledge of our religion.... Wherever this knowledge should be received, idolatry, with all the rabble of its impure deities, its monsters of wood and stone, its false principles and corrupt practices, its delusive hopes and vain fears, its ridiculous ceremonies and degrading superstitions, its lying legends and fraudulent impositions, would fall.”

The British rulers hesitated to become grossly aggressive to destroy India's Hindu and Muslim cultures for the fear of retaliation in this country, and also fearing severe criticism by the liberals in their home country. So they slowly, and under cover, imposed the English language and the Western values on us. The Indian youth had been subjected to allurements and persuasion. This process continued for long, and created generations of brainwashed persons. Dr. Ramdhari Singh 'Dinkar' has drawn a graphic account of the degradation that had been brought about in our country:

“The young people, with verve, took to alcoholic liquors; and tried showing to their fathers, uncles, and brothers that they were radically

different from them all. Those, who were even more intoxicated with that impact, started teasing and befooling their fathers and grandfathers; even went to the extent to throwing beef morsel, and cow's bones into the temples. Bewailing at this condition, Vivekananda said that the first lesson that children learn is that their fathers are fools; the second that their grand-fathers are mad; the third that their teachers are hypocrites; and then that their entire scriptures are useless." ⁴⁰

It was easier to understand what was being done to destroy, or subvert, our culture; and we were in a position to react as we could easily see our targets of wrath; and we could devise our strategies against them clearly. The enemies were well-known, and our revolutionaries were fighting against them. In our time, especially in the years after the onset of the neoliberal economy in this phase of Economic Globalisation, that clarity in perception has gone. The new capitalism has spread its tentacles by adopting the technique of deception. The new imperialism is interested in capturing a country's resources by turning the country itself into a Sponsored State. If before Independence, the British Government could have subjected us to such international obligations as our government accepted by entering into the WTO Treaty, we could have condemned and rejected that treaty by resorting to civil disobedience, even direct action. Now we feel embarrassed. The advocates of the New Economic Order assert that it was India's own government that had signed that treaty, and was closely associated with the institution on the day-to-day basis. I have referred to the WTO for the simple reason that consumerism is being massively promoted under its agenda. My research has led me to think that the corporate oligarchy wants a strong government, with democratic structure, to plan for the neoliberal economy, to work symbiotically with the Market, and to tame the common people if they ever raise after protests against things going against *their interests*.

We live in bad times. We see our young pursuing the models from the West, whilst they show studied indifference, even contempt, towards our great literature, philosophy and the way of life. It would take not more than a few decades when the young Indians would forget the *Ramayana* and the *Bhagavad-Gita*. We are taught these days to turn into cogs in the huge machine of wealth production and management. The title of Alvin Kernan's *The Death of Literature* (1990) is sufficiently suggestive. Poetry is dead, literature is dead, and books are passing into oblivion. We learn the art of life from television. Frederick von Hayek considers freedom as the function of the market : hence one's 'character' and values are shaped by commercial mores. ⁴¹

A lot is spent on propaganda to brainwash and persuade people to accept commercial mores and consumerist values. The technique is at its best when it subjects the target groups to crypto-psycho pressure. The technique had been massively used by Hitler and Mussolini, but the MNCs of our days have brought it to the point of perfection. Tawney said, in his *Acquisitive Society*, that capitalism does not go with democracy. This is also because of the role of the compradors and the lobbyists. You can know how they operate by reading Vance Packard's trilogy: *The Hidden Persuaders*, *The Status Seekers*, *The Waste Makers*. Never did we face crisis worse than what has overtaken us now. A society of well-fed pigs would sell democracy for a piece of pizza. I see it prudent to remind my reader

of those two lines from 'Yeats' 'The Second Coming', which I had read in Class VIII. I have had good reasons never to forget:

‘The best lack all conviction, while the worst
Are full of passionate intensity.’

They do not find anything wrong in dishonesty if that works as the best policy in the market. The following consequences have emerged which are worrisome for our civilization:

- (a) Morality has ceased to be a matter of concern in economic management. The idea of Gandhi, that the moral vision and the economic vision can never go apart, has been ignored. The importance of morality in the sphere of economic management was recognized by Fritz Schumacher. He felt that the world has enough resources to maintain all, if moral principles are followed. He held that management was “not an economic question but a moral one, which is why for him economics and religion went together, and why they were the most important disciplines”.⁴²
- (b) The natural outcome of the abandonment of moral vision is that ‘truthfulness’ has ceased to be of importance. Wherever it is felt that falsehood can promote selfish interests, people do not have qualms of conscience in resorting to it. Falshood has become the most cherished grist to the mill of the corporate and commercial advertisements through which desires are manipulated, and the values of life reshaped.
- (c) When moral vision gets blurred, corruption of all sorts flourish gradually eroding the society’s standards for evaluation of acts and ideas, and a point is reached where nothing matters as everything becomes a short thrilling sensational triviality in meaningless human life. Such a society can never remain ‘democratic’ in its real sense. If every affair is a function of the controlling market forces, then everything, vice or virtue, is a commodity or service that can be purchased on consideration.
- (d) The environment that has emerged is promoting individualistic pursuits to the point of extreme lunacy. This excessive concern for individual welfare has fanned unrestrained greed, and has destroyed a sense of social solidarity and interdependence. This narcissistic behaviour has altered our social mores. Sanctity of relationship is fast vanishing. Fathers have fallen, and have become hated burden for the ungrateful progenies. One’s spiritual attachment with society and culture is decaying fast. The commercial culture is out to promote an indulgence in the voyeuristic fantasies. Numerous ways are adopted to promote commerce by generating more and more wants and desires including an ever growing craze for hedonistic cravings.
- (e) Such a society loses creativity of thoughts which is needed to promote peace and coexistence in collective happiness. Such a society cannot produce great creative art, nor can it scale new heights in philosophy without which our civilization can neither develop, nor can it conserve our attainments as hitherto made. When I reflect on art and literature of the post-Globalisation epoch, I am shocked by the their alarming barrenness.
- (f) It is said that we are in a great scientific age illustrating a profound change in our perspective. They call this a ‘paradigm shift’. But I do not think our

cultural crisis has anything to do with the concept of 'paradigm shift' which contemplates time, to say in the words of Thomas S. Kuhn, 'when our sense of the very nature of a subject and its possibilities and limitations changes radically.'⁴³ History of times shows that there is hardly any shift in the human approaches to the world's problems. True, modern science has discovered some new possibilities and limitations, but the humans have refused to grow as ethical beings. The neoliberal culture, that is being promoted by the corporations and their patrons, is grossly greed-driven. Such a society would prefer lies to truth if that enhances profits; such a society evaluates every thing conceivable in terms of utility, better, commercial utility; such a society helps the sections of the humans who become accustomed to consider that the earth exists for their pleasures alone. Such a society becomes deficient in sensitivity towards the poor and the oppressed. Such a society is destined to perish either through human follies, or on account of Nature's retaliation or punishment, or under some divine instrument of justice.

The impact of the commercial hedonism, under the corporate pressure, is being promoted by shaping the worldview of the young generations. Many devices have been adopted: perhaps the most potent is the Television. "Television, however, is not just a new way of doing old things but a radically different way of seeing and interpreting the world. Visual images not words, simple open meanings not complex and hidden. transience not permanence, episodes not structures, theatre not truth."⁴⁴ What Bertrand Russell had written about the Hellenic society in its bad days, can be said about the society that is fast emerging in our times:

"There seems no use in thrift, when tomorrow all your savings may be dissipated; no advantage in honesty, when the man towards whom you practise it is pretty sure to swindle you; no point in steadfast adherence to a cause, when no cause is important or has a chance of stable victory; no argument in favour of truthfulness, when only supple tergiversation makes the preservation of life and fortune possible. The man, whose virtue has no source except a purely terrestrial prudence will, in such a world, become an adventurer if he has the courage, and, if not, will seek obscurity as a timid time-server."⁴⁵

In Chapter 8, I have reflected on the education we impart these days, and the values which we promote through the academic activities. I have seen over the last fifty years a radical shift in our perspective on education. This shift is best illustrated by our changing attitudes towards many disciplines which improve the human qualities rather than commercial worth of the individuals. The subjects which do not have market utility, are being systematically ignored, or devalued, despite their importance in our culture, and art of living. It is seen that there is now a craze for 'economics' which is the direct offshoot of capitalism, and works for that. I have mentioned the apprehension of John Maynard Keynes in connection with economics in Chapter 8 of this Memoir. I mentioned there how the gross commercialization helped the growth of interest in such subjects as the

MBA which make its students 'one dimensional': only in the service of Market and its 'Invisible Hand'. For them, neither political independence, nor the feeling of patriotism has any value. They are indifferent to moral judgments, and consider themselves machine to enhance profits of the big corporations. They become the best specimens of beings which Macaulay and Duff wanted to manufacture during the British period, but could not wholly succeed in doing so then.

History shows that the supremely effective strategy to subject any society to perpetual servitude is to destroy its culture. This is what happened to many civilizations in the past, and this would happen in future also. The only option is to act with firm determination to save our culture. This is what Guru Gobind Singh prescribes for us:

Deh Shiva bar mohe ehe
Subh karman te kabhu na taron

(Never desist from your duty that promotes the weal of all.)

I have told in Chapter 10 about my first posting at Patna in 1965. Soon thereafter I visited the Gurudwara Patna Saheb. Guru Gobind Singh, the 10th Guru of the Sikh religion, was born at Patna. The Hindus, the Sikhs, even the Muslims, pay homage to that Guru. It was he who summarized the core principle of the *Bhagavadgita* in those two lines. I was lucky to get a Saropa from the Gurudwara with a blessing couched in those words. Only sometime back, I heard Dr. Manmohan Singh recite those lines in our Parliament. I would not measure Dr. Singh on the standard prescribed in those great words, but I was happy to find that a moment came in the history of our democratic Republic when someone thought it fit to resonate in our Parliament those immortal words. What impact these words had on the collective and the individual psyche of the listening Members of Parliament is not for me to think about. What matters most for me is that these words planted salutary seeds in the consciousness of our Parliament to sprout, grow, and flower someday for the welfare of 'We, the People' of our country.

VI

THE JUDGMENT

We have reached a crossover point where all our ideas about 'man' and our expectations from the wisdom of the *Homo sapiens* are terribly confused. We all know that all the creations are astride on the course to which the *Bhagavadgita* refers in Chapter 11 in *shloka* 28. This Memoir does not provide me scope to develop such ideas in detail. But it is interesting to note what persons, far abler than me, have said about the destiny of the *Homo sapiens*. They have tried to acquire the prevision of the judgment of Time (our *Maha Kaal*) on us. Some of their views go thus:

(i) Noam Chomsky said—

"Mayr speculated that the human form of intellectual organization may not be favored by selection. ... We are entering a period of human history that may provide an answer to the question of whether it is better to be smart

than stupid. The most hopeful prospect is that the question will *not* be answered: if it receives a definite answer, that answer can only be that humans were a kind of “biological error,” using their allotted 100,000 years to destroy themselves and, in the process, much else.

The species has surely developed the capacity to do just that, and a hypothetical extraterrestrial observer might well conclude that humans have demonstrated that capacity throughout their history, dramatically in the past few hundred years, with an assault on the environment that sustains life, on the diversity of more complex organisms, and with cold and calculated savagery, on each other as well.”⁴⁶

(ii) Claude Lévi-Strauss said:

“There is today a frightful disappearance of living species, be they plants or animals. And it’s clear that the density of human beings has become so great, if I can say so, that they have begun to poison themselves. And the world on which I am finishing my existence is no longer a world that I like.”⁴⁷

(iii) Prof. Gould said reflecting on ‘The Bush of Life’—

“In most of my writings on evolutionary biology, I emphasize the unity of humans with other organisms by debunking the usual, and ultimately harmful, assumptions about our intrinsic self-importance and domination as the most advanced creatures ever evolved by the process predictably leading in our direction. All basic evidence from history of life leads us to an opposite interpretation of *Homo sapiens* as a tiny, effectively accidental, late-arising twig on an enormously arborescent bush of life.”⁴⁸

Their insight is denied to me. I can neither gaze through crystals, nor can I see the course of future configured on my palms. But it is sobering to hear their judgments on the humans. The final verdict is awaited: whether it is great to be humans, or to be born amoeba, or cockroaches or mosquitoes!

Whatever I heard, saw, and reflected has led me to believe that it is no use reflecting on the shape of things to come. There cannot be a guide better than what Krishna tells us in the *Bhagavad-Gita* (Chapter II.47): its import has been thus brought by Dr. S. Radhakrishnan: to quote —

“To action alone hast thou a right and never at all to its fruits; let not the fruits of action be thy motive; neither let there be in thee any attachment to action.”

One must act with a sense of duty as comprehended through wisdom (*viveka*). If yet destruction overtakes us, there is nothing to feel distressed about. All the humans and all the stars are subject to the course which is crisply stated in the *Bhagavadgita shloka* 28 referred to above. Let things take the course as Nature requires, as Destiny demands, as God wishes. This is the worldview that emanates from what Krishna said: न मे कर्माणि लिम्पन्ति न मे कर्मफले स्पृहा (I have no lustful attachment with actions, nor do I have any desire for the fruits of actions).

The *Mahabharata*’s ‘Maushal Parva’ deserves to be read, and reread, by persons like Chomsky, Will Durant, Claude Lévi-Strauss, and Prof. Gould. The Mahabharata War was over. The Yadavas of Dwarika had become very powerful, but had turned unrestrained pleasure seekers. Great power had turned their

head, and they became lustful. They had taken to unrighteous path. As the consequences of the deeds of the Kauravas had led them to their destruction in the Mahabharata War, the misdeeds of the Yadavas invited their inevitable doom. At the instruction of Krishna, they assembled at Pravashteertha, a holy place. Even there they breached the norms of good conduct. They began the horrendous internecine warfare, and thus, destroyed themselves. Krishna had asked his people not to commit their follies which could drive them towards destruction; but they went ahead with their misdeeds. They wrought their own destruction as do the flies by running towards a flame to embrace it. Krishna did not shed even tears at their sad fate. Balarama went to the sea-coast, and abandoned his body. Krishna moved into a deep forest, and departed from the world, sitting under the *peepal* tree.

It is interesting to find that the great war of Mahabharata was conducted at a holy place (*dharmakhetre*: the field of righteousness); the end of the Yadava dynasty too came at a holy place. The poetry that these two events express is great. It suggests that none can escape the consequences of actions. This norm of existence ensues from *Dharma* itself.

Our only duty is do what our wisdom tells us to do. We must not forget that whatever is done must be for the *kalyan* (good) of self and all others. In this God's world we must act with a resolution well-expressed by Guru Gobind Singh: "*Subh karman te kabhu na taron*" (we must not shrink from doing what is right).

VII

CONCLUSION

I would end this Chapter with two cryptic comments highlighting the 'tragic optimism' of our times, the pangs and pleasures of which I have suffered and enjoyed in course of our collective journey to the unknown:

- (i) We must live to work with hope and dedication. Prof. Gould speaks of our 'Tragic Optimism'⁴⁹. The expression is amply revealing. We have seen and suffered tragic experiences, but our commitment to 'optimism' is steadfast and unswerving. He quotes very aptly from John Playfair's *Outlines of Natural Philosophy* (1814): "About such ultimate attainments, it would be unwise to be sanguine and unphilosophical to despair".
- (ii) We must do our duty always keeping in mind what Krishna said in the *Bhagavad-Gita* (Chap. II.47): 'Your right is to action alone, Not to its fruits at any time.' If even after good work done, discharging one's *kartavya karma* (duty), destruction comes, one must accept that without anguish. I recall my musings that I had once whilst planting paddy saplings in the paddy fields after uprooting them from the soil-beds wherein we had sown the seeds earlier. I had heard how the saplings had sobbed on being uprooted from the soil-beds, and, later, I saw them, rich in the golden glow, luxuriating in the paddy fields with ripe grain. True, some of the uprooted saplings died in the course, but then that is what happens. Hence our experiences of

sorrow and delight have hardly any relevance in the larger scheme of things much of which we do not even know. W.H. Auden aptly said:

If we really want to live, we'd better start at once to try;
If we don't, it doesn't matter, but we'd better start at once to die'

NOTES AND REFERENCES

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- 2 Bertrand Russell, *History of Western Philosophy* p. 361
- 3 Bertrand Russell, *History of Western Philosophy* p. 361
- 4 Peter Watson, *A Terrible Beauty* p. 254.
- 5 Majumdar, Raychoudhari & Datta, *An Advanced History of India* p.775
- 6 Majumdar, Raychoudhari & Datta, *An Advanced History of India* p.776
- 7 See Notes & References No. 48 in Chapter 26.
- 8 Asa Briggs in the *Encyclopaedia Britannica* Vol. 29 p. 85 (15th Ed.)
- 9 Paul Kennedy, *The Rise and Fall of the Great Powers* p. 199
- 10 *Encyclopedia Britannica* vol. 17 (15th ed) pp. 910-911
- 11 Noam Chomsky, *The Essential Chomsky* p. 61
- 12 Emile Lgouis, *A History of English Literature* p. 434
- 13 *The Encyclopaedia Britannica* Vol. 21 p. 806
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- 15 *History of Western Philosophy* p. 621
- 16 Quoted in Jawaharlal Nehru, *Glimpses of World History* p.684
- 17 *Concise Oxford Dictionary*
- 18 Quoted by R. Dallek, 'The Postwar World : Made in the USA', in S. J. Ungar (ed), *Estrangement: America and the World*
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- 20 A.J.P. Taylor, *English History 1914-1945* p.601
- 21 Bertrand Russell, *Autobiography* 653
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- 24 *Peoples' Commission Report on GATT* by V R Krishna Iyer, O Chinappa Reddy, D A Desai, (all former Hon'ble Judges of the Supreme Court), and Rajinder Sachar (former Chief Justice of the Delhi High Court);
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- 26 Jawaharlal Nehru, *Glimpses of World History* p. 677
- 27 Harold Pinter, the winner of the Nobel Prize for Literature, 2005.
- 28 'Tragic Optimism' *Encyclopedia Britannica 1999 Book of the Year* p. 7
- 29 The Canto describing the departure to the heavenly abode. *The Mahabharata* Vol. VI p. 6508 [My translation.]
- 30 Noam Chomsky, *Hegemony or Survival* p. 1; Ernst Mayr, "Can SETI Succeed? Not Likely," *Bioastronomy News* 7, no. 3 (1995). Online at: <http://www.hcc.hawaii.edu/~pine/mayr.htm>.
- 31 Robert Jervis, *American Political Science Review* 96 (2002)
- 32 Noam Chomsky, *Hegemony or Survival*. P. 139.
- 33 Stuart Ewen, *Captains of Consciousness* (McGraw-Hill, 1976), p. 85. See Michael Dawson, *The Consumer Trap* (Illinois, 2003), for an extensive review of the technique of "off-job control" developed from the 1920s as a counterpart to the "on-job control" of Taylorism, designed to turn people into controlled robots in life as well as work.
- 34 E. Lipson, *Europe in the 19th & 20th Centuries* p. 342
- 35 David C. Korten, *When Corporations Rule the World* p. 174; also see Chapter 21 of this *Memoir*.
- 36 'Respect for oneself; self-esteem'.
- 37 Noam Chomsky, *Hegemony or Survival* pp. 160.

OUR WORLDVIEW & THE TRENDS OF OUR TIMES

- 38 Octavo Paz, *In Light of India* quoted in Peter Watson, *A Terrible Beauty* p. 763
- 39 Nehru, *Glimpses of World History* p. 363
- 40 Dr. Ramdhari Singh 'Dinkar', *Sanskriti ke Chaar Adhyaya* (1956) p.448
- 41 Hayek, *The Constitution of Liberty* quoted by Peter Watson, *A Terrible Beauty* p. 518
- 42 Peter Watson, *A Terrible Beauty* p. 586
- 43 Bernard Bergonzi, in *The Oxford Illustrate History of English Literature* p. 408 (edited by Pat Rogers)
- 44 Peter Watson, *A Terrible Beauty* p. 757 quoting *Alvin Kernan*.
- 45 Bertrand Russell, *History of Western Philosophy* p. 237
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- 47 <http://www.npr.org/templates/story/story.php?storyId=120066035>
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25

CERTAIN STORIES AS MY 'OBJECTIVE CORRELATIVES'

The only way of expressing emotion in the form of art is by finding an "objective correlative"¹; in other words, a set of objects, a situation, a chain of events which shall be the formula of that particular emotion; such that when the external facts, which must terminate in sensory experience, are given, the emotion is immediately evoked.

T.S. Eliot *The Sacred Wood: Essays on Poetry and Criticism*.
1922.

In this Chapter I intend to tell you some stories which constitute, what T.S. Eliot calls "objective correlative". These are metaphors, valuable more for what they suggest than for what they say. Truth is often expressed best when done through fiction. Gustave Flaubert is right when he says: "Poetry is as exact a science as geometry". We have aptly called God 'Kavi' (poet). All these stories are well known. They are summarized as I remember them. I am indebted to their authors and narrators who have helped me in exploring my world through such objective-correlatives.

(i) Story of Two Frogs: Plight of our 'low arousal people'

*"Now things every bit as wild as this are being received in silence every day. All strokes slip on the smoothness of a polished wall. All blows fall soundless on the softness of a padded cell."*G.K. Chesterton

A society, which keeps on accepting aberrations and injustice over a long time, is most unfortunate. Massive strokes of injustice, when suddenly inflicted, lead to powerful reaction. But when they come in low doses, the victims keep on adjusting with them. This process of adjustment destroys the capacity to react to make their lot better. We cannot enjoy sojourn on a plateau: if we cannot go up, we must go down. This brings to my mind a story of two frogs which a naughty boy had caught for his macabre play. He hurled one into a pan of boiling water. The frog reacted with instant verve, and jumped out to fall with a thud on the green grass. So it survived. The second frog enjoyed the cool water. But the boy set firewood ablaze under the pan in which the frog rested with delight. The

water, which was cool and comfortable, was getting warmer and warmer. It felt that water was getting warmer, then inconvenient, and then inclement. The unlucky frog fritted away its energy in the process of adjusting with its circumstances as getting shaped. And then it died.

The tragedy that was wrought at Kurukshetra (as portrayed in the *Mahabharata*) could have been avoided if persons like Bhishma, Drone, and Kripacharya would have refused to keep on adjusting with the circumstances wrought by Duryodhana.

(ii) *Shatranj Ke Khiladi*

The way Nawab Wajid Ali Shah was arrested was described by Munshi Premchand in his famous story *Shatranj Ke Khiladi*.

Wajid Ali was the fifth King Oudh till its annexation to the empire of the East India Company Bahadur in 1856. The Nawab wrought his tragedy through a treaty with the Company entered into without understanding its implications. In fact, its content must have been beyond him to understand. He is said to have written a *bhairavi thumri* which I have loved most, especially when sung by my wife, Veena: "*Babul mora naihar chhootohi jaaya*", a song he is said to have composed.

Munshi Premchand's well-known story *Shatranj ke khiladi* ("The Chess Players") tells us about Wajid Ali and his men, and through their ways it reveals the decadence that had set in the Nawabi polity. Premchand tells us this in his felicitous Hindi which I translate:

Nawab Wazid Ali Shah was arrested, and the army was taking him to an unknown destination. There was not even a murmur in the town, no question of resorting to force (to save him). Not even a drop of blood had been shed. Oudh was annexed to the East India Company Bahadur. Till this date no independent country is known to have embraced servitude so calmly. Not a drop of blood was shed to drench soil to protect the country's independence. In such situations, how could servitude be avoided. The only thing that could be said about the Independence of such a country: "It is a wonder that it is free, no wonder if it loses it."

The Nawab's nobles were busy playing chess whilst they were losing every thing they should have valued. And the Nawab had turned narcissistic gazing himself in the goblet of wine and by being wholly lost in the sweet sound of dancing girls' ghunghroos. Wealth had been amassed through exploitation, so his people were alienated from him. He was unlucky not to have his image-builders, advertisers or hired management experts to render him acceptable in public perception. (How lucky are the present-day Wazid Alis in power in our world!) The people of Lucknow might have enjoyed listening to the marching music of the East India Company's band leading the ferocious legion in combat dress. This brings to mind what had happened during the times of King Charles I (1628). The Duke of Buckingham was killed. 'While the king wept in his palace, people drank to the health of the assassin in the streets; Buckingham had become a symbol of all that was wrong in the nation.'² You can try to understand what the playing of chess would mean if the protectors of a family remain busy playing chess in the outer portico when inside the house the robbers loot the house, and

ravish their women! You can enjoy reading about the Game of Chess in Middleton's *Women beware Women*, and the referential invocation to that 'Game of Chess' in T.S. Eliot's *The Waste Land*.

(iii) Our 'Taj Mahal Economy'

I have called the present-day economic management the "Taj Mahal Economy". This heading may not appeal to the *amour propre* of the economists of Yale, Chicago or Cambridge. I would tell you how this expression 'Taj Mahal Economy' came to my mind. It came to my mind while studying the economic management of Emperor Shah Jahan who got constructed a mausoleum, the Taj Mahal, at Agra, to commemorate his love for his deceased wife Mumtaz Mahal. It is considered world-famous as "the jewel of Muslim art in India and one of the universally admired masterpieces of the world's heritage." Thousands of artisans and craftsmen sweated over more than two decades turning stones into an expanding metaphor of love, or exploitation (depending on how you look at it). The tomb was described by a poetic genius as "one tear-drop...upon the cheek of Time". This Taj was built when the Mughal prosperity was at its peak. The Great Mughals had reached its cultural acme, and had acquired renown world over which our historians tend to describe with passionate intensity, and ever waxing pride. The feudal lords and the denizens of the privileged classes rolled in luxury pretending a cultivated taste and rich aesthetic sensibility. It was again Shah Jahan who had built his Diwan-i-Khas with precious stones studded in the ceiling exhibiting the glitter of gold, and the shine of the choicest marble believing, as the inscription engraved on it says, that he was in the Eden of Bliss on the Earth:

Agar firdaus bar ru-yi zamin ast
Hamin ast, u hamin ast, u hamin ast.

But the best of times was also the worst of times. The commoners of the great Mughal Empire could eke out their living only by becoming the beasts of burden, or at best, mere serfs. It seems the Emperor, and his advisors, believed in something that reminds us of our present-day neoliberal economists' pet ideas compendiously called the 'trickle-down effect' theory. The Emperor's expenditure on the construction of the Taj Mahal was, perhaps, his response to help his people severely stricken by a terrific famine which had broken out in 1556-1557 in the neighbourhood of Agra, Biyana, and Badauni. Spending the State's resources over the construction of the Taj Mahal, or the Diwan-i-Khas, might have brought joy for the Emperor, and those chosen-people of his realm who needed some glamorous rendezvous, but for the rest of people that was a cruel joke cut with macabre taste. Whatever the artisans, craftsmen and the labourers earned, as daily wages, were lost in the expenditure on luxuries peddled out by the swarming sellers of drink, and lascivious *mujras*. The great poet Sumitranandan Pant wrote a poem on the 'Taj' where he said (to render it in English from Hindi):

What an amazing and celestial worship of Death,
Whilst the people remained despondent under gloom.

The poet was rightly shocked by that arrogant extravaganza mocking the poor of those days.

Shah Jahan knew their plight, but, like our present-day wielders of power, indulged in crystal gazing. He must have known that in 1556-1557 (and even thereafter), in the neighbourhood of Agra and Biyana, and Badauni, "men ate their own kind, and the appearance of the famished sufferers was so hideous that one could scarcely look upon them. The whole country was a desert, and no husbandman remained to till the ground". "The horrors of this calamity were so great that, as 'Abdul Hamid Lahori, the official historian of the reign of Shah Jahan, wrote : "men began to devour each other, and the flesh of a son was preferred to his love" [Majumdar, Raychaudhuri & Datta, *An Advanced History of India* p. 565]. A Dutch merchant, who witnessed the calamity, notes that "men lying in the street, not yet dead, were cut up by others, and men fed on living men, so that even in the streets, and still more on road journeys, men ran great danger of being murdered or eaten". Shah Jahan "opened a few soup-kitchens", distributed 1½ lacs of rupees in charity and remitted one-eleventh of the land-revenue assessment; but this could not suffice to mitigate the sufferings of the starving people.' [How close is this strategic response to what our Government has done to alleviate the suffering of the starving farmers in our country!] The nobles and the rich considered the sound of *ghungroos* as the very index of people's welfare. This state of affairs contemplates the classes of the exploiters and the exploited. This was the world in which, as William Blake says:

*Some are born to Sweet delight,
Some are Born to Endless Night.*

(iv) Sone ki Lanka

In ancient times, Ravana was a demonic person, and felt precisely as the demonic persons feel: "I am God myself. I am perfect and the mightiest. Every object exists only for my pleasure."³ He ruled the mighty *imperium* of Lanka where he had amassed wealth that he had looted from all the worlds. His capital was made of gold beautified with pearls and diamonds. Everything that could beautify it was there in plenty making it a thing of delight every moment it was seen. Its security was of the highest order, and the king was wholly invincible.

Tulsidas tells us in the *Ramcharitmanasa* that during His sojourn in the forest, Rama saw heaps of bones of the sages and saints. His kindness welled up, and he asked people around what had wrought their plight that way. He got a reply: "The demonic persons had eaten up the good residents of the forest (अस्थि समूह देखि रघुराया, पूछी मुनिन्ह लागि अति दया). Ravana had got Lanka made by the divine architect Vishwakarma. Hanumanji, contemplating to enter Lanka in search of Sita, felt that Ravana's capital floated on the clouds. Ravana's aircraft had on it white mansions, water tanks with lotuses in plenty. It was called the *Puspakvimana*.

But Ravana's extractive imperialism did not last long. His city, with all its might and affluence, was destroyed by of Hanuman, a monkey who was working for Rama. Even the invincible Ravana was killed by Rama. None survived even to shed tears for the mighty demon.

David Korten, in his *Where Corporations Rule the World* tells us about a very suggestive episode: about the Cloud Minders in *The Star Trek: The Original Series*. It is an allegory with deep import.

"The Cloud Minders, episode 74 of the popular science fiction television series *Star Trek*, took place on the planet Ardana. First aired on Feb. 28, 1969, it depicted a planet whose rulers devoted their lives to the arts in a beautiful and peaceful city, Stratos, suspended high above the planet's desolate surface. Down below, the inhabitants of the planet's surface, the Troglytes, worked in misery and violence in the planet's mines to earn the interplanetary exchange credits used to import from other planets the luxuries the rulers enjoyed on Stratos."

The Troglytes, the suffering beasts of burden, worked extracting zenite. This mineral was valuable for the cloud-minders for augmentation of wealth, though the unprocessed zenite emitted gas which made the beasts of burden lose their mental capacity. But their capitalist exploiters had good time in their world built in the sky. How unfair it is to deprive the poor of essential entitlements, and then cast them off in the ashcan because they are deficient!

To suffer unjust sufferings, tongue-tied, is itself the worst of all sins.

(v) The three Indias

Three persons met in a conclave at the 'swimming city' in the Pacific to deliberate on the affairs of our world. They assembled in this ship. They were advertised in the media as the three flowers out to herald a new spring all around. One was with the highest Business Management doctorate from the world's most prestigious university; the second was an economist flaunting gaudy academic distinctions; and the third had a distinguished career as a financier reigning with his wizardry the world of finance. Each of them claimed to work for the common people of the country. Each of them had easy access to the Government that claimed to work as the guardian of the people (*parens patriae*). The common people had a lot of expectations from them, they reposed a lot of faith in them. They never felt they could ever be deceived. This always happens when critical sense to discriminate between reality and illusion is lost. The persons in the conclave had a dexterous strategy. They seemed to work for common people, but served the ends of the present-day versions of the House of Medici (a 14th century political dynasty that had once ruled the world of finance), or the gang of the Zaharoffs (Sir Basil Zaharoff was an arms dealer and financier). They worshipped God but served Mammon. For them common people were no better than 'beasts of burden'. They felt they sounded scholarly when they quoted Alexander Hamilton for whom the common people were merely 'the great beast'.

They thought of three Indias. One India, called 'India Incorporated', of the *nouveau riche*, the high net worth individuals, the most successful looters, the most successful crooks, the MNCs, and creatures of the similar stuff. Mammon is their guide and Lucre is their love. They need a country on this planet because some stellar world is yet to be discovered or explored. They feel that all others beyond their circle are mere commodities to be turned into the grist of the mill of their greed. They feel the world exists for them. Not to say of a Government, even God exists to promote their welfare. The Second and the third Indias exist in the spheres away from the first, separated by the thickest smog ever seen. These two

constitute Bharat, itself vivisected into two realms, one working for the first India as their workers, lobbyists, advertisers and cheerleaders and the other destined to exist bound on the wheel of fire. Some of these have before them inviting carrots for which any donkey is accustomed to bray, and move towards. The Third India is the Bharat of ordinary mortals whose destiny makes them either to become the instruments to run the market, or to become raw materials for creation of new products, or to become what the lawyers say *res commercium*.

Justifying their ideas they drew on the wisdom of J.B. Priestley who discovered four Englands in his *English Journey* (1934). He discovered four Englands:⁵ (i) the traditional England rich with wealth; (ii) the "bleak England of harsh industrial towns," and (iii) the "England of dole", a subdivision of England No. 2." and (iv) the enterprising England of the 20th century.

But the delight of the experts in the conclave found no bounds, when a professor from a prestigious Business School, getting salary in lakhs, and lakhs pointed out that there existed precedents even in 'the best of all times'. Even Benjamin Disraeli, who worked to make Victoria the Empress of India in the 19th century, had witnessed two Englands:

"Two nations; between whom there is no intercourse and no sympathy; who are as ignorant of each other's habits, thoughts and feelings, as if they were dwellers in different zones, or inhabitants of different planets; who are formed by a different breeding, are fed by a different food, are ordered by different manners, are not governed by the same laws...the Rich and the Poor." ⁶

(vi) The Sparrow's Delight

It is said that once upon a time a huge forest caught fire. Flames leaped out in all directions. Vertical convection carried flames up to spread around the wood burning with furious fire to turn the forest into embers. Beings, who dwelt in the forest, were getting scorched, and burnt. There was no exit available to them from the wildfire except through Death. Outside the forest stood a huge crowd not knowing how to respond to the challenge thus posed. They were just onlookers gazing at what was happening. Some thanked God as they had escaped that horrid destiny; others bewailed the lack of resources to fight against the raging fire, still others stood just inhaling and exhaling air, virtually an inert clod existing without relevance to themselves, or to the world.

But there was a sparrow which was seen frequently, flying from somewhere, above or near the burning forest to drop a few drops of water that its beak could hold. To other birds, hovering around, its effort was foredoomed: hence utterly futile. Besides, it was running the risk of itself getting burnt. But it had certain mission; it had a sense of duty. I had written, in Chapter 4 ('Portrait of My Mother') about the sparrow's prayer. It was this very sparrow at work, doing its duty for the weal of all. It was not interested in the ultimate outcome. It had perceived its duty with detachment; and was doing that.

The story goes that an eagle came near the tiny sparrow and asked it; "Why all this, when your efforts could make no difference? Why, then this exercise in futility?"

The sparrow replied; "I know what you say, and what you say is right. Perhaps, all my endeavours might go in vain. But I am not concerned with what

might happen despite my efforts. I have a simple wish. I do not wish to be noted in the history of the universe as one who was a silent onlooker when the forest was in flame. I would do whatever is good. The existence demands that duty be done.

One of our great poets has aptly said :

अवकाश असीम सुखों से आकाश तरंग बनाना
हंसता सा छायापथ में नक्षत्र समाज दिखाना.
नीचे विपुला धरणी है दुख भार वहन सी करती
अपने खारे आंसू से करुणा सागर को भरती.

[They have plenty of time to build waves of joy in the sky, and to deceive others with the mirage of all the stars crafted in the shadows they have mirthfully created. They can go ahead doing so whilst, down below, this Earth keeps shedding tears experiencing agonies without end.]

(vii) Extraordinary Popular Delusions and Madness

An overview of the history from the 16th century to date shows that the art and craft of fraud are deficient in inventiveness: they repeat the same script of their craft time and time again. Its plagiaristic repetitiveness goes most often unnoticed because human memory is proverbially short. This point was forcefully driven home to us by John Kenneth Galbraith in *The Age of Uncertainty* (1977) where he said:

“The man who is admired for the ingenuity of his larceny is almost always rediscovering some earlier form of fraud. The basic forms are all known, have all been practiced. The manners of capitalism improve. The morals may not.”

It is well said. Shakespeare borrowed all his plots for his plays, but he turned them into things of beauty ever new : hence they are never stale. Charles Mackay in his *Extraordinary Popular Delusions and Madness* (1841) tells us about the technique of mega frauds illustrated in certain financial/money manias in the three chapters of his book : ‘Money Mania’, ‘the South-Sea Bubble’; and ‘the Tulip mania’. Michael Lewis considered Mackay, an economist as high in stature, as Adam Smith, Ricardo and Keynes. The bubbles, evidencing greedy financial manias, pertain to the South Sea Company. These show how the murk of greed helped produce a breed of financial fraudsters. Defoe described the craft of greed with an amazing succinctness:

Some in clandestine companies combine;
Erect new stocks to trade beyond the line;
With air and empty names beguile the town,
And raise new credits first, then cry ‘em down;
Divide the empty nothing into shares,
And set the crowd together by the ears

How graphic are the words in the concluding two lines in the context of the computer generated money under the present-day rouse financial system.

In the ‘Mississippi Scheme’, Charles Mackay draws an account of a powerful financial bubble which emerged from the collective pursuits of the bankers,

speculators, economic adventurers and crooks. The circulation of more money, and the emergence of the extractive and exploitative gladiators, created certain oasis of wealth in the French society, and fostered the flame of wrath till the ancient regime itself turned into ashes when the great French Revolution broke out.

The South-Sea Company was incorporated under the Act of the British Parliament with a view to restoring public credit, which was in bad shape. Reports and rumours were assiduously manufactured so that the masses could be turned into herds to be easily driven to the traps so dexterously made with an active assistance of many ministers, members of Parliament, high dignitaries and many others shaping public policies, including the Chancellor of the Exchequer. "Visions of boundless wealth floated before the fascinated eyes of the people in the two most celebrated countries of Europe." "It seemed at that time as if the whole nation had turned stock-jobbers." "Every fool aspired to be a knave." And some unknown adventurer set up a company: "A company for carrying on an undertaking of great advantage, but nobody to know what it is."

In the 'Tulipomania', desires for tulips were created, and made wide spread by adopting a strategy, analogous to that of the present-day commercial world, by creating and manipulating demands and desires. Prices went up and down, and the speculative profits were reaped. The 'tulipomania' got transmuted through some magic wand into 'finmania' (financial mania). All this not only swindled common people, it ruined even the *crème de la crème* (the high and exalted persons of the society).

(viii) Dance on the hood of the most venomous snake

I heard about Kaliya Nag, the most poisonous of all serpents who lived in the river Yamuna making water around so poisonous that humans or birds could not even go near it to quench their thirst. What was for all had been wrongfully appropriated by this looter turned polluter. Krishna compelled it to surrender and leave the river for the weal of all. Krishna danced, playing his *baansuri* on its hood with numerous heads. Kaliya realised its folly, and left the place after expressing its gratitude for the Benefactor of All. Dhenukasura served the obdurate and extractive imperialist King Kamsa. It was this ferocious donkey that showed grossest monstrosity towards all who went to the forest seeking food for survival. The abominable creature implemented the cruel Kamsa's edict excluding all others from the wealth that Nature provided for the benefit of all. This tyranny of exclusion, which the imperialists and the exploiters are accustomed to practice, prevented the humble folk from accessing the natural resources. But this greed-driven tyranny came to a dismal end when Dhenukasura was hurled into air by Balarama. When he fell down, the creature was dead. The great Bhishma told Yudhishthira, to say in the words of poet 'Dinkar':

है सबको अधिकार मृत्तिका पोषक-रस पीने का,
विविध अभावों से अशंक हो कर जग में जीने का

(Everyone has the inherent right to live on the earth's resources: Everyone has the right to live without the distresses of wants)

(ix) *Kalaye tasme namah* ('कालाये तस्मै नमः' O the Supreme Force, salutation to thee)

We visited Ross Island near Andaman & Nicobar Islands. After seeing parts of it, we relaxed at the seashore enjoying a cup of coffee. Our mind explored the past of that place, as its present had nothing to show except ruins and destruction. Till World War II, it was a flourishing town of great strategic importance to the British. During that War, that place was destroyed on account of the Japanese invasion. In her low mellifluous voice, my wife sang Bhartrihari's well-known Sanskrit lines of the *Varagya-Satkam*. The great poet sings how great kings bit dust, how kingdoms were lost, how exquisite beauty of the damsels of delight withered, how the mighty ones writhed in dust, how the scholars sank into foolishness. Wealth and power never prevent the bites of time.

What we saw there brought to my mind the well-known episode mentioned in the 'Vanaparva' of the great *Mahabharata*. Yudhisthira and his four brothers along with Draupadi were roaming in a forest. In order to quench their thirst, the brothers of Yudhisthira went to fetch water. When they did not return for long, Yudhisthira went in search of his brothers. He reached the lake where he found his brothers lying dead on land. Yudhisthira heard some voice advising him to answer certain questions before touching water, otherwise he too would meet the same fate his brothers had met. Yudhisthira agreed to answer the questions. He satisfied the questioner. Of all the questions that Yudhisthira answered, the most important (and relevant for us) question ran thus:

"Who is happy? What is the most amazing? What is the right path? What is the subject matter of the cosmic debate?"

Yudhisthira said: "One, who is not under debt, and is not toiling in foreign lands but gets something to eat even at the intervals of five or six days, is 'happy'. What is most amazing is the fact that whilst people see how everyday persons keep on dying, they wish to live for all time amassing wealth and power. Summing up his answers to all the questions posed, Yudhisthira explained the very course of creation, saying: अस्मिन् महामोहमये कटाहे, सूर्याग्निना रात्रिदिवेन्धनेन, which suggests what Shakespeare suggested through his well-known line: 'where wasteful Time debateth with Decay'. This is an existential irony.

Those ideas led me recall what I had read in my college days: the several instances strewn in history illustrating 'the conceit of this inconstant stay'. It is not possible here to tell you their stories though they are infinitely interesting and greatly illuminating. I would tell you only what happened to them. History shows how rich and technologically advanced societies have met their ruins. H.A. Davies tells us in his *An Outline History of the World*

"All the great nomadic races of history seem to have this in common—that they appear when civilization seems to be growing effete, clogged up, as it were by too much wealth and luxury. . . . It was so with Semitic invaders of ancient Sumeria, with the Arabs who conquered Persia and shook the Eastern Europe to its foundations, and with the Mongol, who under their great leader Janghiz Khan, in the early part of the thirteenth century achieved their conquests with an ease and thoroughness which astounded the world."

The Great Egyptian civilization was destroyed because of its untamed affluence which invited the desert tribes to penetrate into that golden realm to turn that into trash, to be showcased only as fossils in what Malraux called 'the Imaginary Museum' in which the glories of the past are lodged merely to be forgotten.

Paul Kennedy, after observing the history, as choreographed by Time, very insightfully said: "If this, indeed, is the pattern of history, one is tempted to paraphrase Shaw's deadly serious quip and say: 'Rome fell; Babylon fell; Scarsdale's turn will come.'"

(x) Bali questions Rama: The doctrine of Basic Structure in the *Ramayana* and the *Qur'an*

In course of a lecture I delivered at the Jawaharlal Nehru University, I explained the Doctrine of the Basic Structure of our Constitution in the light of our Supreme Court's decision in *Kesavananda Bharati v State of Kerala* (1973), One of my listeners drew my attention to the *Ramayana*. In the *Valmikiya Ramayana* (the *Kishkindhakand*), Bali severely criticized Lord Rama's conduct in striking him with an arrow from a thick hide of foliage. In his comprehensive reply to assuage the dying soul, Rama explained His duty as the supreme wielder of public power. He said (my translation from the original Sanskrit text):

I have acted the way the Shatras have counselled.
If the king does not punish the derelicts,
He cannot but undergo the consequence of his sinful act.

His answer covers a whole Canto of the *Valmikiya Ramayana*. Shri Rama considered Himself bound by the fundamental norms of Rights and Duties as set forth in *Manusmriti*. Under our tradition even God can be questioned. In *shloka* 35, he told Bali: "No need to get anguished. You have been fatally struck only in accordance with *dharma*. We are all bound by the prescriptions of the *shastras*." *Dharma* means, bereft of all details, the discharge of one's essential duties whatever be one's assignment.

This story tells us that under our tradition even God can be questioned. God was severely questioned by Job in the 'Book of Job' in the Old Testament of the *Bible*. But God's answer was in an imperious tone telling Job that he could not comprehend the ways of God. In the *Ramayana*, the questioning of the highest authority is appreciated, and the Lord answers even the charges framed against Him.

(xi) Bindumati

Bindumati carried on, in the Ashokan times, the ancient profession in the city of Patna, on the bank of the Ganges. Once upon a time, as the story goes, Patna was overflowed with the Ganges waters, and people were undergoing deep distress. Efforts of Ashoka and all his people to stem the scourge bore no fruit, and the king was totally nonplussed. He stood near the waters in drooping mood with all his hope lost. At that point of time, Bindumati sought an audience with the Emperor Ashoka. She was a well-known dancing girl whose art and beauty had become proverbial. She drew near the Emperor, and sought his permission to try for the public weal: all that she could do. The Emperor was amazed, but he felt

that every subject of the kingdom had right (and duty) to work for the fellow subjects' welfare, especially when the King had found all his efforts bearing no fruits. The Emperor allowed her to do whatever she could do. She touched the Ganges, and silently prayed; "Mother, if all my years I have done my duty, whatever my destiny has bidden me to do, with sincerity, good faith, skill and commitment, I pray to thee to restrain thy wrath so that the flood recedes saving the land and its beings." It is said that all those who stood near the swirling and angry river saw the waters receding fast; and soon the furious flood had receded.

(xii) HOPE

The common people of our country seem to work day and night with 'Hope', otherwise life would become for them an unbearable burden. Homer, in his *Odyssey*, tells us about Penelope's web. Penelope spent her long years alone, whilst her husband Odysseus was busy conducting the Trojan War. She whiled away her tedium, and kept her numerous suitors at bay through certain device. She underwent great drudgery just hoping that someday she would get an opportunity to get united with her husband. At long last, her HOPE stood fulfilled.

Penelope's story brings to mind the story that I read, and re-read, with joy in Bertrand Russell's *The Impact of Science on Society*. Here mankind's plight is compared with the position of a man "climbing a difficult and dangerous precipice, at the summit of which there is a plateau of delicious mountain meadows" With every step upwards, his fall, if he does fall, becomes more and more terrible. His critical conditions are graphically portrayed by Russell: 'At last, there is only one more step to be taken, but the climber does not know this, because he cannot see beyond the jutting rocks at his head. His exhaustion is so complete that he wants nothing but rest. If he lets go, he will find rest in death. Hope calls: "one more effort – perhaps it will be the last effort needed." Irony retorts: "Silly fellow! Haven't you been listening to hope all this time, and see where it has landed you?"Does the exhausted climber make one more effort, or does he let himself sink into the abyss? In a few years, those of us who are still alive will know the answer.'⁷

Concluding his *Modern Democracies* (Vol. II p. 670), Lord Bryce perceptively observed:

"Hope, often disappointed but always renewed, is the anchor by which the ship that carries democracy and its fortunes will have to ride out this latest storm as it has ridden out many storms before."

HOPE must survive: *hum ho 'nge' kammyab ek din* (we would surely succeed some day).

NOTES AND REFERENCES

- 1 Objective correlative: "the artistic technique of representing or evoking a particular emotion by means of symbols which become indicative of that emotion and are associated with it." *Shorter Oxford English Dictionary*
- 2 *The New Encyclopaedia Britannica* 15th ed. Vo. 29, p. 57
- 3 *The Bhagavad-Gita* (XVI. 14)
- 4 Noam Chomsky, *Hegemony and Survival* p. 5
- 5 A.J.P. Taylor, *English History 1914-1945* p. 301
- 6 Nehru, *Glimpses of World History* 403
- 7 Quoted in Russell, *Autobiography* p. 527

26

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

⁷*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 thieve 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."
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.	After the Renaissance (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.	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.
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	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	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.

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 prerogative 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 moneyinto 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 सृजाम्यहम्

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. *On* 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 *dharma yuddha* 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

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.

THE REALM OF DARKNESS: THE TRIUMPH OF CORPORATOCRACY

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

THE REALM OF DARKNESS: THE TRIUMPH OF CORPORATOCRACY

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.

27

VEENAPANI (वीणापाणि) : MY WIFE

*'None in the world can ever be more intimate than one's wife;
none else can provide shelter better than one's wife, and none else
can render help more than one's wife.'*

— *The Mahabharata*, 'Shantipurva' Ch. 144 shloka 16

(i) My musings on the photograph

Never did I find a proper name so connotative as my wife's. My wife's name, 'Veenapani', means goddess Saraswati, known from the Vedic times as the goddess of knowledge, music and arts. When I saw her for the first time she was sitting on a straw mat in *padmashana* (lotus posture) under the mango tree in her maternal grandfather's house at Baidyanath Dham, famous for one of Lord Shiva's twelve *gyotirlingas*. This holy place is in the district of Dumka in the State of Jharkhand. She was dressed in the ivory-white silk with rich golden zari borders with emerald edge. She was lost playing on her *veena* whereon her dexterous nimble fingers moved in superb rhythm. She was singing in *raag vasant*: She seemed to me 'Veenavadini' (Saraswati) Herself:

या कुन्देन्दुतुषारहारध्वला या शुभ्रवस्त्रावृता
या वीणावरदण्डमण्डितकरा या श्वेतपद्मासना

I was appointed a lecturer at Samastipur College in July 1960, and was married that year in December with Veenapani. Over these five decades whilst I have spun the warp and woof of my life on the loom of time, she has carved thereon myriad patterns, and given them variegated colours. When I look back, I am driven to think that we two have lived on the branch of this *Samsarvrikschha* like those two birds on the branch of the tree about which the *Mundaka Upanishad* makes a reference¹. But whilst of the two birds in the *Mundaka*, one acted and the other was an onlooker, we both have acted, and have kept each other under critical gaze. She made my moments of joy intense and passionate; she made even my tragic moments superbly cathartic and elevating.

I begin this Chapter with my musings on her photograph. It depicts her performing the *Chhat pooja* in which the Sun is worshipped both when He sets in the west and when He rises in the east. It brings to mind what we read about the worship of Ra in ancient Egypt. It shows that while we worship the rising Sun, we worship it also when He sets. We see our God on all sides, in all directions. She



[Veenapani offering *aargh* at the Chhath festival at Juhu Beach, Mumbai]

लाया था रश्मि रथ पै स्वर्ग की छटा ले
पर व्यंग भाग्य का यह, घिर आई वह घटा से
वीरानियों में जिसने अमन का गीत गाया
अब लग रही किनारे अपनी व्यथा कथा से
मिट्टी के धर्मरथ पै तेरी करुण कृपा से
मकरंद बन किया जो आशियाँ को रोशन
बीते क्षणों का मतलब है खोजती लगन से
उम्मीद आरमों पै तिरती यह स्वर्णकाया¹

¹ Worshipping the Sun God by offering sacred water mixed with milk, rice, and some flower petals.

² Had come with sublime glow on the beam's chariot, but Destiny cast its cloudy canopy; Had sung the vernal melody with happiest theme, even on the sandy dunes in life's far-flung desert; (Sorry, dear reader, I cannot translate the rest of the lines I had composed, as I cannot bear to relieve the feelings they express.)



Veenapani meditating on the radiant glow of
an earthen *pradeep* : sweetness and light



TARA
Tara, my love, my deity, my soul's song.

stands in the waves of the Arabian Sea adjacent to the seashore in Mumbai, the famous Juhu beach. She joins her both hands with her palms forming a saucer. My daughter Kishori painted certain symbols on them with rice-paste whereon she sprinkled vermilion and placed flowers. When right time for *pooja* came, the traditional *prasadam*, in the straw or bamboo-made basket, was held in her hands, and raised as an act of offering to the Sun who, we believe, accepts that, and also grants blessings, through His soft rays. As the photograph shows, her face glows with the radiance of the Sun, and her calm posture has the sublimity and serenity which come naturally when the occasion is so august, and mind is so serenely concentrated. The photograph shows her eyes half open observing the Sun, and her mind wholly focused. I saw how hundreds of others stood in the waters and on the shore. Our *pooja* materials were arranged on the sand of the seashore only a few dots above the points where the waves broke. My duty was to see that they were not washed away by the frequently advancing waves becoming gradually more and more aggressive.

Again to the photograph. Her hands demand some pointed reflections. We were advised by our elders that our first act every morning on waking up should be to look at our palms. We caught its import when we learnt what stood choreographed on them, thus described in a well-known verse:

*Kar agre vaste Lakshmi
Kar madhye cha Saraswati
Kar mule vaste Govindam
Pratah subh kar darshnam*

No greater tribute to human hands is conceivable than that expressed in these four lines. This is a rich paean to the very instrument of action with which we work in the *kriya* (action; cosmic creativity) we call this *samsar* (the universe). The palm suggests through its images, as described in that *shloka*, a philosophy of life never to be forgotten in our *karmayoga*. It is high poetry to view our hands as the support from Govind Himself. How else are we enabled to row our life's canoe across the shark-infested and turbulent ocean of life (निराधारधारं भवजलधिपारं)? The Goddess of wisdom and learning (Saraswati) is conceived to be at the centre of the hand. Whatever one does, one must do that after examining things to be done on the touchstone of wisdom (निष्प्रावा मतिहेम्नः). And the fingers (*Karmandriya*) represent the Goddess of wealth (Lakshmi) who helps us to acquire wealth that comes without blemishes. In her *Kar-kalash* (कर कलश, अंजलि) we had poured drops of milk and holy water which trickled down into the ocean after shining a little in the slanted rays of the Sun. Everyone, irrespective of caste or creed, could participate in the worship of the Sun. Once this ritual was over, she took turns at the same spot with some fruits and home-made sweets as oblations to the God. This was an essential part of our customary rituals. The Sun God never ate what was offered, but we believed that His divine kiss got planted through the rays. At the end of the *pooja*, we distributed, amongst all those present, the fruits and the sweets as the *prasadam* which everyone received as God's grace, and ate with all solemnity. I have reflected on her hands so much as nothing demands reflections more than the hands with which we all become active participants in the vast *kriya* of the cosmos.

(ii) My heart-attack: when She played the role of Savitri

I am convinced that her hands saved me from death in 1989 at Nagpur. While on the tread-mill for a routine cardiac medical check-up at Dr. Mahorkar's heart clinic, I suffered a massive heart-attack, so serious that even the doctors lost hope. I felt I was sinking in darkness, and for sometime I lost my consciousness. When after 72 hours of the crisis I recovered my senses, I felt the soft touch of my wife's hands on my forehead. When I opened my eyes I saw her in meditative mood. It seemed she was praying in her silence to God to save my life. She believed that He, who had come to save the King elephant from the death clutches of Makara (crocodile), when the elephant had been deserted by all the relations, would surely come to save her husband. She silently recited *Gajendramoksha*, which had made God Vishnu come to the helpless elephant's succour. Her expressions bore the serenity which could come only after a total surrender to God with soul singing in silence: 'You are my only resort, my only hope, my only strength' (गतिस्त्वं गतिस्त्वं त्वमेका भवानि).

I could regain consciousness within 72 hours, but had to remain on bed in the Intensive Care Unit with a trembling hope for survival. Certain lines from Browning welled up in my mind to mitigate, to some extent, my wrenching apprehensions of an imminent end:

'Love, we are in God's hand.
How strange now, looks the life he makes us lead;
So free we seem, so fettered fast we are!'

For me the past had ceased, and the future seemed non-existent; and the present was slowly getting sucked into dense fog in which my mind often painted some rainbow with the fleeting rays of faltering hope. Whenever I saw around, I could always see my wife sitting in the room's corner in meditative mood. Often it became obvious to me that she was somehow restraining her tears by arresting them under her eye-lids and in her eye-corners. She was my best nurse whose dedication amazed even my cardiologist.

Whilst the conventional cardiologists prescribed the traditional and conservative regimen for my treatment, Dr. Khalilullah, a noted cardiologist, and my old acquaintance, examined me and suggested that I needed an interventional treatment at the Apollo Hospitals at Madras, or some similar centres in New Delhi. He said that not to undergo it would be running a grave risk. I felt I stood in the desert where visibility had gone on account of a blinding dust storm. We had none to help in the crisis we faced. My children then were very young, not capable of taking a decision in a crisis. My friends maintained silence on the issue as none thought I would survive even the journey to Madras. Besides, we had meager financial resources, and were not sure how much assistance I would get from the government that I had served for decades. My wife took a bold decision to take me to Madras with not more than Rs. 5000 with herself. Virtually she took me in her hands. She boldly responded to the challenge she faced. I never saw her morose as she never had lost her way, or light. She had infinite faith in Mahadeva: and believed that He would surely come to her help when she found herself helpless and hopeless. When I felt totally broken whilst travelling in the first class compartment of the Madras Mail, she pepped up my sagging spirit by telling me

that she would surely bring me back from Death, as Savitri had done to her husband Satyavan. She told me the story which she had read in the *Mahabharata*. I knew the story as I had read Aurobindo's *Savitri* in which he had turned the story into an allegory to express his philosophy. She narrated the story as is given in the epic. When Savitri found her husband dead, she made Lord of Death revise His decision through her indefatigable persuasion so deeply touching and moving that the Lord was pleased to grant her prayer. She brought her husband back to life. Whenever I look back, I feel she had been my Savitri.

For about a month we stayed in Madras. The first 20 days I was confined on the third floor of the Cardiology Ward of the Apollo Hospitals. The cardiologist, Dr. Samuel Mathews, after subjecting me to the exploratory procedures, told me that there was a critical block in the cardiac artery which called for an immediate removal through an interventional procedure known as 'coronary angioplasty'. Though the Apollo Hospitals had been recognized under the Central Government Health Scheme, this specific procedure had not been recognized by our Government as an approved mode of treatment for cardiac ailment. The medical charges could come to Rs. 60000, but we had only about Rs 5000. But my wife was not broken. She prayed to Krishna for succour. Then I found a miracle happened. One fine morning the Hospital received a fax message from the Government recognizing angioplasty as a mode of treatment. I became, perhaps, the first CGHS beneficiary in our country to obtain this costly treatment. My worry was over. Cardiac angioplasty was performed on me. Under this procedure the blocks in the cardiac vessels were removed by inserting through the blocked areas in the arteries a specially devised wire carrying a medicated balloon at its tip to press the accumulated plaques sideways to clear the flow of blood. This procedure was done under a local anesthesia, so I could see how the catheter, inserted through my groin, sent its wire up inside into my heart to discover the stenosis in the circumflex branch. I found the procedure of angioplasty very interesting. I could see on the computer screen my own throbbing heart. I could see how the wire was travelling inside in its quest of the obstructions to be removed. On seeing my heart, I found it wholly bereft of the romantic glamour we associate with it in our literature. For a short while, I felt I was performing what is called '*Shavashana*' in our Yoga. In *Shavashana*, one can see from outside how one's body looks and how it reacts to external stimuli, and emotions. It is a great experience.

As I had spent so many days in the Cardiology Ward, I had developed friendship with many persons undergoing similar travails. When I was taken down for the interventional procedure in the Cath-Lab, many of them saw me off getting into the lift. My friends from the Income-tax Department at Madras saw me off at the entrance of the Cath-Lab enclosure. My wife was permitted up to the door of the Lab where she sat meditating and praying for my welfare. And I alone was rushed into the semi-dark room for interventional treatment. Only my God was with me. On his lotus feet I concentrated my mind allowing my body to be carried to the operation table. After a month, she brought me back to Nagpur as Savitri had brought back her Satyavana by supplicating the Lord of Death. My children were overjoyed, my friends were amazed. So, with God's grace, none could derive the macabre delight of seeing a beautiful young lady, who had gone with a brilliant vermillion mark, return as a widow with the dim mark of ash on her forehead. But her gruelling experience did not leave her unscathed. She

developed high blood-pressure, and her sugar level went up causing concern over all the years thereafter. Thus she paid a heavy price for interiorizing her sufferings for my sake.

But this was not the only patch of bad time which had withered me, and wrenched my better half. The chemistry of my blood went wrong several times thereafter leading to the formation of new blocks in the cardiac blood vessels putting my survival to risk several times. I had to go through repeated hospitalizations. She bore the slings of my misfortune with a cheerful zest; and she cultivated her art of life with fortitude and Stoic patience. She had patience, and maintained her poise when it is not unnatural for many humans to bend, break, and melt away. I felt her strength emanated from her wisdom that she herself expressed in the lines she often sang, or intoned while alone:

इस अखिल विश्व प्रवाह में किसको नहीं बहना पड़ा
सुख दुःख हमारी ही तरह किसको नहीं सहना पड़ा

(Who escapes from the cosmic flux?
Who hasn't, like me, felt distress and delight?)

(iii) She worshipped Lord Shiva, and performed *Rudravisheka*

Whenever she felt torn into pieces, she turned to Lord Shiva whom she had worshipped daily for twelve years before her marriage when she lived in the family of her maternal grandfather, at Baidyanatha Dham, Deoghar. She went to the temple every morning to offer flowers and *vilvapatra* on behalf of her maternal grand-mother. Her maternal grandfather, Pandit Chhedi Jha 'Shastri', spent most of his evenings in the temple complex reciting the *Vedas* which the crowd present there heard with rapt attention. We all believed that Lord Shiva was *Mritunjaya*, and His worship could save one even from death. Even now many of us perform, or get performed, the worship of Shiva with numerous recitations of *Mritunjaya Mahamantra*. Believing that Lord Shiva's grace alone had saved her husband from death, she decided to perform the great Shiva worship called *Rudravisheka*. It involved elaborate rituals and the continuous recitations from the *Vedas* over nine days. I couldn't do that as I was not medically advised to do that. I was not in a position to subject myself to the discipline for nine days: to fast for the whole day, and to have frugal meal of fruits only once at night. In our society, the ladies were not supposed to perform this *pooja*. We were advised to engage some professional pandit to perform this. But my wife decided to perform this worship herself, and all my effort to dissuade her failed. Once she decides, she does. Over all those days she made everyday a thousand tiny Shivalingas out of well-kneaded clay, besides a main *Shivalinga*. It is amazing how the images of clay, thus made, turned divine. She followed the prescribed schedule in all its meticulous details. I remained just a silent watcher of the things going on. She treaded the path of devotion, and was a *Karmayogi*. Once she told me that whatever she did was itself Shiva's worship (यद्यत्कर्म करोमि तत्तदखिलं शम्भो तवाराधनम्). In the evening of the ninth day, when the entire process of the *pooja* was over, she touched my feet with a glow on her face the like of which was unlikely to be seen in God's creation. I could describe her only the way the great Tulsidas

described the beauty of Sita when Sri Rama had seen Her for the first time in the garden of Maharaja Janaka: 'She made Beauty herself more beautiful. She seemed a flame of light in the dome of Beauty': (सुन्दरता कहूँ सुन्दर कराइ; छविगृह दीप शिखा जनु बरई). She told me in soft voice: "I heard the Lord say that I would be on the funeral pyre with my vermillion mark. So you need not worry for your life till I am alive". Tears trickled down her cheeks. Her statement mitigated my pangs, but burdened me with the apprehensions of the days I would have to undergo the sentence of life when she would have gone.

Once we went to Baidyanathdhama on the occasion of *Maha Shivaratri* said to be the Night of Shiva. Some say that the Lord was married to Parvati that night, others say He performed that night the supreme cosmic dance (*Tandava*) capable of creating, and also destroying, the cosmic order. It so happened that the head priest of the great Shiva temple called on us to invite her to sing *Rudrastakam*, the poem composed by the great Tulsidas, at 3.30 a.m. from the wide portico at the crowning dome above of the main entrance providing ingress into the sprawling quadrangle in which so many majestic temples had been built, of which the Baidyanath Temple was most famous. This entrance was called the *Singh Darwaza* (the Lion Gate) as massive lion images had been put on both the sides of the entrance. She accepted the request. When we ascended the portico we saw an ocean of humans in the campus abuzz with all sorts of devotional sounds in different tones, pitches and tenors. Most of them had come trekking over all the way from the bank of the holy Ganges at Sultanganj singing devotional songs. Once she began singing, silence prevailed in the campus. It was still dark, and the electrical light created beautiful chiaroscuro effects. The sweet plenitude of her voice wove an environment which could be imagined, but not described in words. She sang the *Rudrastakam* which recites the glory of God who is eternal, and is all bliss. It begin with the melliflous *shloka*:²

नमामीशमीशान निर्वाण रूपं विभुं व्यापकं ब्रह्म वेदस्वरूपम्
निजं निर्गुणं निर्विकल्पं निरीहं चिदाकाशमाकाशवासं भजेहं

We felt we were in paradise.

(iv) Our marriage: She was a Padmini

We were married in 1960 when she was barely fifteen, and I was twenty-two. She was a school student at Baidyanatha Dham; and I had just become a lecturer in the Department of English at Samastipur Degree College. The families to which we belonged shared the same value system. My father and her father were distinguished teachers, and had participated in our country's Struggle for Freedom. They liked each other, and disliked go-getting of any sort. I had never seen Veenapani before our wedlock though I had an opportunity to steal a glance at her even before our marriage when I had accompanied my mother to the temple for worship. She too had come to the temple with her grandmother who was distantly related to my mother. My mother saw Veenapani in the temple, and selected her to be her daughter-in-law. She said she picked up a flower that she found on the sanctum sanctorum of the Lord. My Mother lived with this belief till her end.

We were married in customary way. The ideal that is set for a daughter in Mithila is Sita's. All the rituals, going with songs, followed the pattern set when Sita was married to Sri Ram in ancient times. I have seen how the same protocol was repeated thrice in my family when my three daughters were married in the eighties and the nineties of the century just gone.

I could see her at close quarters only after performing rituals on the fourth day of marriage. Under our custom, the sacrament of marriage is considered completed only after this ritual. When I saw her for the first time, she was clad in traditional style; was fully draped in yellow sari. But I could see the glow of her body getting subdued transmission. I could see her hands exposed not more than what Leonardo Da Vinci allowed his Mona Lisa to reveal hers in his painting. I fancied that God made them at His leisure with Yellow Sapphire and gold. Till the fourth night after our marriage we slept in the same room but did not share the same bed. Two elderly ladies also slept in the same room so that the customary practice of total abstinence, till the ritual of the fourth day, was not breached. Deprivation and Plenitude coexisted! And I could weave and unweave rainbow only in my mind till the fourth night.

I grew infinitely curious when someone from my maternal uncle's village, who had some occasion to see her, told me that she had all the features of a Padmini. What he said was above me. He explained to me the features of a Padmini, one of the four classes into which women were classified in the ancient text of *Ratimanjari*. A Padmini is one who possesses features thus summarized:

भवति कमलनेत्रा नासिकाक्षुद्रंभ्रा अविरलकुच युग्मा चारुकेशी कृशांगी सुवचनसुशीला गीतवाद्यानुरक्ता सकल तनुसुवेशा पद्मिनी पद्मगंधा. Then came the cherished night; and in the dim light of an earthen lamp I saw her, and found her well qualified to be called a Padmini. She was a rose in her full bloom. A line from the *Ramcharitmanas*, where the poet describes Sita, came to mind: जनु बिरंचि सब निज निपुनाई; बिरंचि विश्व कहं प्रगटि देखाई (as if with all His skill and deftness God created her to demonstrate His skill to the universe). The great Bhratrihari aptly said (which I render from Sanskrit): "What is the loveliest of all the things to look at? It is the happy face of the beloved. Which smell can charm one most? It is the aroma of her mouth." But no conversation was possible because of her sweet bashfulness. The situation brought to mind the line in which Tulsidas portrays the restraints in the impatience of Sita on seeing Sri Ram amidst the crowd of kings assembled in the court of Maharaja Janaka to break the Shiva's bow (as Janaka had taken the vow to marry Sita with him alone who could break the mighty bow which once upon a time Lord Shiva had wielded). The poet describes her facial expression of her agony:

गिरा अलिनि मुख पंकज रोकी, प्रगट न लाज निशा अवलोकी

(She kept her words confined, out of coyness, in her lotus-like mouth, as does a lotus by confining a bee inside itself by closing its petals when it gets dark.),

(v) Her First Coming to the house of her in-laws: the lotus unfolds its multi-layered petals

She received a traditional welcome when we took her to our house at Laheriasarai. My mother and others had boundless joy. But soon she discovered



Veenapani Jha meets Mrs. Indira Gandhi,
the then Prime Minister of India



Veenapani Jha & Shiva Kant Jha at the Taj Mahal, Agra, in 1978.

that her daughter-in-law knew no Maithili, our mother tongue; and was not proficient in the cultural rituals of our family. As she found her greatly responsive, she decided to train this greenhorn. I was delighted to see the rich chemistry developing into close bond of love between the two till my mother died in December of 1973.

My mother engaged Pandit Chandra Nath Mishra 'Amar', a great scholar of Sanskrit and Maithili, and one of the greatest Maithili poets of modern times, to teach her Maithili. I had the good fortune of being his student while I studied at the M.L. Academy at Laheriasarai. He came to my house every evening for two years to teach her. Soon my wife learnt the natural Mathili accent. When she sang in Maithili, she sang with the characteristic Maithil melody. She sang the great poet Vidyapati's love songs with such sublimity that we could experience ecstasy, a sort of spiritual frenzy. I have noted with a sense of joyous wonder that the love songs of Vidyapati are capable of being enjoyed at different levels, mundane and spiritual alike. We know how Vidyapati's love songs made the great Chaitanya dance in the glory of God. Dr. Harivansh Rai Bachchan aptly said:

कहाँ विरत चैतन्य महाप्रभु, कहाँ मनुज ममता-रत कामी
पर विद्यापति के चरणों के दोनों है बरबस अनुगामी

(How different are the pleasure seeking humans from the detached and divine Chaitanya! Yet they all enjoy Vidyapati's songs capable of yielding meaning at diverse planes.)

The Nobel Laureate Pablo Neruda's love poems are erotic but not spiritual; Vidyapati's are erotic and spiritual both, depending on the mind that reflects on them.

I recall, late Pandit Triloknatha Mishra, one of the greatest pandits of modern Mithila. He had told us while addressing us at our School : "the ladies are the custodians of the culture of Mithila". Credit goes to my mother for her decision to give my wife sound cultural orientation. Credit goes also to my wife who listened to what her mother-in-law told her, and acted thereon. My mother wanted her to become proficient in family customs and rituals which were performed in all the *samskars* (ceremonies) beginning from one's birth to death. The importance of customs prevailing in a family (*kulachar*) in Mithila was so great that if they differed from *shastras*, the customs generally prevailed.

In her expectations from her daughter-in-law, my mother was not dismayed. She learnt fast and learnt well. She presented a contrast to those daughters-in-law who come with closed mind and gross intellectual sclerosis. My mother got in her a good student. She was very much conscious that someday that young lady would succeed her on the throne of our family even though the throne was of cane of no value in our market economy. It is said that students fall into three categories: (i) those for whom suggestions are more than enough (as Janaka was in the famous *Ashtavakra Geeta*); (ii) those who are convinced only after ratiocination and arguments (as Arjuna was in the *Bhagavad-Gita*); (iii) those who refuse to grow into wisdom even if all efforts are made by the ablest teachers. My wife belonged to the second category.

(vi) The Festivals and the family rituals

Our festivals are the products of our culture, and are also its most potential shapers of our values. They are sources of our supreme delight, and continuous inspiration. The important festivals in which we, and all others of our Mithila region, put our heart, are Basant Panchami, Maha Shivratri, Holi, Ram Navami, Rakshabandhan, Janmashtmi, Dussehra, Deepawali and Bratridutiya (Bhai Duj). My wife showed the same zest in performing them as is usual amongst the ladies of Mithila. What amazed me was their shared views on what the festivals suggested. These festivals constituted for us the sources both of light and delight. All the festivals have a central thread to emphasize the necessity of doing *kartavya-karma* (duties) for doing which all of us must strive and struggle. Our festivals reveal our ontological and metaphysical ideas about the cosmic order. Whilst the forces of good and evil coexist in Brahma, the *Shatras* provide us ways to ensure that the forces of good prevail. Our festivals turn our life itself into festivity. Our festivals are easy even for the poor to enjoy and celebrate. They bear all the marks of the agricultural society, and are informal; but demand great devotion. As I have already written, our *Chhat* festival recognizes no caste barriers: even the Muslims can participate (as I had myself participated in the “Tazia” procession organized by the Muslims).

(vii) When She met Mrs. Indira Gandhi, the then Prime Minister

It was the early 1977 when we came from Calcutta to see Delhi. Our stay was for seven days only. We could see all that one should see in Delhi. We visited the Red Fort. Our children spurted with joy when they reclined on the marble throne of the great Mughal emperor Shah Jahan in the Red Fort. At the Red Fort I read, and explained to my wife, what the Emperor had got written in gold at the ceiling of the Diwan-i-Khas:

Agar firdaus bar ru-yi zamin ast
Hamin ast, u hamin ast, a hamin ast.
[If on Earth be an Eden of bliss,
It was this, it was this, it was this.]³

My wife mused on the gilded words, and let loose her imaginings to share what the Emperor might have felt in those great days of his imperial power. We were happy to see the “light and sound” show inside the Red Fort. It was a great experience to hear and imagine the gaits of horses in good number coming on their trot and canter. We were bemused by the cadenced sound of the *ghunghroos* of the girls advancing to present their amorous dance to the Emperor. It was all ‘sound and shadow’ but signified a lot to us. We made some stray shopping in the Meenabazaar which glittered with select wares displayed on both the sides of the long passage inside the fort. The Mughal princesses and the favoured damsels of the imperial household shopped for things they needed to enhance their glamour already great.

The next day we roamed in what is called Lutyens’ Delhi, and saw all that any visitor could hope to see. We had highest admiration for Mrs. Indira Gandhi who was at that time the Prime Minister of our country, and was at the pinnacle of her glory. My wife shared my father’s high admiration for Mrs. Gandhi. She

expressed her desire to meet her to see her at close quarters. As my experience went, my wife never went wrong in her decisions (except perhaps once, when she married me). She wished to meet Mrs. Gandhi. I was amazed at her wish. I told her the story which tells us how Lord Krishna's two wives, Satybhama and Rukmini, asked Him to get the Parijaat tree from the Heaven. No ordinary mortals could go to the paradise to bring the rare tree to the earth. But Lord Krishna could do that, because He was Krishna. I felt her wish could not be fulfilled. I thought my indifference would make her forget her desire. But she got what she wanted. It so happened that she was asked by Mukul Jha to accompany her to Mrs. Gandhi. Mukul was the wife of late M.K. Jha, who was a senior member of the Indian Police Service, and had wide contacts in Delhi. He was related to us, and was very kind to us. So my wife went to call on Mrs. Gandhi. Mukul had in her company a third lady, perhaps a social worker of some distinction. I accompanied them to the Prime Minister's residence. They went inside whilst I waited in the Reception. I felt it was not proper for a public servant of my standing to meet the Prime Minister without complying with formalities, and without valid reasons. Mrs. Gandhi met them in the lawn of her house. She first talked to the two elderly ladies. She was not comfortable with them, perhaps, because they had gone with some veiled requests. She was visibly annoyed. The two ladies wanted her to pose for a photograph. She curtly refused their request. Then she turned to my wife and asked her what had brought her there. Their short conversation lasted for a few seconds. It went thus:

Mrs. Gandhi: "And what makes you come to me?"

My wife: "No work. Just to see you."

Mrs. Gandhi: "Just to see me!"

My wife:

"Yes. I had read about you. I heard about you from my father-in-law, himself a freedom-fighter. And I was eager to see your beauty that goes with brain so well. I am overjoyed."

Mrs. Gandhi blushed. She knew that all those who met her always had some interest to promote, proximate or distant. Here she found someone, herself pretty, meeting her to appreciate her beauty, both as it was then, and as it might have been in those sweet years long gone. She asked her to take to social work. My wife told her that she was busy looking after her four children. For a few seconds Mrs. Gandhi looked at her, then She herself expressed her desire to be photographed with my wife. My wife wondered at her silence: it seemed that through a concentrated glance she read things not apparent. The other two ladies also joined. I collected that photograph from the Ministry of Information and Broadcasting. While returning from her house, we loitered near the India Gate. I asked her what she liked most in Mrs. Gandhi. She did not say anything but sweetly intoned Sir Muhammad Iqbal's lines:

सितारों से आगे जहाँ और भी हैं,
अभी इश्क के इन्तहाँ और भी हैं ...
तेरे सामने आसमाँ और भी हैं

(The universe remains even beyond the stars,
Many more tests still await in life,
And a wide sky is there within your ken.)

I got her answer.

(viii) Her judicial verdict in *A Rickshaw Puller vs. A Rickshaw Puller*

For some personal reasons I visited Mumbai sometime in 2000. I, along with my wife, went to a Shiva temple on the Marine Drive. It was just a chance that there I met some senior officers of the Income-tax Department whom I had known for years. They were apparently distraught as something was wrenching their mind. I had no wish to play God's spy, yet I asked them the reasons which had led them to that pass. They told me the whole story pertaining to the abuse of the Indo-Mauritius Double Taxation Avoidance Convention. They discharged their duty under the Income-tax Act 1961. They were quasi-judicial officers. Their orders displeased the corporate *imperium* which procured support of some powerful politicians. Instead of getting reward for good work done, they were threatened with punitive actions. I assuaged them that in our country they were not the first to receive displeasure for having done good work. But, I felt, I sounded hollow in advising them to take things just in their stride. But what they said lingered in my mind. I got light when a rickshaw puller told me his story of his sufferings wrought by the fraud and collusion of his friend. I have called that stuff *A Rickshaw Puller vs. A Rickshaw Puller*.

Whilst arguing before the Hon'ble Delhi High Court, the case which questioned the misuse of the Indo-Mauritius Double Taxation Avoidance Convention⁴, I told the Court the story of *A Rickshaw Puller vs. A Rickshaw Puller*. Do not try to find out this case in the books as it is not there. Everyone knows the cases of *Shylock vs. Antonio* and *Jarndice vs. Jarndice*. These cases are stated for illumination, but never cited as authorities. The *Antonio's Case* is narrated in Shakespeare's *A Midsummer Night's Dream* to highlight the greed of the hard-hearted Shylock, and *Jarndice's Case* is from Dickens's *Bleak House* wherein law's delays ruined the litigants but delighted the greedy lawyers. *A Rickshaw Puller vs. A Rickshaw Puller* is the figment of my imagination, but is a delightfully suggestive metaphor. I got the nuggets of its plot in course of my conversation with someone I met in the J.J. Colony at the periphery of Delhi which I had visited, along with Mrs. Gita Mittal, (now one of the Hon'ble Judges of the Delhi High Court), at the request of the Chief Justice S.B. Sinha of the Hon'ble High Court (as he then was). The story goes thus:

Two rickshaw pullers came from Bihar and settled down in the J.J. Colony (the Jhuggi Jhopri Colony). They had with them their families. To economize, and to reduce the drudgery of the domestic chores they entered into a gentleman's agreement that whilst they would have their lunch in the house of one, they would dine in the house of the other. They were good friends and assumed good faith in the discharge of these contractual obligations. But one of them turned greedy. He felt that reaping benefits at the cost of others was the way of the world. Lucifer's logic sprouts naturally when Mammon casts its spell. The first party to the said contract found that not only his friends' wives multiplied, even his children grew by leaps and bounds. When questioned, he said that law permitted

him to have more than one wife, and the kids were no different from his children. He even procured from certain Government offices certain papers bearing round seal in support of what he asserted. When the other contracting party grumbled and protested, he was told to carry out his obligations as he was bound by his words. Change of circumstances did not matter. Having lost everything this way, the swindled Rickshaw-puller went back to his village to become a hapless grain-picker in other's fields.

I narrated what happened to this hapless Rickshaw-puller to my wife though I knew she never had the misfortune of wasting time over law and litigations. "Well dear, was it fair and just for the first rickshaw puller to do what he did?" She instantly replied; "It was unfair." The derelict Rickshaw-puller had committed a breach of faith: his act was fraudulent. I felt that Mauritius tax treaty was bilateral: it was only for the benefit of the residents or Mauritius and of India. To allow the residents of the third States to masquerade as the Mauritian residents was obviously fraudulent. Her verdict led me to initiate a Public Interest Litigation before the Delhi High Court which upheld, to my mind, her verdict⁴. I have discussed that litigation in Chapter 23 of this Memoir. This story brought to my mind what CG Jung had said; "Great innovations never come from above, they invariably come from below."

(ix) The *Srimad Bhagavad Mahapurana*

A story goes that once Narada visited the cottage of the great Vyasa in Naimisharanya on the bank of the holy river Saraswati flowing there. He found great Vyasa sad as he was yet to acquire the bliss of peace. Narada, omniscient as he was, could understand his plight, and he asked the great poet what ailed him. Vyasa asked Narada how could he get peace, and enlightenment. Narada told him that he did great work, but something still greater was yet to be done. Whilst writing the *Mahabharata*, Vyasa missed to realize the supreme value of *Bhakti* (devotion). Besides, whilst composing that great epic, he, as its creative artist, experienced, no doubt creatively, the ideas and feelings of all sorts, noble or not so noble in the diverse characters in their diverse situations. His mind that created such situations and characters couldn't have escaped experiencing such emotions. Vyasa suggested that the only way to overcome his distress was total devotion to the Lord. Vyasa saw the seer's point, and he, in holy Naimisharanya, composed the *Srimad Bhagavad Mahapurana*. Someone said about this *Purana* with deep perspicacity:

कलि-मल-मथनि त्रिताप-निवारिनि, जन्म-मृत्यु भव-भय-हारिनि
सेवत सतत सकल सुख कारिनि, सुमौषधि हरि-चरित-गान की

(In substance it says: the *Srimad Bhagavad Mahapurana* saves one from all the evil traps of life and death to which we are all exposed in this Kaliyuga. This *Purana* provides never-failing remedy through God's *kirtan*.)

It was sometime in the December of 2005. My wife wished to hear the *Bhagavad Mahapurana* at the 'Veenapani Bhawan' at Laheriasarai where she had spent some of her best years with my mother and father. At her initiative we set up there 'Bhagavad-Gita Swadhyaya Kendra'. She herself sang the *kirtan* she had learnt

from Swami Satyanand Saraswati, the great Sannyasi who had founded the Munghyr School of Yoga. It expresses the very gist of the *Bhagavad-Gita*. [You can hear her singing this at my website www.shivakantjha.org in the folder relating to the said Kendra.] I wish everyone hears it, and recites it inside himself.

I felt her request to hear the *Bhagavad Mahapurana* was her great spiritual quest. It is often said that one can through one's endeavour attain heights through the *Karma Yoga*, or the *Gyan Yoga*. But the *Bhakti Yoga* is unique as it comes through God's grace alone. We had the happiest experience when over seven days we heard the *Mahapurana* at the 'Veenapani Bhawan'. It was expounded everyday in the afternoon by Dr. Bighnesh Chandra Jha of Darbhanga. His mellifluous and interesting exposition was often punctuated by *kirtans*. The schedule of this *pravachan* (exposition) ran over seven days. Every day was well-structured from morning to evening. In the forenoons we sat for the worship when four expert Brahmins slowly recited the *Vedas* in the four corners of the sprawling room; and a distinguished pundit recited the Sanskrit text of the *Mahapurana* as fast and loud as he could do as he had to recite all the *shlokas*, with refrains, within those seven days. We fasted for the whole day and had simple food only in the evening. My wife prepared that, and sprinkled thereon the tulsi leaves. Lots of persons assembled over these days to hear the divine exposition, and most of them expressed gratitude that they could get that great opportunity to hear the religious discourse. It was great to see how so many persons had such deep spiritual yearnings despite their absorption in the world's materialistic ways. We sat together all through such rituals listening to the *shlokas* so mellifluously recited. The exposition of the *Mahapurana* commenced each day at 3 o'clock in the afternoon to continue till 7 p.m. Every day this began with the worship of the book, the *Bhagavad Mahapurana*, which is itself considered Sri Krishna. Each day's exposition was concluded with *aarti* followed by *kirtans*. On some of these days my wife sang certain *kirtans*: some of which can be heard⁵ at www.shivakantjha.org.

On the seventh day, the main Pandit wanted us to pray for the fulfilment of whatever desires we had. But neither my wife nor I had anything in our mind to wish for. We stood, with folded hands, before the Lord but had nothing to wish for, nothing to ask for. She told me later that she could only get at that time the words in which Sri Billvamangalacharya prayed to his own tongue:

त्वमेव याचे मम देहि जिह्वे समागते दंडधरे कृतान्ते
वक्तव्यमेवं मधुरं सुभक्त्या गोविन्द दामोदर माधवेति

She told me later; "What could I ask for? He Himself has given so much. I felt I had nothing to wish for". She sang Billvamangalacharya's 'Madhurashtkam'. It can be heard on my website⁶. In this Sanskrit *kirtan*, the poet prays to his tongue only for one act of kindness: it should just recite 'गोविन्द दामोदर माधवेति' when he is at the point of his death.

(x) Her song that moved Dr. Sri Krishna Sinha

Veenapani had known, with empathy, the sufferings of many who were the victims of the exploitative and extractive social system in the rural areas of Bihar. She was born in an important Zamindar family, and had seen how mercilessly the

poor and the indebted were treated. Her heart bled for those who suffered. She had an occasion to sing at a function organized at her school. It was 1957. The function was presided over by Dr. Sri Krishna Sinha, who was the Chief Minister of Bihar for the longest period, till 1961. She sang a song in Bhagalpuri language called *Angika*. This song portrayed the sufferings of a poor farmer's family. It was caught in a debt-trap, and the mighty zamindar had deprived the distressed family not only of whatever tiny piece of land it had, but also of its farming equipments and the bullock it had purchased. Veenapani sang a song in which the poet had portrayed the pathetic plight of the poor farmer's wife who saw all her dreams shattered, and means of livelihood gone. The song was touching: it ran thus:

छिनी लेलहो कहिने बाबू मोरे जमिनवा हो
अहि रे जमिनमां पर मोरे जीवनमां हो

Her song touched the heart of the listeners amongst whom none could remain without film of tears in their eyes. Dr. Sri Krishna Sinha was moved by the sentiments expressed in the song. Veenapani received the first prize for singing a song that cast its spell so much, so effectively.

Dr. Sinha was himself devoted to reforms for social justice. He was deeply anguished. It was good that our politicians those days had not lost milk of human kindness. He heard the song with rapt attention, and his heart went for the suffering souls. History tells us how passionately he strove to do things to heal the wounds of those who suffered because of deprivation. He was himself well-versed in *Angika*, he could catch the suggestions that those well-chosen words made. His heart bled for the downtrodden and suffering souls. He became the first to see that the Zamindari system was abolished in Bihar. He led the Dalits to the Deoghar temple to break the conventions which had prevented them from entering the temple. He pursued with zest the ideas and ideals which were dear to us during our Struggle for Freedom. Dr. Sinha was himself a distinguished freedom-fighter.

When we think of the present, as being shaped by our politicians pursuing the neoliberal agenda of the present-day Economic Globalisation, we have good reasons to feel greatly anguished. Persons, like Dr. Sinha, have gone. Now things in our country are becoming different. Thousands of the farmers have killed themselves, and lakhs are being driven to starvation death. They are thrown to be treated as the market forces decide. The Government is busy drumbeating its 9% GDP, and also selling dreams that our country is going to become a super power soon. Her song takes my mind to our suffering countrymen who feel the same way as the farmer felt in that song. They too have the pangs on account of the deprivation of their land and cultural environment for the benefit of the present day big corporations, the neo-liberal economists and their lobbyists. Crudities of greed and deception have polluted our perception, and destroyed our sympathetic responsiveness. We see again the emergence in our country of a system of 'corporate zamindari', more noxious than what we had abolished in the early years of our independent India. Greed-driven depravity has no bottom, it is abysmal. Are we going to build a socio-economic system in which the hard-hearted creatures rule the roost? Are we going to enact the scenes which shock us

whilst reading Dostoyevsky's *The Brothers Karamazov* to which I have made reference in Chapters 6, 12, and 22. The days have gone when the mighty political power-wielders could be moved by the soft plaintive melody of 'छिनी लेलही' to become creative and responsive.

**(xi) Her life: a many coloured dome. She could smile
even on the Wheel of Fire**

Her life has been "a dome of many-coloured glass". The chiaroscuro effect of light and shade made her life rich and meaningful. I recall Byron in his *Don Juan* who put his heart in a rhetorical question:

"Why don't they knead virtuous souls for life
Into that moral centaur, man and wife?"

Centaur is a creature in the Greek mythology: it is half a horse and half a human being. But under our Hindu culture when God kneads husband and wife together, what comes out is the 'Ardhanarishwar', composed of Shiva and his Shakti, the masculine and the feminine forces of nature fused dexterously together without which creation itself is inconceivable. We have experienced this over all these years we have travelled together through shade and shine of life, with that synergy which exists between a word and its meaning, two no doubt yet not different (गिरा अर्थ जलविचि सम कहियत भिन्न न भिन्न).

She, on her marriage, came to a family which had a glorious past but, from economic point of view, a bleak present. We had small land holding just enough to provide resources for food that we consumed. My father had retired before I joined the Indian Revenue Service. My salary was poor, enough only to exist. My wife had come from an important feudal family. But she, like her mother-in-law, learnt the art of managing things with scarce resources. She never grumbled, she never grudged.

We too have suffered the slings of misfortune, and the ungratefulness even of the dearest ones. We have seen trust betrayed, we have tasted bitter chalice, and we have cracked, and got crushed under avalanches of inclemency of all sorts. But she has taken her life with zest: with tongue-tied patience even while seeing it ebbing away so fast. In this evening of our life, we experience that the clouds which our pursuits produced were not rain bearing. But I get solace from her words which linger in my memory to assuage me when mind is wrenched: 'संसार की घटा से क्या प्यास बुझ सकेगी' (Who has ever got water to quench thirst from the clouds which overcast the World?) It was beyond me to understand this. But I got some light from her song she had learnt from her father:

कैद दुनियां किस अजब जादू की है टोने की है
इससे कैदी जीव को नफरत नहीं होने की है

(This captivity of the world is the wondrous spell of some magician's wand,
The prisoners undergoing this sentence suffer, yet they are in love with it!)
I do not think any better portrait of life can ever be drawn up.

This capacity to look at life this way comes only when one knows how to accept, whatever comes, as God's wish (*Ishwareksha*: ईश्वरेक्षा). She told me once that

she would wish to leave the world listening inside herself the sound of Goddess Kali's *ghunghroos* so beautifully described by the great poet Vidyapati in words which defy translation into English: “घन घन घनन घुघरु कटि वाजय, हन हन करि तुअ काता”. Every morning I hear her recite a prayer to Goddess Durga: आपत्सु मग्नः स्मरणं त्वदीय करोमि दुर्गे करुणार्णवेशि (Whenever my distresses grind me, show me, Mother, Thy most merciful face). It reminds me of Lord Hailsham's memoir, *A Sparrow's Flight*, which ends with a prayer to the Lord that when his story of life ends he be not judged, but be simply granted divine mercy.

She drew strength to suffer with smile from Krishna Himself who never lost serene sublimity and subdued smile even when He had worst tryst with most painful situations. In her sufferings, she took Him as her role model. I must not say more about her on this point. Even 'candour' in an autobiographical memoir must be subject to 'prudence'. But what has struck me most is her sense of resignation to the Lord. She acted as she thought appropriate. She has drawn her support, and wants me to do likewise, from the sense of total surrender to the Lord:

‘पतवार को हमने छोड़ दिया सरकार तुम्हारे हाथों में
उद्धार पतन अब मेरा है सरकार तुम्हारे हाथों में’

[The oars of my life's boat are now in Thy hands,
It is for Thee, My Lord, to save me, or to let me sink.]

Leo Tolstoy said in his great novel *Anna Karenina* (Ch. 1): “All happy families resemble one another, each unhappy family is unhappy in its own way.” Our experiences have led us to believe that we differ from others no less in happiness than we do in unhappiness. There are ways and ways to become happy; there are situations and situations when we become unhappy. But it is 'unhappiness' that makes 'happiness' so dear. George Bernard Shaw made a valid point when he said in his *Man and Superman*: “A lifetime of happiness! No man alive could bear it: It would be hell on earth”. Life is a mix of happiness and unhappiness. How we live through the years is the art of life.

(xii) Conclusion

The reader may tend to think why so much has been said about someone who might yet have many more years to be at work on the loom of time. But we feel we have reached a point of time when a look-back may not be unjustified. Our visibility of the future is now poor. Final words, of course, must be deferred to life's final moments.

It is difficult to draw up this Chapter's Conclusion for two reasons. First, I cannot do this here as this would be integral to the very 'Conclusion' of my Memoir. Secondly, 'Conclusion' of a life is always a wholly private affair, between oneself and one's Creator, at a point from which none returns to tell anything to anyone. So this 'Conclusion' must remain an inconclusive 'Conclusion'. Whilst the past cannot be erased, things of the past might take new turns, or acquire a new gloss, a new meaning. But one thing is obvious: she has enjoyed living a rich life, through all its colours: to say in the words of Mirza Ghalib,

'Shama Har Rang mein Jalti hai Sahar hone Tak' (a lamp burns in all its hues till it is needed no more).

I have often felt that though we have lived together over all these decades, we have belonged not to the same universe of thought. Our duet is good but her solo is excellent.

NOTES AND REFERENCES

1. Cf. The Bush of Life: "All basic evidence from history of life leads us to an interpretation of *Homo sapiens* as a tiny, effectively accidental, late-arising twig on an enormously arborescent bush of life." Prof. Gould in *The Encyclopaedia Britannica Year Book 1999* p. 8
2. You can listen to it at <http://www.youtube.com/watch?v=tPw3A1k6N58>
3. Rendered into English by Dr. Kalikinkar Datta in Majumdar, Raychaudhuri, and Datta, *An Advanced History of India* p. 586
4. *Shiva Kant Jha vs UOI* (2002) 256 ITR 536
5. http://shivakantjha.org/openfile.php?filename=trusts/bhagavadgita_study_centre.htm
6. [http://shivakantjha.org/openfile.php?filename=trusts/bhagavadgita_study_centre.htm]

28

FROM DARKNESS TO LIGHT : MY REFLECTIONS ON THE BLACK MONEY CASE & ON THE ANNA HAZARE MOVEMENT

तमसो मा ज्योतिर्गमय

The Government will not re-establish respect for law without giving the law some claim to respect. ... If the Government does not take rights seriously, then it does not take the law seriously.

Ronald Dworkin¹

Note at the outset :

I have maintained the symmetry of this Chapter, but have made some changes to update it. Now it is divided in two parts. The **PART I** carries the story of the Black Money Case to March 26, 2014 when our Supreme Court “ rejected the Centre’s plea to recall its 2011 order to set up a special investigation team (SIT) to probe all cases of black money”. But I have thought it prudent to shed some fleeting light on the subsequent developments in the **Postscript IV**. The **PART II** retains my comments on the Anna Hazare Movement so that you can appreciate what I had felt about it when it was in its passionate full bloom.

PART I

A

From Darkness to Light: My Reflections on the Black Money Case

Ram Jethmalani & Ors. v. Union of India & Ors. [2011] 8 SCC 1]

I

The Chapter 23 (The Profile of a PIL in Revenue Matters) of this Memoir begins as under:

“The three Chapters 23 (‘The Profile of a PIL in Revenue Matters’), 24 (‘Our World-view and the trends of our times’), and 26 (‘The Realm of Darkness: the Triumph of Corporatocracy’), constitute a triplet of ideas forming a common spectrum of thought. They would help you to reflect on ‘the moral deficit’ and ‘democratic deficit’ of our times. Whilst the first tries to answer Juvenal’s question: *Quis custodiet ipsos custodes?* (Who will watch the watchers?), the second explores the

trends and tendencies shaping our world-view, and the third would show how 'the instruments of darkness' 'win us with honest trifles, to betray's in deepest consequence'² to create circumstances for the triumph of Corporatocracy, which can smother Democracy, can wither our Republic, and can build a structure of deception that can catch us the unwary!"

I devoted almost all my time in the first decade of this century in pursuing my PILs³ before the Delhi High Court, and the Supreme Court of India. The prime issues that I had pursued pertained to the subversion of our law and constitution, and the triumph of the instruments of darkness operating from the tax havens and secrecy jurisdictions where most of black wealth and illicit gains are amassed for subsequent layerings and operations. In carrying on my crusade, as a labour of love, I suffered several times frustrations in the litigious process, but I went on in the light of my conscience making an appeal to "the brooding spirit of the law, and justice".

Observing the way things moved in our country, and scanning the responses of our Government, I felt that in this general gloom, a ray of hope was from Judiciary alone. I had, in my mind, the judicial creativity and integrity that the U.S. Supreme Court had once shown in *Brown v. Board of Education of Toeka* (1954), and again in *Reid v. Covert* [ILR 24 (1957) 549], and had a conviction that our Constitution contemplated judiciary to play a role even more creative and assertive than that under the U.S. Constitution. In his *American Dilemma*, Gunnar Myrdal (1898-1987) appreciated the American institutions but felt that it was the *court alone* which could provide a remedy against the evil of racial segregation⁴. And the U. S. Supreme Court did provide a remedy against racial segregation in *Brown v. Board of Education of Toeka* (1954), which Ivan Hannaford considers 'the most important single Supreme Court decision in American history', and again in *Reid v. Covert* holding that all powers, including the treaty-making powers, were subject to constitutional limitations and restraints. I have already told you, in Chapters 21 and 23 about the fruits of my endeavours in our courts. I had framed my premises after a careful study of our Constitution at work. I felt that the greedy crooks had discovered ways to drive the present-day Economic Globalisation into the clasp of Circe. Circe was in the Greek mythology, an enchantress that was said to transform offending humans into animals servile thereafter to her. My premises and ideas are amply set forth in the Book III of this Memoir, mainly in Chapter 24 ('Our Worldview & the Trends of Our Times') and 26 ('The Realm of Darkness: the Triumph of Corporatocracy').

Soon after the completion of this Memoir, two great events have taken place in our country: first, the reasoned Order of our Supreme Court in *Ram Jethmalani's Case* (referred in this Chapter as the "Black Money Case") delivered on July 4, 2011; and second, the movement against corruption, with its widening gyre organized under the impeccable leadership of Anna Hazare. The Black Money Case, as I read it, articulates ideas which I had wished our Supreme Court to accept and declare in exercise of its duty to uphold our Constitution. The Anna Hazare movement is an effort to rid our country of corruption; it is a stride from Darkness to Light. In this Chapter, I wish to say a few words on these two events as my tributes to those who have contributed to bring about these two events:

one, by showing how we are governed, and the other, by showing how our brothers and sisters can respond to a clarion call for a public cause.

II

THE BLACK MONEY CASE

(i) The Structure of the Judicial Order

The judicial order in the *Black Money Case* is structured in three parts though in their logic, the parts are closely and organically integrated, and interdependent. The full portrait of the Order cannot emerge unless their inherent unifying and invigorating logic is appreciated. The Petitioners, in a public interest litigation, alleged that some persons “have generated, and secreted away large sums of monies, through their activities in India or relating to India, in various foreign banks, especially in tax havens, and jurisdictions that have strong secrecy laws with respect to the contents of bank accounts and the identities of individuals holding such accounts.” After appreciating what had been presented, the Court said in paragraph 20 of the Order:

“These matters before us relate to issues of large sums of unaccounted monies, allegedly held by certain named individuals, and loose associations of them; consequently we have to express our serious concerns from a constitutional perspective. The amount of unaccounted monies, as alleged by the Government of India itself is massive. The show cause notices were issued a substantial length of time ago. The named individuals were very much present in the country. Yet, for unknown, and possibly unknowable, though easily surmisable, reasons the investigations into the matter proceeded at a laggardly pace. Even the named individuals had not yet been questioned with any degree of seriousness. These are serious lapses, especially when viewed from the perspective of larger issues of security, both internal and external, of the country.”

(ii) The Judicial technique evident in the *Black Money Case*

Judicial process provides ‘solutions through insight’. How this ‘thought process’ operates is precisely stated in *The New Encyclopedia Britannica* (Vol. 28, p. 654): to quote –

“In striving toward insight, a person tends to exhibit a strong orientation toward understanding *principles* that might bear on the solution sought. The person actively considers what is required by the problem, noting how its elements seem to be inter-related, and seeks some rule that might lead directly to the goal. The insightful thinker is likely to centre on the problem to understand what is needed, to take the time to organize his resources, and to centre on the problem (reinterpret the situation) in applying any principle that seems to hold promise.”

In effect, the process involves the following stages:

- (i) the Right Knowledge of the Constitution and law without missing its text and context;
- (ii) the Right comprehension of the facts placed before the court playing its role as our Constitution’s watch-dog and sentinel *on the qui vive*;

- (iii) the correct determination of the problems to be judicially solved after applying critical sense, and judicial sensibility taking judicial notice of the fact that there is no presumption that governments do not speak lies;
- (iv) the identification of the law and juristic principles in the light of law and the Constitution with Justice as the non-failing sovereign guiding star; and
- (v) the application of the legal principles to the solution of the problems presented for judicial decision.

In this process, the decision-maker must not allow factors to disturb, distort, or pollute the decision-making process: I mean the factors such as 'inhibitions', 'stock-responses', 'received notions', psychic or crypto-psychic pressures or persuasions of myriad brands.

The Black Money Case is one of the rare cases in this post-1991 phase which has focused on what our Constitution provides, and what our nation needs in this era when the old 'states system' has changed, when the corporatocracy has emerged, and when the mission of our Constitution is being made to yield to neoliberal agenda, when Darkness has descended on the world to rule, and when the governments are fast becoming servile instruments of the realm of Darkness operating from secrecy jurisdictions, tax havens, foreign fora, even the cyberspace! All these have wrought an alarming situation about which I have written in Chapter 21 ('Our Constitution at work') recalling the decadent Milo's Roman Republic whose Constitution had all the features of the present-day so-called democratic constitutions. The state of affairs, described in Part II of the judicial Order in the *Black Money Case*, put the Court on its quest to discover what our Constitution says, and also to discover the Court's own constitutional duty to solve problems posed by the realities evident all around. It would be trite if I say that one of the prime determiners in this constitutional quest, and the exploration of the meaning of our Constitution, is the administrative and political culture of the time. Part I of the Order summarizes deductions from our Constitution and constitutional jurisprudence.

The Part II of the *Black Money Case* states the culpable inaction and the gross remissness on the part of our Government. The facts set forth in Part II are appraised in the light of the observations in Part I stating the mandatory constitutional perspective, and the governing norms. The prepositions of the Part I of the *Black Money Case* are drawn from our constitutional jurisprudence, and the fundamental assumptions on which our Constitution erects our polity. It is good that the Court has not considered our Constitution a mere reflecting-mirror of the neoliberal paradigm, or a mere sounding-board of the ideas crafted by Mephistophelean think-tanks in the service of Mammon operating from the dark zones of this terra firma, the Earth.

Friends, I feel overjoyed to find that the views I set forth in my numerous Petitions before the High Court and the Supreme Court, and which find expression in the Book III of this Memoir, find full support from the observations in the *Black Money Case*. I extract a few lines from the *Black Money Case*, and structure them in the following table convinced that they prove my points which I advanced in the courts, and my articles many of which you can read on my website (www.shivakantjha.org).

	The propositions judicially stated in the reasoned Order
I.	Capitalism: “Increasingly, on account of “greed is good” culture that has been promoted by neo-liberal ideologues, many countries face the situation where the model of capitalism that the State is compelled to institute, and the markets it spawns, is predatory in nature.” “Even as the State provides violent support to those who benefit from such predatory capitalism, often violating the human rights of its citizens, particularly it’s poor, the market begins to function like a bureaucratic machine dominated by big business; and the State begins to function like the market, where everything is available for sale at a price.”
II.	<p>Neoliberal Paradigm: The new States System: “They work in the interstices of the micro-structures of financial transfers across the globe, and thrive in the lacunae, the gaps in law and of effort. The loosening of control over those mechanisms of transfers, guided by an extreme neo-liberal thirst to create a global market that is free of the friction of law and its enforcement, by nation-states, may have also contributed to an increase in the volume, extent and intensity of activities by criminal and terror networks across the globe.”</p> <p>“The paradigm of governance that has emerged, over the past three decades, prioritizes the market, and its natural course, over any degree of control of it by the State”.</p> <p>“As noted by many scholars, with increasing globalization, an ideological and social construct, in which transactions across borders are accomplished with little or no control over the quantum, and mode of transfers of money in exchange for various services and value rendered, both legal and illegal, nation-states also have begun to confront complex problems of cross-border crimes of all kinds.”</p>
III.	The Role of the State: “The more soft the State is, greater the likelihood that there is an unholy nexus between the law maker, the law keeper, and the law breaker.”
IV.	The Government: FOR WHOM? FOR WHAT: “The amount of unaccounted monies, as alleged by the Government of India itself is massive..... Yet, for unknown, and possibly unknowable, though easily surmisable, reasons the investigations into the matter proceeded at a laggardly pace. These are serious lapses, especially when viewed from the perspective of larger issues of security, both internal and external, of the country.”
V.	Constitutionalism: our Constitution: “We also hold that the continued involvement of this Court in these matters, in a broad oversight capacity, is necessary for upholding the rule of law, and achievement of constitutional values.” “Modern constitutionalism ... specifies that powers vested in any organ of the State have to be exercised within the four corners of the Constitution, and further that organs created by a constitution cannot change the identity of the constitution itself”.

VI.	Supremacy of our Constitution: The judicial review even of treaties: “It is now a well recognized proposition that we are increasingly being entwined in a global network of events and social action. Considerable care has to be exercised in this process, particularly where governments which come into being on account of a constitutive document, enter into treaties. The actions of governments can only be lawful when exercised within the four corners of constitutional permissibility. No treaty can be entered into, or interpreted, such that constitutional fealty is derogated from.” “Undesirable lapses in upholding of fundamental rights by the legislature, or the executive, can be rectified by assertion of constitutional principles by this Court.”
VII.	The indifference to the State’s resources, and its effects : “In addition, such large amounts of unaccounted monies would also lead to a natural suspicion that they have been transferred out of the country in order to evade payment of taxes, thereby depleting the capacity of the nation to undertake many tasks that are in public interest.” “The question that arises is whether the task of bringing foreign funds into India override all other constitutional concerns and obligations?”
VIII.	Secrecy jurisdictions and tax havens: “Unaccounted monies, especially large sums held by nationals and entities with a legal presence in the nation, in banks abroad, especially in tax havens or in jurisdictions with a known history of silence about sources of monies, clearly indicate a compromise of the ability of the State to manage its affairs in consonance with what is required from a constitutional perspective.”
IX.	The role of the technostucture: “Life, and social action within which human life becomes possible, do not proceed on the basis of specialized fiefdoms of expertise.The result, often, is a system wide blindness, while yet being lured by the dazzle of ever greater specialization.”
X.	Corruption rules: “If the State is soft to a large extent, especially in terms of the unholy nexus between the law makers, the law keepers, and the law breakers, the moral authority, and also the moral incentives, to exercise suitable control over the economy and the society would vanish.”.
XI.	Culture of permissibility and venality: Promotes “broader culture of permissibility of all manner of private activities in search of ever more lucre. Ethical compromises, by the elite those who wield the powers of the state, and those who fatten themselves in an ever more exploitative economic sphere - can be expected to thrive in an environment marked by such a permissive attitude, of weakened laws, and of weakened law enforcement machineries and attitudes.” The worries of this Court are also with regard to the nature of activities that such monies may engender, both in terms of the concentration of economic power, and also the fact that such monies may be transferred to groups and individuals who may use them for unlawful activities that are extremely dangerous to the nation, including actions against the State.

XII.	Treaty-Making Power: “It is now a well recognized proposition that we are increasingly being entwined in a global network of events and social action. Considerable care has to be exercised in this process, particularly where governments <i>which come into being on account of a constitutive document</i> , enter into treaties. The actions of governments can only be lawful when exercised within the four corners of constitutional permissibility. No treaty can be entered into, or interpreted, such that constitutional fealty is derogated from.” (italics supplied)
XIII.	PIL and the Role of Judiciary: “Informed by contempt for the poor and the downtrodden, the elite classes that have benefited the most, or expects to benefit substantially from the neo-liberal policies that would wish away the hordes, has also chosen to forget that constitutional mandate is as much the responsibility of the citizenry, and through their constant vigilance, of all the organs of the state, and national institutions including political parties.”
XIV.	Judicial Role : “We also hold that the continued involvement of this Court in these matters, in a broad oversight capacity, is necessary for upholding the rule of law, and achievement of constitutional values..... Nevertheless, as constitutional adjudicators we always have to be mindful of preserving the sanctity of constitutional values, and hasty steps that derogate from fundamental rights, whether urged by governments or private citizens, howsoever well meaning they may be, have to be necessarily very carefully scrutinised.”
XV.	Court monitoring: “The resources of this court are scarce, ... Nevertheless, this Court is bound to uphold the Constitution, and its own burdens, excessive as they already are, cannot become an excuse for it to not perform that task. In a country where most of its people are uneducated and illiterate, suffering from hunger and squalor, the retraction of the monitoring of these matters by this Court would be unconscionable.”

III

The Black Money Case: A brief critique

It was prudent on the part of the Court to constitute the Special Investigation Team (SIT) with its duties prescribed in the judicial Order. I would draw your attention to Chapter 12 (‘Fodder Scam’) where the Court faced an analogous situation, and provided an analogous remedy differing materially on a core point that whilst the Patna High Court ignored the Special Investigation Team (SIT) appointed by the Government of Bihar to supervise the investigation of the Fodder Scam Cases, and assumed an active role itself; the Supreme Court in the *Black Money Case* has constituted the SIT to work under the eyes of two retired Supreme Court Judges. I had examined in my Memoir the issues relating to the reach and ambit of ‘Mandamus’⁵, and the relevance of the Theory of the Separation of Powers⁶, and had concluded that any criticism of the Court on these counts is misconceived. I wholly agreed with the view of the Patna High Court that the investigation by the government departments into the Fodder Scam

cases could not be possible because of the triple alliance of the top politicians in power, bureaucrats at the apex, and the strong lobby of businessmen⁷. I have already written how the Aiyar Commission⁸, and the Shah Commission⁹ had found good materials to focus on the might of those constituting, what the Shah Commission called, “the root of all evil”. This evil was the burden of song in various other reports in public domain¹⁰ which stood ignored by governments for understandable reasons. This evil overtook not only the general civil service, like the Indian Administrative Service, but even the statutory civil service like the Income-tax Department. Time has come in which the corporate lobbies call the tunes. The Shah Commission highlighted instances which brought no credit to the CBDT.¹¹ I always felt that the Circular 789 of 2000¹² had been got issued by the CBDT. I need not speculate on who got it issued. When such situations occur, the courts are duty-bound to forge ways and mechanism which can ensure performance of public duties which are the duties owed to people. We are passing through critical times.

When, as the Chief Commissioner of Income-tax, I supervised the regular submissions, before the High Court, of the Status Reports on the investigations into the Fodder Scam Cases, I had occasions to consider the objections to the judicial monitoring by its critics who were too many. They felt that the High Court had no constitutional jurisdiction to do so, and that the judicial monitoring process unwisely blurred the constitutionally prescribed roles of the three organs of the State (often called the theory of Judicial Restraints justified by invoking the Doctrine of the Separation of Powers). I felt that such objections were wholly misconceived. I have summarized my views on the Doctrine of Restraints in my *Judicial Role in Globalised Economy*.¹³ The theory, when all is said, boils down to one point: what is the role of our Judiciary under our Constitution. I had the opportunity to discuss the nature of judicial role with Dr. Bernard Schwartz, when he had come to Kolkata to deliver his Tagore Law Lectures.¹⁴ He had insightfully said:

“The Warren-Frankfurter difference in this respect ultimately came down to a fundamental disagreement on the proper role of judge in the American system.”

The realities of our days have made the Holmes-Frankfurter conflict on judicial role wholly stale and otiose. The changes wrought by Time have to be recognized. In this phase of Economic Globalisation, human rights run the risk of becoming meaningless unless our superior courts freely intervene in the economic realm, and management. Now the political realm stands subjugated to the economic realm. I must say that the view of judicial restraints that our Supreme Court had adopted in *R. K. Garg vs. Union of India*¹⁵ is now anachronistic. The courts have treated TIME as a distinguishing factor in the matters of interpretation. Lord Buckmaster said so suggestively in *Stag Line Ltd. v. Foscolo Mango & Co. Ltd.*¹⁶

“It hardly needed the great authority of Lord Herschell in *Hick v. Raymond and Reid* to decide that in constructing such a word it must be construed in relation to all the circumstances, for it is obvious that what may be reasonable under certain conditions may be wholly unreasonable when the conditions are changed..”

And in *McDowell's Case*, Justice Chinnappa Reddy referred to the observations of Lord Roskill in *Furniss v. Dawson*:

“The error, if I may venture to use that word, into which the courts below have fallen is that they have looked back to 1936 and not forward from 1982.”

I have mentioned in Chapter 26 of this Memoir, the view of Judge Manfred Lachs how law must respond to new realities wrought by the facts of nature or new technology.

I have always considered that our superior courts have ample jurisdiction to ensure that in exercise of Treaty-Making Power, our Government is not competent to transgress constitutional limitations. I have already told you in Chapter 21 of this Memoir that the Delhi High Court accepted this view on my Writ Petition in *Shiva Kant Jha v. Union of India*¹⁷ (see Chapter 21 Part III). Even the Central Government admitted this position in its Counter-Affidavit¹⁸. The *Black Money Case* is a bold and emphatic assertion of this view¹⁹. The effect of all this is that our Government's Circular to the UNO, saying that in India treaty-making power is under no constitutional restraints²⁰, becomes wrong and misconceived, hence *non est*. Our superior court possesses the jurisdiction on treaties to examine if they transgress constitutional limitations. This proposition has been emphatically stated in this *Black Money Case*.²¹

While pursuing the PILs before the High Court and the Supreme Court, I noticed a maddening craze on the part of our Government for foreign exchange and foreign investments for which passionate paeans were sung by the Attorney General and the Solicitor General with a refrain that without these our country would be trapped in financial crisis. I had pleaded before the Delhi High Court that the Income-tax Act, 1961, was to collect revenues for our Consolidated Fund, not to facilitate obtaining foreign exchange etc. I have told you in Chapter 23 how law was used for extraneous purposes under circumstances which brought no credit to our Government. The Delhi High Court saw through the game, and rejected that dressed-up pleas. The Delhi High Court found as a matter of fact [2002] 256 ITR 563:

“Having regard to the globalization of economic policy adopted by India relaxation on regulations and controls on direct foreign investment took place in 1992 wherefore guidelines have been announced. The said Convention, as would appear from its preamble, was entered into “for the encouragement of mutual trade and investment in India and Mauritius”.

It rejected the Government's contention, and observed in pregnant words:

“It is contended by the learned Solicitor General that by reason of the said treaty a political arrangement has been made. The same, in our opinion, would run counter to the provisions of section 90 of the Indian Income-tax Act. Political expediency cannot be ground for fulfilling the constitutional obligation.”

I have already told you in Chapter 23 how my view, and that of the Delhi High Court, was not accepted by our Supreme Court in *Azadi Bachao Andolan*. Hon'ble Supreme Court in *Azadi Bachao* approved the neoliberal thought by quoting 3 long paragraphs from a book written by a tax haven advisor! I wish you re-read Harold Pinter's quote mentioned in Chapter 21. I kept on asserting

my stand in other PILs. But my view merited no acceptance. It is great that now our Supreme Court in this *Black Money Case* says, through a rhetorical question in the context of our Constitution, that the concern to bring foreign funds into India cannot override all other constitutional concerns and obligations. What I had asserted in the context of the Indo-Mauritius Tax Treaty Abuse Case, the Supreme Court has recognized in the context of our Constitution.

But I am sorry to submit that our Supreme Court in *Union of India v. Azadi Bachao*²² went wrong by adopting the view of Frank Bennion in saying that the tax treaties are “indirect legislation”. In India, treaties are done entirely through the opaque administrative process, and suffer from gross ‘democratic deficit.’²³ In other countries treaties receive some measure of Parliamentary approval.²⁴ The Indian tax treaties cannot be elevated to the level of ‘indirect enactment’. Bennion must be contemplating the Western major states where even the tax treaties are legislated. It seems, the Supreme Court missed this point again in the *Black Money Case* where it quoted Bennion’s view on which *Azadi Bachao* had erroneously relied.

IV

Judicial Observations on Article 26(1) of the Indo-German Tax Treaty

The Court’s small step on the Article 26 of the Indo-German tax treaty is a big leap in our jurisprudence that removes a lot of cobwebs, and settles certain seminal principles pertaining to the law of Treaties.

But before I come to the Hon’ble Court’s interpretation of the Article 26, I would refer to the Government of India’s core reasons for not disclosing the details about those keeping their black wealth amassed in the foreign banks. The Hon’ble Court summed up our Government’s pleas thus : “(i) that they secured the names of individuals with bank accounts in banks in Liechtenstein, and other details with respect to such bank accounts, pursuant to an agreement of India with Germany for avoidance of double taxation and prevention of fiscal evasion; (ii) that the said agreement proscribes the Union of India from disclosing such names, and other documents and information with respect to such bank accounts, to the Petitioners, even in the context of these ongoing proceedings before this court; (iii) that the disclosure of such names, and other documents and information, secured from Germany, would jeopardize the relations of India with a foreign state; (iv) that the disclosure of such names, and other documents and information, would violate the right to privacy of those individuals who may have only deposited monies in a lawful manner; (v) that disclosure of names, and other documents and information can be made with respect to those individuals with regard to whom investigations are completed, and proceedings initiated; and (vi) that contrary to assertions by the Petitioners, it was Germany which had asked the Union of India to seek the information under double taxation agreement, and that this was in response to an earlier request by Union of India for the said information.”

As to (i) and (vi) *supra*, the Court felt no need to go deep as (i) it found on the proper reading of the Indo-German DTAA that there was nothing to proscribe our Government from disclosure in the judicial proceeding, rather it specifically permitted such disclosure in the judicial proceeding; and also because the

Constitution of India casts certain mandatory duties which might require such a disclosure in the judicial proceeding. In this connection, I consider it proper to mention three more points which also deserve to be noted. The Government of India did not produce before the Hon'ble Court the preparatory materials of the Indo-German DTAA to support its point, even to enhance probability in favour of our Government's plea. Nothing was advanced to show that the *consensus ad idem* at the root of that treaty had such an understanding as controlling and determining the ambit of bilateral obligations. Besides, Germany did not intervene before our Supreme Court which option that country had.²⁵ The transactions in the banks of Liechtenstein could not come under the eye of the Indo-German DTAA. The Hon'ble Court limited its perspective with great practical prudence: it said:

'For the purposes of determining whether Union of India is obligated to disclose the information that it obtained, from Germany, with respect to accounts of Indian citizens in a bank in the Principality of Liechtenstein, we need only examine the claims of the Union of India as to whether it is proscribed by the double taxation agreement with Germany from disclosing such information.'

'Further, and most importantly, we would also have to examine whether in the context of Article 32 proceedings before this court, wherein this court has exercised jurisdiction, the Union of India can claim exemption from providing such information to the Petitioners, and also with respect to issues of right to privacy of individuals who hold such accounts, and with respect of whom no investigations have yet been commenced, or only partially conducted, so that the State has not yet issued a show cause and initiated proceedings.'

The Court closely examined the last sentence of paragraph 1 of Article 26 (1): "They may disclose the information in public court proceedings or in judicial proceedings." The last sentence in Article 26(1) of the OECD Model is independent and additive in effect. It has the effect of providing a new norm permitting disclosure of information in the judicial proceedings. As the expressions indicate, the *consensus ad idem* between the contracting parties, it must be read as not prohibiting the disclosure of information in judicial proceedings. We know that some OECD commentators and writers have held different views as they have failed to see the difference between the structure of the words in the OECD Model and the UN Model of the DTAA. We cannot see an ambiguity where it is not present.

In Chapter 26 (Segment V), I have considered the reach of a DTAA in different situations. This cannot apply to income that is not within its scope. It cannot be invoked to help the crooks and the criminals to hide their fruits of crimes, and their shady deals causing wrongful gains to themselves and wrongful loss to others. I have shed light on the operative facts of our world in the Chapter 26 ('The Realm of Darkness: the triumph of Corporatocracy'). I am happy that my views on those points do not require a change in the light of what our Supreme Court has said in *Ram Jethmalani's Case*. Our Supreme Court has aptly said in paragraph 58 of the Order in this Case:

'The proceedings in this matter before this court, relate both to the issue of tax collection with respect to unaccounted monies deposited

into foreign bank accounts, as well as with issues relating to the manner in which such monies were generated, which may include activities that are criminal in nature also. Comity of nations cannot be predicated upon clauses of secrecy that could hinder constitutional proceedings such as these, or criminal proceedings.'

Two other points that our Government advanced before the Hon'ble Court were noted, but were rightly ignored by the Hon'ble Court. Our Government was wrong in thinking that it could support its stand by invoking the norms of international relations, or comity of states. The Hon'ble Court rightly ignored the Government's argument with reference to the norms pertaining to the Comity of nations. When we think of tax treaties, we must not forget what Viscount Simonds said in the leading case of *Colloco Dealings Ltd. v. IRC* [1961] 1 All ER 762 at 765:

"...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."

A cardinal principle of our jurisprudence (that we share with England) is that it is the Hon'ble Court that is the ultimate decision-maker in the matters of what sort of norms (their ambit and reach also) of International Law are to be domestically recognized.²⁶ It is not difficult to comprehend what might have worked in the Court's judicial consciousness that made it dub our Government's strategy 'disingenuous' (see para 56). The epithet is well deserved. 'Disingenuous' is defined by the *Shorter Oxford Dictionary* to mean 'Insincere, lacking in frankness or honesty; fraudulent'. H.W. Fowler's *Modern English Usage* interprets it to mean 'having secret motives, lacking in candour; insincere' (said of persons or their actions), whereas *ingenuous*, its antonym, means 'innocent, artless, frank'. What a comedown for our Government!

V

Court's Jurisdiction on Treaties

Our Constitution has established a democratic and republican polity where all the organs of the State have been created by the Constitution with *granted* powers to be exercised both at the international plane and in domestic sphere in terms of the *constitutionally mandated* discipline to achieve the mission sacred at the heart of our Constitution. I had submitted this before the Hon'ble Delhi High Court in *Shiva Kant Jha's Case* (refer to pp. 294-297 of the Memoir), and the Court seems to have approved it. The neoliberals and the MNCs, and the global plutocrats have found in 'international treaties' a powerful device that can be adopted to bend, or break, the frontiers of the domestic space, and the 'soft structure' of a political society as constitutionally conceived. *Ram Jethmalani & Ors. v. Union of India & Ors.* [2011] 8 SCC 1 is a great decision where our Supreme Court has seen through the conspiratorial strategy of the corporate globalists, and has stated certain constitutionally mandated principles which can sustain our Constitution. These observations led me to reflect on our Constitution and the genius of our democratic republic in the Postscript VI ('Reflections on the Constitution of India : Ambit of the Constitutional Restraints on the Treaty-Making Power')

In *Ram Jethmalani's Case*, the Hon'ble Supreme Court examined 'whether in the context of Article 32 proceedings, wherein this court has exercised its jurisdiction, the Union of India can claim exemption from providing requisite information to the Petitioners on the account of the constraints of the Indo-German DTAA. It also examined the ambit of the right to privacy of individuals with respect of whom no investigations had yet been commenced, or 'only partially conducted, so that the State has not yet issued a show cause and initiated proceedings.' The Court's observations on the point of its jurisdiction are clear, categorical and comprehensive with which our jurisprudence goes well. I quote some of the seminal observations that we all understand well, and we do not require the aid of any gloss put on the terms of treaties by the so-called globalists working for the IMF, the World Bank, the MNCs, and the predatory capitalism in the world for whom hired bodies are out to create a new international law drawing a lot from the ideas of the imperialists of the 18th and the 19th centuries. I would revisit this point in Chapter 29 ('Portrait of our Time') see pages 485-500.

Some of the judicial observation which can neither perish nor go stale till our society remains dedicated to our constitutional mission (see pages 286-293 of the Memoir), are stated by the Hon'ble Court thus:

- (i) 'The government cannot bind India in a manner that derogates from Constitutional provisions, values and imperatives.'
- (ii) 'Modern constitutionalism, to which Germany is a major contributor too, especially in terms of the basic structure doctrine, specifies that powers vested in any organ of the State have to be exercised within the four corners of the Constitution, and further that organs created by a constitution cannot change the identity of the constitution itself.'
- (iii) 'The basic structure of the Constitution cannot be amended even by the amending power of the legislature. Our Constitution guarantees the right, pursuant to Clause (1) of Article 32, to petition the Supreme Court on the ground that the rights guaranteed under Part III of the Constitution have been violated. This provision is a part of the basic structure of the Constitution.'
- (iv) 'In order that the right guaranteed by Clause (1) of Article 32 be meaningful, and particularly because such petitions seek the protection of fundamental rights, it is imperative that in such proceedings the petitioners are not denied the information necessary for them to properly articulate the case and be heard, especially where such information is in the possession of the State.'
- (v) 'The burden of asserting, and proving, by relevant evidence a claim in judicial proceedings would ordinarily be placed upon the proponent of such a claim; however, the burden of protection of fundamental rights is primarily the duty of the State.'
- (vi) 'The State has the duty, generally, to reveal all the facts and information in its possession to the Court, and also provide the same to the petitioners. In

proceedings such as those under Article 32, both the petitioner and the State, have to necessarily be the eyes and ears of the Court.’

- (vii) ‘There is a special relationship between Clause (1) of Article 32 and Sub-Clause (a) of Clause (1) of Article 19, which guarantees citizens the freedom of speech and expression. The very genesis, and the normative desirability of such a freedom, lies in historical experiences of the entire humanity: unless accountable, the State would turn tyrannical.’
- (viii) ‘Withholding of information from the petitioners by the State, thereby constraining their freedom of speech and expression before this Court, may be premised only on the exceptions carved out, in Clause (2) of Article 19.’

VI

The Court ordered

The full thrust of the judicial order in *Ram Jethmalani’s Case*, can be clearly understood from the Operative Order that the Court passed. The various directions contained in the order deserve to be marked in order to appreciate the Order, and also to acquire critical insight into the stream of events they were expected to shape. The judicial directions have been thus summed up in Para 79 of the Court’s Order: The Court ordered that

- ‘(i) The Union of India shall forthwith disclose to the Petitioners all those documents and information which they have secured from Germany, in connection with the matters discussed above, subject to the conditions specified in (ii) below;
- (ii) That the Union of India is exempted from revealing the names of those individuals who have accounts in banks of Liechtenstein, and revealed to it by Germany, with respect of who investigations/enquiries are still in progress and no information or evidence of wrongdoing is yet available;
- (iii) That the names of those individuals with bank accounts in Liechtenstein, as revealed by Germany, with respect of whom investigations have been concluded, either partially or wholly, and show cause notices issued and proceedings initiated may be disclosed; and
- (iv) That the Special Investigation Team, constituted pursuant to the orders of to-day by this Court, shall take over the matter of investigation of the individuals whose names have been disclosed by Germany as having accounts in banks in Liechtenstein, and expeditiously conduct the same. The Special Investigation Team shall review the concluded matters also in this regard to assess whether investigations have been thoroughly and properly conducted or not, and on coming to the conclusion that there is a need for further investigation shall proceed further in the matter. After conclusion of such investigations by the Special Investigation Team, the Respondents may disclose the names with regard to whom show cause notices have been issued and proceedings initiated.’

B

THE *BLACK MONEY CASE*: OUR INSTITUTIONS WEIGHED AND FOUND WANTING

“You have been weighed in the balances, and found wanting.”

Daniel 5:25-28

(i)

The Union of India moved an Application for Recall (I.A. No. 8 of 2011) before our Supreme Court seeking modification of the order passed in the *Ram Jethmalani's* aforementioned Case.

It is worthwhile to keep in mind some material points discussed in the Supreme Court's order against which the Union of India moved this Application for Recall. Our Supreme Court had criticized the Union of India for its inaction (and remissness) in taking steps to recover the large sums of money deposited by Indian citizens in foreign banks, in particular, in the Swiss Banks. The Writ Petitioners had sought certain specific reliefs: (i) directions for disclosure of information gathered by government agencies; (ii) 'orders from time to time to ensure that the outcome of the investigations are not suppressed, or even unduly delayed'; and (iii) suitable directions to the Government "to apply to the foreign banks, more particularly the UBS Bank, for freezing the amounts in the said foreign banks, particularly, the UBS Bank which as stated above is holding *inter alia*, the Khan, and Tapurias' assets."

In Part 'A' of this Chapter, I have compiled the general propositions stated by our Supreme Court in *Ram Jethmalani's* Case. In my considered view they constitute the perspective under which the Hon'ble Court had issued directions in its order. Though the Court's Order was divided into three parts, its two parts are of great importance. These two parts are summarized in the Hon'ble Court's Order [reported in (2011) 9 SCC 751] on the Government's said Application for recalling the order that had been passed: to quote —

"The first part of the order dealt with the alleged failure of the Central Government to recover the large sums of money kept in such foreign banks and in tax havens having strong secrecy laws with regard to deposits made by individuals. The second part dealt with the unlawful activities allegedly funded out of such deposits and accounts which were a threat to the security and integrity of India. The amounts deposited in such tax havens in respect of one Shri Hassan Ali Khan and Shri Kashinath Tapuria and his wife Chandrika Tapuria were alleged to be in billions of dollars in UBS Bank in Zurich alone. Income Tax demands were made to Shri Hassan Ali Khan for Rs. 40,000 crores and a similar demand was served on the Tapurias amounting to Rs.20, 580 crores. On being convinced that, in the absence of any known source of income, the large sums of money involved in the various transactions by Hassan Ali Khan and the Tapurias were the proceeds of crime, which required a thorough investigation, this Court felt the necessity of appointing a Special Investigation Team to act on behalf and at the behest of the directions of this Court."

Considering the facts, and the various lapses and delay in conducting the investigation in such cases, the Supreme Court, after stating broad principles many of which are quoted in Part 'A' of this Chapter, reconstituted the Government's High Level Committee to make it a Court appointed SIT (Special Investigation Team). This SIT was to be headed by two former eminent judges of the Supreme Court: Justice B.P. Jeevan Reddy as the Chairman; and Justice M.

B. Shah as the Vice-Chairman, later on changed to Justice M.B. Shah as the Chairman, and Justice Arijit Pasayat as the Vice-Chairman of the SIT consisting, in addition, 11 members from the top investigative and enforcement agencies of our country. The Court directed that the said SIT was to “function under their guidance and direction”.

The SIT was to be “charged with the responsibility of preparing a comprehensive action plan, including the creation of necessary institutional structures that could enable and strengthen the country’s battle against generation of unaccounted monies, and their stashing away in foreign banks. The SIT was to ‘report and be responsible’ to the Supreme Court and it was under duty to keep the Court informed of all major developments by filing periodic status reports. This body was required to follow the directions of the Court, if any ever made. All public authorities were bidden to extend all cooperation and assistance necessary for that body to work. The sweep of direction, made by the Court was wide and comprehensive as it directed the Union of India, and where needed, even the State Governments, to “facilitate the conduct of the investigations, in their fullest measure”, and they were required to provide “all the necessary financial, material, legal, diplomatic and intelligence resources” whether such investigations or portions of such investigations were to be done “inside the country or abroad”. The Court empowered the SIT to “investigate even where charge-sheets have been previously filed; and that the Special Investigation Team may register further cases, and conduct appropriate investigations and initiate proceedings, for the purpose of bringing back unaccounted monies unlawfully kept in bank accounts abroad.”

At the threshold, objections were raised to the said Application contending that it was not maintainable as it was, in effect neither an appeal, nor review. After hearing these preliminary objections for several days, the Hon’ble Court (*Coram*: Altamas Kabir, Surinder Singh Nijjar, JJ.) could not decide the matter finally as the two Hon’ble Judges reached opposite conclusions on the threshold question as to the very maintainability of the said Application. On Sept. 23, 2011 the Hon’ble Court held: “Since we have differed in our views regarding the maintainability of I.A. No. 8 of 2011 filed in W.P. No. 176 of 2009 let the matter be placed before Hon’ble the Chief Justice of India, for reference to a third Judge.” I understand no order, consequent to this judicial direction, has yet been made.

I understand that very recently the Chief Justice of India has constituted the Bench consisting of 3 Hon’ble Judges to hear the aforementioned Petition for Recall (I.A. 8). Let us see what happens.

(ii)

Our Government has seldom found wisdom in Shakespeare’s well-known saying in *Henry VI* (III.ii.33): ‘Delays have dangerous ends.’ The ‘carefreeness’ and the unreasonable delay on the part of the organs of our state might jeopardise the prospect of truth ever coming out. Besides, the present world in which money games are played by the High Finance, is a strange brave world where a carnival of fraud and deception can go on well. Money has become

*“Hot Money” Business Week, March 20, 1995 quoted by David Korten in *When Corporations Rule the World* p.185.

abstraction that can move from heaven to earth, and earth to haven, by a mere stroke on the computer keyboard. Its movements are difficult to watch; its ways are difficult to comprehend. All the investigative agencies are now pitted against the challenges posed by the fast changing technology, and financial wizardry.

The raw realities of our day demand us to catch the black cat hidden in the dark room. Gathering information about the crooks' hidden wealth abroad is a daunting problem. At times I feel its ways are as mysterious as of Macavity's. T.S. Eliot writes about this cat:

Macavity's a Mystery Cat: he's called the Hidden Paw - For he's the master criminal who can defy the Law. He's the bafflement of Scotland Yard, the Flying Squad's despair: For when they reach the scene of crime - Macavity's not there!

(iii)

It is appropriate to appreciate that '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.' It is time for us to recognize that the emerging Corporatocracy is fast becoming the shadow world government, a point that has been brought out with discernment in the *Business Week**:

"In this new market ... billions can flow in or out of an economy in seconds. So powerful has this force of money become that some observers now see the hot money set becoming a sort of shadow world government—one that is irretrievably eroding the concept of the sovereign power of nation state."

It is great that our Hon'ble Supreme Court has given very sound and comprehensive mandate to the SIT it has appointed. If the mandate is faithfully carried out, India would evolve, for the first time, with the principles governing the jurisprudence of investigation involving transborder data flows and transactions. Never had our Court ever issued directions so practical and insightful as in this case. These directions would surely help us in our battle against generation of unaccounted monies, and their stashing away in foreign banks; and would also facilitate our bringing back unaccounted monies unlawfully kept in bank accounts abroad. In effect, the instructions to the SIT require this body to explore all the investigative possibilities to the ultimate confines drawing on the latest developments in the information technology. I think this would require the study of the 'computer program' which is used by the crooks to transform money into abstractions, and is used by the professional service providers to transmit money from realms to realms both on the earth and in the virtual space. It is time when it is essential to constitute a core segment of investigators in the investigative structure who can develop software to keep track money leapfrogging from jurisdictions to jurisdictions, from the earth to cyberspace. Such pursuits would require a mechanism to do the needful in foreign jurisdictions, and would help us invoke the legal systems of foreign countries by exploring their laws. Our investigators would endeavour to acquire skill to use the innovative computer information technology that even helps the crooks to backdate transactions to any point of time, past or future. An investigator, like a lawyer or a poet, must possess that imaginative faculty to see the gone past and the looming future by observing the present as it unfolds itself before his mind's eye.

(iv)

Our Apex Court's sublime passion, so well expressed in the judgment, would just be a mere lyric to our ears if the cause is allowed to get lost on account of delay, contrived delay, and creative delay. If such things are allowed to take place, we might find someday that the entire pursuits, by the petitioners, and of the Court, turned out all futile. Perish the thought: I have certain apprehensions. Perhaps we will be told that all the papers, from which the stories of the crafts of the crooks had emanated, were, in fact, a bunch of forged papers; or that Switzerland had never known, never heard of Hassan Ali, or his friends. They may come to be dismissed as just 'airy nothing' in the void. Prudence counsels us to consider: of what use is the industry to squeeze the structure of the honeycomb when the honey has been allowed to be eaten by the honey bees, or when the honey of the comb is already extracted. Those who feel depressed can pep themselves up repeating *Satyameva Jayate* (Truth always triumphs). Mysterious are ways of the persons in power: mysterious are the ways of governments. We all know that in our country things are so managed that crooks are hardly seen, rarely caught, and seldom punished. I wish our courts keep in mind, when taking the Executive Government to task, their own institutional frailty to which C.K. Allen had drawn our attention in these words:

"In *Liversidge v. Anderson* the majority of the Lords felt the same confidence in the wisdom and moderation of executive officials; there is, apparently, something in the tranquil atmosphere of the House of Lords which stimulates faith in human nature. The fact is, however, that nobody on earth can be trusted with power without restraint.." [Allen, *Law and Orders* 3rd ed. p. 297].

C

THUS SPAKE THEIR LORDSHIPS

I had written the content of section B of the Part I of this Chapter sometime in February 2014. I had requested Shri Jethmalani to make his comments on my exposition on the status of the case before the Hon'ble Court. On March 26, 2014, a bench of three Hon'ble Judges of the Supreme Court dismissed the Government's plea for recalling its 2011 order setting up a special investigation team (SIT) to probe into all cases of black money. The Hon'ble Court was not impressed by our Government's arguments in course of the hearing: (i) that the setting up of the SIT, under two eminent former Hon'ble Judges of the Supreme Court, was unnecessary as there was already a mechanism in place to deal with the issues of black money; (ii) that foreign countries and their banks might not cooperate with the SIT as they might 'claim sovereign immunity'; (iii) that many other efforts were being made to deal with the menace of BLACK MONEY.

The point (i) is precisely the point that the Union of India, and the State of Bihar, had advanced in the Fodder Scam Monitoring case (see Chap. 12). The point (ii) is not relevant because the banks of Liechtenstein and Switzerland, whilst transacting with their customers, were operating in the sphere of their non-sovereign activity (*acta jure gestiones*), not in the sphere of their sovereign

activity (*acta jura imperii*). In my view, no aid can be had from the provisions of the VCDR (Vienna Convention on Diplomatic Relations). As to point (iii), effective actions were nowhere seen to prove our Government's assertions.

In my view, the Double Taxation Avoidance Agreements cannot be invoked to refuse the disclosure of information about ill-gotten gains, unless the gains are analytically income. You may read Chapter 26 ('The Problem of the Black Wealth stashed in Foreign Jurisdictions') where I have dealt with some of those problems which our Government considered it proper to submit before the Court. Besides, the supply of the relevant information against the crooks cannot be denied on the ground that the information was derived from some stolen data. It is well established that even an illegally obtained evidence/material can be used [see *Pooranmal v DI* 97 ITR 505; *Sarkar on Evidence* p. 83(4th. ed.); for the US view see: *Mapp v Ohio* (367 U.S. 643 (1961), and Bernard Schwartz, *Some Makers of American Law* Chap. 6]. The information about the persons holding black money in the LGT bank of Liechtenstein, though stolen from the bank by an erstwhile employee, could be utilised to discover black money.

Now let us think how the SIT should work. For the success of the SIT, what is needed most is the WILL to act on the part of our Government. We should consider how the USA, the U.K., and Germany substantially succeeded in obtaining information about their nationals who had evaded their laws to amass their black money abroad. But these countries succeeded because they could show strong political will to get back the black money stashed by their nationals in the foreign banks. They showed both diplomatic astuteness, and exercised strong diplomatic pressure. They asserted with sincerity and with strength. How such things were done deserve a study. A lot of materials are available on the internet for us to study and reflect. We all know well the strategies the crooks adopt in pursuing their ends. It is the same plot illustrating the entente cordiale of Fraud and Collusion that the financial crooks have been accustomed to adopt over the last 400 years. Charles Mackey's *Extraordinary Popular Delusions* (1841) deepens our understanding of how the crooks work (see for its summary pp. 402-3, & 497 of this Memoir). Can't we too strive with verve, vigour, and diplomatic skill to acquit ourselves well in exposing them? Shall we be able to discover our Bernard Madoffs and many others of the same feather? Shall we be able to discover the trails of transactions where the nexus between the beneficial owner and his wealth is concealed? This trade has made Liechtenstein, a country of about 36000 souls, achieve the highest gross domestic product per person in the world !

It is good that the Supreme Court has directed even the 'diplomatic and intelligence' authorities to render assistance to the SIT in discharge of its work. We have seen how our diplomatic mission had betrayed our trust when Mauritius was transforming itself as a tax haven (see pp. 353-354). It is good that the SIT would build the structure, with various functional segments, for effective and comprehensive operations. It would build the 'soft' and 'hard' structures of the architecture of investigation, with customised computer programmes, to crack the shells of secrecy, and track the trails of wired transmissions of the tainted wealth, (even if digitized and transacted through the virtual world), by looking

through the ways in which the transmission, stashing, and even layerings (to bring such wealth back) of such wealth are done. I had discussed some of the noxious strategies adopted to achieve such ends in my *Judicial Role in Globalised Economy* (2005), mainly in its Chapter 2. I had drawn my materials and insight from my researches I made for conducting the PIL (see Chapt. 23 of this Memoir). You can read, on www.shivakantjha.org, the whole text of the book. It had been written 8 years back. Over these years the craft of concealment, and the technique of manipulation have become more challenging on account of the new strides in the electronic technology, and the aggressive wizardry of the financial experts.

The SIT has a broad brief, and a difficult task. If it succeeds, it will be our great achievement; if it fails, the Republic of India would have to reflect whether it is, or is not, a failed state.

[FOR MORE ON THE 'SIT ON BLACK MONEY', SEE POSTSCRIPT IV]

PART II

ANNA HAZARE MOVEMENT (Written on August 26, 2011)

When Comus and Kurtz²⁷ rule from the Realm of Darkness, 'corruption' waxes wide and deep enmeshing our public institutions. Whilst I write these lines, our great Anna Hazare, is on the 11th day of his fast against 'corruption' to rid our system of the crudities of predatory capitalism. He has his point, and the whole nation is greatly responsive to his call. How this movement would move and shape, I cannot say. But the protest has gone to some extent above the point 'B' on the scale of revolution that I have drawn up in Chapter 22. I wish our Government is blessed with a modicum of wisdom to adopt a right course to deal with the matter. This apprehension is always a matter of worry as most governments seldom learn from history, and rarely read the text that is written on the wall.

I had witnessed, and suffered, the Quit India Movement of 1942; I had watched, while at Patna, the JP Movement against the Emergency; and now I see Anna's movement, and our people's response to his call. In my assessment, the present movement is *sui generis*. The Quit India Movement was against the British rule in India; the JP Movement was against Mrs. Indira Gandhi's arbitrary rule in breach of Constitution; but the present movement is against the operators from the Realm of Darkness, the MNCs, the corrupt governments, bureaucrats, and corrupt politicians, the very Axis of Evil, the very 'Root of All Evil'. What is happening in our country is great. Whilst 'corruption' has bedeviled our nation over all the decades after our Independence, this evil has grown so much over the recent years that our whole society, our whole system, our whole culture, have come to tread on the path of ruin. Our resources are mercilessly extracted, our environment is cruelly milked, and our national identity is being destroyed. Anna's movement, massive though it is everywhere in our country, is wholly peaceful the like of which our history has not seen. But I wish the wielders of public power get the wisdom to read the message that this wide

public response conveys. The whole movement is peaceful, but this lull and peace must not be misread. I hope things do not come to such a pass when Krishna is compelled to put aside His flute, and allow His *Sudarshnachakra* to come to swirl and revolve above his finger awaiting instruction to operate as the supreme weapon of creative destruction. Gandhi insinuated to this in *Young India* of December 5, 1928 in a passage I have quoted in Chapter 20 of this *Memoir*. Even Anna, a Gandhian outright, said the same by saying in his address to the nation in the evening of August 15, 2011 that time might come to treat Shivaji as our role model.

In my view our nation would remember Anna Hazare not for the Jan Lokpal Bill, or as the crusader against corruption (though great this endeavour surely is), but for becoming a great catalytic agent to draw together our people's response for nobler values. It is amazingly delighting to see how an earthen lamp has lit lakhs and lakhs earthen lamps of this nation fostering hope that someday we would surely march from Darkness to Light. Despite the instruction of Article 51A(b) of our Constitution ('to cherish and follow the noble ideals which inspired our national struggle for freedom'), we have allowed our country to become what our Supreme Court, in moments of rare insight, has portrayed in the *Black Money Case*. Lakhs of lamps are now lit, thanks to this Anna phenomenon. Our people, I think on reading the text of the passing moments, shall have assertive roles to play in future; (i) if the heart of our Constitution is, perish the thought, gouged out for sale on some Commodities Stock Market; (ii) if our culture and tradition are polluted, or are hurled into the neoliberal gas-chamber; (iii) if Bharat comes to be sacrificed for the India Incorporated, or for the global oligarchy of the plutocrats, exploiters, and bandits striving to establish corporatocracy and the rule of market.....Anna would have gone, but these lakhs and lakhs earthen lamps would burn in the temple of Bharat Mata; and lakhs and lakhs of our countrymen would follow the Buddha to become: "*Appa Dipo Bhabha*" (be thou thy own lamp). Let everyone never forget that whilst a lamp sheds light, its flame can burn and destroy any *Sone-Ki-Lanka*.

In my considered view, Anna would experience greater odds in course of his struggle to free our society from corruption than what Mahatma Gandhi had experienced to free our country from the British yoke, or what Jayaprakash Narayan had faced in the struggle against Emergency. I cannot commit the folly of comparing Anna with Gandhi, or Jayaprakash Narayan (JP) But the problems they had faced were easier for many reasons. To some extent, Anna's movement reminds us of the struggle Jesus had carried on against the powerful Herodian establishment's 'evil or oppressive economic power', and had worked against the unjust social and economic order of the time. The beneficiaries of that corrupt system considered Jesus 'political' and 'social' rebel (see Chapter 20 of this Memoir) sufficiently dangerous to the persons in power. Anna's struggle is even more difficult. The gains of corruption are enjoyed by the persons in power, and the corporations who cast their spell on the way we live and think. Anna's fight against corruption seems to me more difficult than any struggle for any public cause about which we have read in recent history. All the beneficiaries, of 'corruption' are bound to flock together from all the spheres to devise strategies, and to hone their Mephistophelian logic, to protect their illicit gains. They know how to collapse their differences to promote their secret agenda. But

let us see what happens in this land of Krishna and Gandhi, Shivaji and Laxmibai. We believe that, in the end, *Dharma* is always triumphant, Justice always prevails, and Truth always wins. Our society never lost hope, and it shall never lose it in future.

Note : The topic continued in the Postscript I to this Memoir.

NOTES AND REFERENCES

1. Ronald Dworkin, *Taking Rights Seriously* pp. 204-5 [quoted by Peter Watson, *A Terrible Beauty* p. 645]
2. Shakespeare, *Macbeth* (Act I scene iii)
3. *Shiva Kant Jha & Anr v. Union of India* (2002) 256 ITR 563 (Del.); *Union of India And Another v. Azadi Bachao Andolan & Anr.* (2003) 263 ITR 706 -SC ; Curative Petition © D.No 10569 Of 2004; Writ Petition (Civil) No. 334 of 2005; W.P.(C) No.445/2006; CWP No.1357/2007 of the Delhi High Court; Special Leave to Appeal in the Supreme Court in (Civil) No(s).19751/2010. Also see the texts of pleadings at www.shivakantjha.org
4. "Congress, he judged, was unwilling and/or incapable of righting these wrongs. Something more was needed, and that 'something,' he felt, could be provided only by the courts.It was not a popular verdict, at least among whites. Myrdal's conclusions were even described 'sinister'" Peter Watson, *A Terrible Beauty* p. 391.
5. See Chapter 12 of this *Memoir*.
6. See Chapter 12 of this *Memoir*. In my *Judicial Role in Globalised Economy* p. 179 (2005), I summarized my ideas thus :
'Sir William Holdsworth in *Halsbury's Laws of England* states that the doctrine of separation of powers:
"Has never to any great extent corresponded with the facts of English Government...it is not the case that legislative functions are exclusively performed by the Legislature, executive functions by the executive, or judicial functions by the judiciary."
Even when Montesquieu had written his *Spirit of Laws*, he had committed mistake in comprehending that in England there was any clear-cut Separation of Powers. As a defender of liberty, he erected his erroneous idea to see that his despotically governed France brought about a change towards freedom. Ogg & Zink, in their *Modern Foreign Governments* observe (at p. 39) :
"Today, the principle of separation finds only limited application, the one point at which it really prevails being with respect to judiciary."
The position of judiciary is, thus, *sui generis*. The U.S. Constitution or Australian Constitution vested the legislative, executive, and judicial powers in the three separate organs of the State. But even in these countries the rigidity of the doctrine has been substantially softened as a response to the demands of the times. This power the Court derives from the very grammar of its existence under our Constitution, and from the terms of its judicial oath."

7. See pp. 166-167
8. Chapter 10
9. Chapter 11 p. 165, 176-177
10. Pp. 176-177
11. P. 154-155, 235
12. See Chapter 23 of this Memoir. How could the Income-tax Department ever issue a Circular which helped (a) promote extraneous purpose of promoting the interests of the FIIs and the MNCs; (b) make a trespass on the legislative field by creating certain conclusive presumptions; (c) build and ensure the continuance of an opaque system impervious to public gaze by going counter to the basics of an open and transparent political society; and (d) promote Fraud and Collusion on massive scale through the sinister stratagem of Treaty Shopping.
13. 'It is the time to collapse distinction between the human rights situations and the economic situations. "The hydra of the economic globalization has so enmeshed us that our human rights are exposed to great jeopardy. Now it has become the greatest constitutional duty of our Supreme Court to see that our human rights granted to us under the Articles 14, 19, 21, and 25 are not lost on any specious pleading, for any reason whatever. ... The present tsunami of circumstances unleashed under the architecture of economic globalization is a jeopardy *sui generis*, a like of which never occurred in the past. Our superior courts are under the constitutional oath to uphold the Constitution, even if the Executive or the Legislature betrays its cause. This author has referred to a strange syndrome, which is co-eval with the economic globalization: the gradual subordination of the political realm to the economic realm. The Constitution represents the supremacy of the political realm within which after centuries of struggle we have succeeded establishing a democratic polity. After the setting up of the Bretton Woods institutions and the emergence of economic architecture, the fundamentals of constitutional democracy have been systematically but subtly, by hook or by crook, eroded. These forces, at international level, have damaged the majesty of the U.N.O. which is a prime political institution at the international level. The waxing forces of globalization have acted adversely even on internationally accepted human rights. This point is clear from a resolution of the Sub-Commission on the Promotion of Human Rights which—
"Reminds all Governments of the primacy of human rights obligations over economic policies and agreements." (Economic and Social Council Distr. General E/CN.4/Sub. 2/2000/L.11/Add.1 of 17 August 2000)
Time has come when the courts shall have to recognize that if they show reluctance in interfering in the governmental actions on the ground of non-intervention in economic matters, they would soon find that their restraints would, in the end, turn out to be an institutional death-wish. Days of Holmes are dead and gone. Warren went ahead on the track but could not go whole hog as the corporate *imperium* could not withstand too many of his onslaughts. In this Petitioner's view, in our tryst with destiny it is for our courts to play the role, which Apollonius played in John Keats *Lamia*. (Apollonius, whose glance alone made the fraudulent *Lamia* fumble and crumble proving *satyameva Jayate!*). "In the U.S.A. there is a recrudescence of idea of Charles Beard that the Constitution was meant to redistribute wealth from the poorer sections of the society to the upper class to which the Constitution framers belonged. The great centers of legal learning in the U.S.A. are busy with their programme to make judiciary market friendly. Richard Posner in his "The Constitution as an Economic Document" mentions that today when one thinks of how economics might be used to study the Constitution, no fewer than eight distinct topics (Quoted from *Jurisprudence Classical and Contemporary: From Natural Law to Postmodernism* 2nd ED. [Amrican Case Book Series] pp. 371-72.) come to mind. These include (i) the economic theory of constitutionalism; (ii) the economics of constitutional design; (iii) the economic effects of specific constitutional doctrines; (iv) the constitutional interpretation with an implicit economic logic. The other 4 topics are so important that this author quotes from Posner:
"(5) Proposals to refashion constitutional law to make it a comprehensive protection of free markets, whether through reinterpretation of existing provisions or through new amendments, such as a balanced-budget amendment.
(6) The problem of 'dualism,' by which I mean the paradox of the Supreme Court's being passionately committed to liberty in the personal sphere and almost indifferent to liberty in the economic sphere.
(7) The relationship (if any) between the Constitution, as drafted and as interpreted, and the economic growth of the United States.

MY REFLECTIONS ON BLACK MONEY

- (8) The extent to which judges should feel themselves free to use economic analysis as an overarching guide to constitutional interpretation [that is, beyond the limits of points (3) and (4)]; in other words, the relationship between economics and interpretation.”
- This author prays to God, and the Hon’ble Judges on the Olympus not to allow this tsunami of neo-capitalism overtake our Constitution through the subtle persuasions of the vested interests: the way Lucifer struck a bargain for the soul of Dr. Faustus in Marlowe’s *Doctor Faustus*.’
- Shiva Kant Jha, *Judicial Role in Globalised Economy* 176-178 (2005)
14. Bernard Schwartz, *Some Makers of American Law* pp. 128 & 144
 15. AIR 1981 SC 2138
 16. [1931] All ER Rep 666 H L
 17. 2009-TIOL-626-HC-DEL-IT
 18. The Government admitted in its Counter-Affidavit before the Delhi High Court thus :
 “It is humbly submitted that the Government of India can only enter into a treaty in conformity with the constitutional provisions laid down in the Constitution of India.” “By virtue of article 73 of the Const., the executive power of the Union, in absence of Parliamentary legislation to the matters with respect to which the Parliament has power to make law subject of course to constitutional limitation.” “.....there has been no violation of any provisions of the Constitution in signing and ratifying the Uruguay Round Final Act. It is also denied that there has been any breach of Fundamental Rights and basis structure of the Constitution.”
 19. “No treaty can be entered into, or interpreted, such that constitutional fealty is derogated from.” (para 71)
 20. U.N. Doc. ST/LEG/SER.B/3, at 63-64 (Dec. 1952) (Memorandum of April 19, 1951).
 21. 2011 (6) SCALE 691
 22. *Azadi Bachao Andolan & Anr* (AIR 2004 SC 1107)
 23. See Chapter 21 of this *Memoir*.
 24. See Chapter 16 ‘Notes & References’ 14
 25. *Crown Forest Industries Ltd. v. Canada*, [1995] 2 S.C.R. 802. a tax treaty case where the Government of the United States of America became an *Intervener*; see also ‘TO ASSIST THE COURT, Third Party Interventions in the UK’ A *JUSTICE* report.
 26. *Chung Ch Cheung v. R* [1938] 4 All ER 786 at 790; Cockburn CJ in *R. Keyn (1876) 2 EX.D. 63 at 202*; Also see *West Rand Centrla Gold Mining Co v R* [1905] 2 KB 391;
 27. See Chapter 26: Milton’s *Comus* and Conrad’s *Heart of Darkness*.

29

THE PORTRAIT OF OUR TIME

SYNOPSIS

Introduction	485	When Mammon Reigns	496
Towards Corporatocracy	486	'Corporatocracy' rules the world	497
An Overview of the Western Political Thought	486	'Capitalism' and 'Corruption' go together	501
When the Republic comes on the edge	490	Corruptions in our country	504
When crooks shake hands	491	Bound upon the Wheel of Fire	505
When Greed is Good	492	Karna's dream	506
Black Magic of Capitalism	492	Conclusion	507

*uddhared atmana'tmanam Na'tmanam avasadayet
atmai 'va hy atmano bandhuratmai'va ripur atmanah.
The Bhagavad-Gita (VI. 5)*

[Let a man lift himself by himself; let him not degrade himself; for the Self
alone is the friend of the self and the Self alone is the enemy of the self.¹]

Introduction

I must confess at the outset that my reflections in this Chapter are coloured by my perception of the morbid realities of these recent years which I have witnessed with anguish, and suffered with gnawing dismay. I had read during my college days Bertrand Russell's *Autobiography*. Its Chapter 8, on 'The First War', begins with a sentence that often comes to my mind. He wrote: "The period from 1910 to 1914 was a time of transition. My life before 1910 and my life after 1914 were as sharply separated as Faust's life before and after he met Mephistopheles." Mephistopheles is the Devil in the Faustian literature. The crafty Devil could cast its spell to enmesh even the most learned Faust. Goethe's *Faust* is a great work in the world literature. He knew economics and management. He had worked for sometime as the legal and financial expert in the court of Weimer. Through this allegory, Goethe expressed the dilemma of our modern industrial society. This story helps us comprehend the world in which we live, and helps us to get ready to respond to its challenges.

When I think of the state of my country's affairs, I find that even before the 1990s, there was a growing *affaire d'amour* between the Government and the Big Business. Dr. Faustus had sold his soul to the wily Mephistopheles for acquiring

knowledge to acquire the cornucopia of riches. His craze for enjoying that 'lovely moment' (*verweile doch, du bist so schön*), which the Devil had promised, is matched only by the passion with which the neoliberals of our times work for acquiring the cornucopia of riches pursued with unbridled greed.

This Chapter is divided in Segments 'A' to 'D'. **Segment 'A':** ('Towards Corporatocracy') deals with the evolution of the Western political thought, and highlights the enthronement of 'corporations' that has brought about an era of 'corruptions'; **Segment 'B':** ('When Greed is Good') deals with 'Capitalism, Corporate *imperium*, & Corruption' as these go together; **Segment 'C':** ('Bound upon the Wheel of Fire') portrays our plight, and reflects on the wheel of fire on which most of us are hopelessly bound; and **Segment 'D'** is this Chapter's short 'Conclusion' that might grip you for long.

SEGMENT 'A': Towards Corporatocracy:

(i) An Overview of the Western Political Thought

We all are caught in the seamless web of history, and all our ideas and institutions grow, break and bend in the flux we call 'history'. Reflecting on the ways of the world, as we have witnessed in modern times, I recall the insightful words of Professor H.A.L. Fisher. In the Preface to his *History of Europe*, which I had read as an undergraduate student at C. M. College, Fisher had written:

"Men wiser and more learned than I have discerned in History a plot, a rhythm, a predetermined pattern,. These harmonies are concealed from me. I can see only one emergency upon another as wave follows upon wave; only one great fact, with respect to which, since it is unique, there can be no generalizations; only one safe rule for the historian: that he should recognize in the development of human destinies the play of the contingent and the unforeseen."

Nothing is pre-determined. We reap only the consequences of what we think, what we do, and how we synergize them in life, and what sort of symbiotic relationship we establish between the ways of the world and the cause of Justice. Fisher rightly believes that the consequences of deeds done always interact to shape the course of history: 'history' tells us the story of our deeds. Our tragic traits and moral imagination interact to shape life, whether it be of an individual, or of a nation, or of mankind.

In my assessment, in the West, 'thoughts' are shaped by the operative socio-political realities, and by the dominant assumptions they generate. The most dominant strand in the thinking of the West is 'property'. The most influential amongst all the political thinkers, was Locke who believed: 'The great and chief end of men uniting in the commonwealths, and putting themselves under government, is the preservation of their property.....' It is not surprising that his ideas shaped the framing of the U.S. Constitution. One of the makers of that Constitution, Alexander Hamilton, called the common people the 'great beast'! Locke could shed crocodile tears for the poor, but did everything only to aggravate inequality, and increase the sufferings of the common people (see Chapter 21 at p. 290). He thought as our neoliberals think: 'To some extent, civilization is furthered by social injustice'. I have discussed, in Chapter 24 of this Memoir, some of the fundamental ideas which have shaped the Western worldview.

With this prefatory comment, I move to reflect on the leading ideas of some of the most distinguished thinkers of the West. What I have said about Locke is a prelude to the main structures in the Western thought. Such structures provide habitation and name to the different trajectories of thoughts in political economy wherein different drivers and vectors work only to achieve the common end which none noticed so insightfully as did Karl Marx. In the preface to his *Contribution to the Critique of Political Economy*, he portrayed the vital drivers, and core determiners: his words deserve to be read: to quote—

“The sum total of these relations of production constitutes the economic structure of society, the real foundation, on which rises a legal and political superstructure, and to which correspond definite forms of social consciousness. The mode of production in material life determines the general character of the social, political, and intellectual processes of life. It is not the consciousness of men which determines their existence; it is on the contrary their social existence which determines their consciousness.”

In the Western thinking, there was a phase when ‘government’ was considered God’s bequest to a sovereign who was accountable to God alone. For quite long, the kings and emperors were considered divine appointees with inherent right to command obedience of all in their realm. But such ideas are now broomed into the dustbin of history. But myths do persist. In the U.K. the ‘legal position still continues: “In the contemplation of the law the Sovereign is always present in the court....”’.²

The history of the Western political thought, after the Renaissance and the Reformation, has, to say in the words of T.S. Eliot “many cunning passages, contrived corridors”. I think it worthwhile to discern the following distinct streams of thoughts dominant in different phases of the modern Western history:

- (i) the phase of Hobbes (1588-1679):
- (ii) the phase of Locke (1632 -1704):
- (iii) the phase of the neoliberals (in this phase of market-driven Globalisation):
and
- (iv) the post-modern phase when the corporations rule the world: the era of *Pax Mercatus* that works to establish *Corporatocracy*.

We may consider (i) to (iii) the modernist ideas, and (iv) the post-modernist thought.

All the aforementioned Western thinkers built their core ideas on the ‘Idea of Contract’. Though the idea of ‘contract’ predates the Romans, it was harnessed most to crystallize, and to buttress, ‘property’ rights during the era of the Church domination. It supported the idea that the humans of the City of Man must respect the obligations to the City of God. The ‘corporatic’ structure of the Church drew on the idea of ‘contract’ not only to stabilize its paradigm, but also to teach the kings and princes all around to bear good faith allegiance to the Church. They succeeded in making the R.C. Church the greatest of all the capitalists in the Western history. To promote its objectives, it was allowed to build the most

impregnable corporate structure which, as I would show later, became the model for the MNCs of our times! In passing, it is worthwhile to mention that whilst Hobbes, and Locke, remained preoccupied with the idea of 'contract' mostly in the domestic realm, Vitoria, Gentili, Grotius, Pufendorf, Wolff, Vattel, and others carried this idea to build the foundation stone of International Law by coining the concept of *Pacta sunt servanda* (agreements must be kept). The doctrine of 'contract', history shows, serves the Devil and the saints; it has served tyranny and also democracy! Time alone would show how it serves 'corporations' and its mentors, and how it impacts on our 'democracy' and the constitution that people have given to themselves.

Here I intend to reflect, with utmost brevity, on the ideas of Hobbes and Locke which have been skillfully made grist to the mill by the later thinkers. They have provided the intellectual substructure to the present-day neoliberal assumptions for building the post-modernist power-structure.

(i) *The ideas of Hobbes (1588-1679):*

It came to be believed that the political power to receive obedience emanated from some assumed 'contract' between the groups of the people to which the sovereign was not a party. The power once given, could not be taken back. The sovereign had no obligations to the people: he had only rights and powers. This led to the tyranny of the absolute rulers. Those amongst us, who want to subjugate our Constitution through treaties, like the Bilateral Investment Treaties (BITs) and the WTO Treaty, cannot have an authority in support of their cause more powerful than the great Hobbes. Once the present-day 'Leviathan' signs a treaty at the International Plane, the constitutional organs are coerced to implement them (I would revisit the point in Chapter 30). Thomas Hobbes, in his *Leviathan*, considered Judicature an organ of the State (*civitas*). He did not refer to legislature as at that time it was not an organ of the State. In his "*The Law of Free Monarchies*", James I, drew on Hobbes, and held that judiciary and executive powers inhered in the King himself as he was God's vice-regent on the earth. Those, who want to subjugate 'democracy' and 'constitution' by subjecting them to the international obligations, find treaties effective device to delude people, to disarm people, and to deceive people. All those who had helped that 'Leviathan' then, are round the corner even now to help the 'Corporatocracy' emerge triumphant.

I would invite you all to see for yourself the allegorical frontispiece to *Leviathan* in which Hobbes articulated his ideas. I saw it at p. 194 of *The Oxford Illustrated History of English Literature*, edited by Pat Rogers. It shows that everything that matters is under the sovereign's absolute authority: all the organs of the state, all the institutions in all the realms, all the rights and obligations, and all the rest. Things happen only because the Leviathan permits! "The ruler, literally made up out of the bodies of his subjects, appears beneath a text from the Vulgate (Job I:24), 'There is no power on earth which can be compared to him.'" I wish my readers see the frontispiece of the book on the internet to catch its allegorical import. *Leviathan* must remain in our mind when we reflect on the creeping 'corporatocracy' advancing through stealth and deceit. I have already said a lot about this in Chapter 26 ('The Realm of Darkness: The Triumph of Corporatocracy').

(ii) The ideas of Locke (1632 -1704):

Great advancement towards democracy was manifest in the ideas of John Locke (1632 -1704). He believed that the sovereign was himself a party to the 'contract': hence he too was subject to the obligations which emanated from the 'contract'. The objective to be pursued through the 'contract' was to promote 'public good'. Locke had great impact on the framers of the US Constitution. But this sort of 'democracy' was chiefly for the propertied people (for the Western view in 'democracy' see Chapter 22 pp. 316-318). His doctrine 'is limited by the view (implied rather than expressed) that those who have no property are not to be reckoned as citizens.' Locke declares that: 'The supreme power cannot take from any man any part of his property without his own consent.' I have reflected on his ideas at several other places in this Memoir (please see the 'Index').

(iii) The ideas of the neoliberals:

But the neoliberal thinking of our days has fundamentally altered the Lockean perspective by altering the content and reach of 'contract' apropos the powers of the State, and by re-determining the measure and incidence of obligations on people and government. In my assessment, this neoliberal paradigm contemplates, and assumes, a tripartite agreement involving three parties: the State represented by the government, the people that constitutes a political society, and the Big Business acting through the senate of investors and other corporate formations.

Our professional friends have innovated to make a corporation crawl from a country to country, from land to water via space as if it were a centipede with many segments each with a pair of legs. So great is the 'corporate creativity' that even God and Devil must be all amazed. I have said something about it in Chapter 26 of the Memoir. If we want the world to remain safe, we should permit only such structures which can be operated only on the mandatory terms of full accountability. As the 'corporations' do not have conscience, they cannot hear the knocking at the door warning them against their advancing doom.

After setting up structures to subjugate the political realm to the economic realm, they went in to utilize the 'International Realm' to subjugate the 'domestic space' of the nation states making their 'political and economic realms' servile to the wishes and edicts of the institutions and operators set in the foreign lands with roots in the realm said to be regulated only by international law. [What has happened reminds me of the story of the two worlds so well expressed in the 'The Star Trek about which I have written at p. 400 of this Memoir].

They are trying to build these two worlds with the help of three things:

- (a) the infinite potentialities of the corporate structuring that can break all barriers hitherto created by the nation states;
- (b) the possibilities to shape International Law, by creating through 'Treaty-terms' binding obligations to subjugate all the organs of the State to the obligations and responsibilities under the coercive acts of various institutions set up at the international level; and

- (c) the creation of a band of valiant corporate loyalists who can make the governments work for the corporate interests by extracting more and more concessions from the governments.

The subordination of the 'nation states' to the operators of the international economic realm is almost complete. We know that without existence of 'strong and vibrant 'nation states', 'democracy' cannot survive. The jurisprudence, developed by the international bodies like the DSB of the WTO and the International Arbitral Tribunals, considers the following norms binding on the states:

- * "The right to seek access to international adjudication must be respected and cannot be constrained by an order of the national court. Nor can a state plead its national law in defence of an act that is inconsistent with its international obligations." [Art. 3 of the International Law Commission; Art. 27 of the Vienna Convention on the Law of Treaties (VCLT)]
- * "Internal law may not be invoked to justify a failure to perform a treaty." (VCLT, Art. 27)

All the above mentioned protocols contemplate the existence of compliant government, servile people, imperious 'corporations', and extractive capitalists in numerous garbs. It is interesting to note how our Government works Janus-faced: placating the common people through strong democratic pretensions and pro-people shibboleths, yet pandering to the interests of the 'corporatocracy', and its protégées, beneficiaries and mentors incessantly working, on land, on waves, in the space, to build an exploitative and extractive tyranny. This sinister industry goes on round the clock. The reality of our days are graphically stated by Joseph Stiglitz thus:

"There is one overriding problem: the well-being of the resource-rich developing countries depends on how much they get for their resources; the well-being of the rich corporations of the advanced industrial nations depends on how little they pay for them. This is the natural and inevitable conflict that we have identified at the center of the paradox of plenty. Where will the people of the developed countries and their governments stand? In support of the few in those countries who own and run the rich corporations, or in support of the billions in the developing nations whose well-being, in some cases, whose very survival, is at stake?." Joseph Stiglitz, *Making Globalization Work* p. 159

(ii) When the Republic comes on the edge

Shortly before his death, President Abraham Lincoln (1809-1865), the 16th President of the United States, expressed, on 21st November 1864, his apprehension about the future of his Republic:

"I see in the near future a crisis approaching that unnerves me and causes me to tremble for the safety of my country. . . . Corporations have been enthroned and an era of corruption in high places will follow, and the money power of the country will endeavour to prolong its reign by working upon the prejudices of the people until all wealth is aggregated in a few hands and the Republic is destroyed."

What he said with agony has already overtaken the USA. Noam Chomsky has perceptively written in his *Failed States* (at p. 238):

‘One predictable result has been a “new, higher level of corruption.” Corruption includes extensive gerrymandering to prevent competition for seats in the House, the most democratic of government institutions and therefore the most worrisome.... More generally, there have been “profound” effects on “the way the country is governed..... Not only is legislation increasingly skewed to benefit the richest interests, but Congress itself has been changed,” becoming a “transactional institution,” geared to implementing the pro-business policies of the increasingly powerful state.’

You can notice at work in our country the triple *entente* of ‘corporation’, ‘corruption’ and ‘democratic and moral deficit’ incessantly at work. Many in power deserve a painful verdict: ‘You are one of those that will not serve God if devil bid you’ (Shakespeare, *Othello* I.i.108). The apparition, the advancing silhouette which had made great Lincoln worried in the very nascent years of the American Republic, has become alarmingly gruesome in our days when we see our institutions caught in its octopus-grip as all our watchers appear etherized (should I borrow T. S. Eliot’s words): “Like a patient etherized upon a table”.

(iii) **When crooks shake hands**

‘A government which robs Peter to pay Paul can always depend on the support of Paul.’ — George Bernard Shaw (1856-1950)

The aforementioned *entente* operates in accordance with its well known grammar. How the dialectics works amongst the criminals and fraudsters is best explained by G.K. Chesterton in his essay on Voltaire. I would quote a few lines from G.K. Chesterton on which you can reflect to find out how graphically they reveal the murk and maladies we see so rampant all around us: to quote Chesterton—

“All Christian history began with that great social occasion when Pilate and Herod shook hands. Hitherto, as everybody knew in Society circles, they had hardly been on speaking terms. Something led them to seek each other’s support, a vague sense of social crisis, though very little was happening except the execution of an ordinary batch of criminals. The two rulers were reconciled on the very day when one of these convicts was crucified. That is what many people mean by Peace, and the substitution of a reign of Love for one of Hatred. Whether or not there is honour among thieves, there is always a certain social interdependence and solidarity among murderers; and those sixteenth-century ruffians who conspired to assassinate Riccio or Darnley were always very careful to put their names, and especially each other’s names, to what they called a ‘band’, so that at the worst they might all hang together.”

“It sometimes seems to me that history is dominated and determined by these evil friendships. As all Christian history begins with the happy reconciliation of Herod and Pilate, so all modern history, in the

recent revolutionary sense, begins with that strange friendship which ended in a quarrel, as the first quarrel had ended in a friendship”

To help you understand what Chesterton has written, I must tell you something about the allusions made in his text. The Supreme Jewish Tribunal was against Jesus as he had worked with a messianic zeal to change the corrupt political and economic system of his day. Pontius Pilate was the Roman governor of Judea who had ordered the crucifixion of Jesus. He had sinned in many ways, and was disliked in Judea. His sin visited him when he killed himself on orders from Emperor Caligula in 39 AD. Pilate obtained the consent of the ruler Herod Antipas. Pilate and Herod were not good friends. In the eyes of the common people both were derelicts. Herod had divorced his wife, and married Herodias, his brother’s wife. This act annoyed his Jewish subjects. These two bands of criminals, earlier not on very good terms, became friends as their crimes imparted them lessons in practical prudence to come close as it is good even for crooks to come together to meet their common enemy. The allusions to Riccio or Darnley are richly revealing. They were criminals trying to evade the consequences of their deeds.

It seems to me that our greed-driven neoliberal world is fast illustrating the establishment of a cordial bond between the present-day Pilates and the present-day Herods. It is our misfortune that we see in our great Republic how camaraderie amongst the crooks is so frequently crafted with success. It is said, in the Republican Rome, the Chief Justice Verres, who was the governor of Sicily also, had looted his country as he was sure to get out of embarrassment, if ever caught resorting to corruption. He used to sell “all his decisions, and he plundered the farmers of their crops, keeping the proceeds for himself.” “Asked if he did not fear judgment when he returned to Rome, he replied that he intended to use two-thirds of his wealth to bribe the lawyers and judges, and that the third which remained would be quite sufficient to make him rich for life.” How close he went to what the Republican lobbyist who said, to quote Chomsky (*Failed States* p.237): ‘The expectation is that corruption will be “undetected and unenforced,” unless it becomes so extreme that it harms business interests.’ Most persons we see around believe that they would escape the wrath of law by just spending something to please the watchers of the public cause.

SEGMENT ‘B’: When Greed is considered Good

Capitalism, Corporate *imperium* and Corruption go together

You can’t run a government solely on a business basis.... Government should be human. It should have a heart. —Herbert H. Lehman.

(i) The Black Magic of Capitalism

Chapters 20 to 24 of my Memoir highlight the *Entente Cordiale* of three sinister forces: the greed-driven Capitalism, Corporate *imperium*, and Corruption. I touch this topic in my Memoir because I have seen this noxious triumvirate reigning in our country to our utter dismay; and because I had occasions to watch how stealthy this Axis of Evil is when it operates. I do not intend to take a historical overview of ‘capitalism’, too big a topic for this tiny Chapter. I would

consider it here as it appears in the present-day context. It is 'the market-driven capitalism' choreographed in this phase of Economic Globalisation. Its most dominant feature has been succinctly drawn up thus in the *Encyclopedia Britannica* (Vol. 17 p. 908):

"A market society is not, consequently, merely a society coordinated by markets. It is, of necessity, a social order with a distinctive structure of laws and privileges." [italics supplied]

The prime actors in this market-coordinated society are the 'corporations'. The MNCs and TNCs are 'boundary-blind', and possess infinite 'boundary-defying ability': thus the 'nation states' are transcended, and ignored. These powerful corporations can locate their operations anywhere on the planet, and can be without loyalty, or gratefulness, towards any place, or society of humans living under any specific cultural ethos. They work against the creation of conditions conducive to 'democracy'. Their inevitable consequences have been captured, with precision and perspicacity, by some of our most eminent thinkers (viz. Geza Fekete, Robert L. Heilbroner, and Noam Chomsky).

I had examined in my *Judicial Role in Globalised Economy* (first published in 2005) how the tsunami of economic globalization subordinated the 'political realm' to the 'economic realm' making the 'state' itself a 'sponsored' institution, sponsored by the vested and dominant interests which the Big Business promotes and protects. This evidences corporate *imperium* which, in the end, establishes the Rule of the Market (*Pax Mercatus*). I have touched this topic in Chapter 24 of this Memoir.

It is worthwhile to contrast this market-coordinated worldview with our Hindu worldview in which life is considered as *yajna* (यज्ञ : sacrifice). In my assessment, nowhere in the world, humanity expressed its worldview with greater profundity and sublimity than what was done in the *Bhagavad-Gita* (III. 9-11): its *shloka* 9 that is rendered into English thus:

'Save work done as and for a sacrifice, this world is in bondage to work. Therefore, O son of Kunti (Arjuna), do thy work as a sacrifice, becoming free from all attachment.'

Here *Yajna* means "any self-sacrificing work undertaken in a spirit of Self-dedication, for the blessings of all." To conceive 'human life' as *yajna* is the greatest monument of human intelligence. We must develop the excellence of skill, and must work hard to earn wealth and protect it, but always for the weal of all. We are amazed observing the moral degradation of the West-dominated society of our day: all running after wealth alone. How it operates is best described in the *Bhagavad-Gita* itself: see Chapter II *shlokas* 62 and 63 the import of which can be thus stated in English:

Propensities of the flesh lead to consumerism (the objects of senses); and further the strong desires to acquire and possess such commodities more and more. Such desires beget 'anger'; when it is evoked but obstructed, it begets *sammoha* (bewilderment, loss of focus of what is right). Bewilderment is sure to cause loss of memory that makes one indifferent to the lessons that history teaches; when it happens, one's

intelligence stands destroyed. And once there is the loss of 'intelligence', one's sense of propriety is gone; and then one perishes.

Our tradition never rejected wealth, or condemned it. I brought this fact to my reader's notice in Chapter 20 of the Memoir (at p. 270) by stressing on the following two principles:

- ◆ "Krishna held in the *Bhagavad-Gita* that 'property' acquired merely for acquisitiveness and greed is clearly a sinister 'THEFT'."
- ◆ Krishna insists that the acquisition of 'property' must not be greed-driven, and society must not be acquisitive, unmindful to the harm it inflicts on the earth and its environment.

When I reflect on the culture of the acquisitive society that the neoliberal capitalist thinkers are trying to build with passion, I notice some pronounced features, a few of which I summarize with utmost brevity.

(1). The neoliberals delude humanity towards some *El Dorado*. They say: let the wealth be created in the market by, and for, the MNCs and the mega-rich creatures so that, later on, even *aam aadmi* can be helped. It is trumpeted with passion that high GDP helps this to happen. They call this "trickle-down theory". This theory illustrates (as John F. Kennedy once noticed it) the phenomenon unfolding how "a rising tide floats all boats". It is, in effect, what John Kenneth Galbraith had called a "horse and sparrow theory": if you feed enough oats to the horse, some will pass through to feed the sparrows. My reader may read the story I have mentioned in Chapter 26 (pp. 433-435) of this Memoir, to decide if that sort of 'trickle-down' benefits would ever entitle ordinary persons to live with dignity. You need not get amazed at my morbid apprehensions. The days are not far when the promoters of the neoliberal paradigm would tell the poor to live only on fodder (if even that remains available after scams like the Fodder Scam discussed in the Chapter 12 of this Memoir). Experts would be hired to convince people that the cattle feed, if consumed, would provide the *aam-aadmi* (common man) more calories than what they needed to survive. (Perhaps, the IMF-WTO-minted counterfeit coins in high circulation would find nothing wrong in that!)

(2) What they say reminds me of a story I had read in the *Mahabharata* ('Striparva', Chapter 6) explaining, through metaphors, the world we all live in. It tells us what this 'trickle-down effect' is all about. It says that someone journeying through a deep and dark forest fell into a deep well he could not see as it was covered with rich grass and saplings. It happened that much before he could fall down on the well's bottom, he was caught, while on way down, in the labyrinthine tendrils, and he stood turned upside down. He saw a terrifying elephant waiting at the brim above, and a snake hissing down below with its hood spread. He saw some honeycombs wherefrom honey 'trickled down' delighting him as he saw the prospect of satisfying his great desires with lovely honey! Greed builds a rainbow of delight which many chase, but all in vain. He wistfully craved for wealth; and in the process perished.

(3) The learned neoliberal experts tell us to wait, and wait, and wait till great wealth accumulates with 'the substantial people'. They feel that a little of that

wealth can trickle down to the common people someday. I have often wondered: will these billionaires be ever satisfied with their billions, or trillions? My study and reflection tell me: they will never be satisfied with their treasures. Centuries back, our ancestors had wisely observed in the *Sri Harivamsa Purana* (the 'Harivamsha Parva', Chapt. 30):

न जातु कामः कामानामुपभोगेन शाम्यति, हविषा कृष्णवर्त्मैव भूय एवाभिवर्धते
यत् पृथिव्यां ब्रीहियवं हिरण्यं पशवः स्त्रियः, नालमेकस्य तत् सर्वमिति पश्यन् मुह्यति

[Not all the wealth, not all the women can ever satisfy the lusty urge of a single man. Hence the right thing is to control desires as they have no end. Desires increase more and more when enjoyed with lust and attachment. They increase as do the flame of fire when ghee is poured on it. When desires wax untrammelled, one can never be at peace.]

Greed is never satisfied, it feeds on itself, it deludes men to never-never land where cascading desires become limitless. This is the humanity's tragic trait that Alfred Russel Wallace, a British naturalist and biologist, had once noted with great concern: his perception is well known as the Wallace Syndrome (see Chapter 20 pp. 266-267).

(4) The greed-driven 'capitalism' leads to the worldview that fosters a "philosophy of futility" and "lack of purpose in life," that promotes voyeurism, hedonism and consumerism bereft of all ethical and moral considerations. The portrait of that world, and the plight of 'democracy' in that sort of world, have been drawn up by Noam Chomsky in his various books some of which I have referred in Chapter 24 of my Memoir. The carpet-bombing by the greed-driven capitalism has produced a worldview that can never produce a great work of art or literature. Intellectual development would suffer because the moral and ethical faculties of humanity would shrink, the sense of empathy and the faculty of the esemplastic (creatively unifying) power (the power to shape disparate things into a unified and integrated whole), would decline, and the human brain would tend to develop only in those areas which can supply things needed by 'market'. Under such a worldview, family, and social solidarity, would also suffer. People would be driven to think that children and relations, culture and countries, the Constitution and the *Gita*, are all commodities on the counters for trade governed by the present-day multilateral trade regime. By advancing on such a thought-process for long, the humans would themselves get commodified. Even sense and sensibility of people would become polluted, and the strong propaganda, engineered by the hirelings and harlots, would rip people off all their finer virtues which are the 'human-specifics' of the *Homo sapiens*: inherent goodness, imagination, social inter-dependence and solidarity, moral vision and aesthetic sensibility. And if we tread on this dreaded path for long, the world would be driven to commit suicide, unless before that, our collective death-wish leads us to destruction. We can read the sub-text of our times: the world is creating conditions for wars and destruction more devastating than what humanity has yet seen. I fear, when such sad moments overtake us, we would see a new set of *dramatis personae* enacting a morbid melodrama of waste in our world. In the past, the imperialists had brought devastations on the suffering souls world over with the help of the big corporations. In the times to come, I apprehend, we

would witness the big corporations, or the mega corporate consortia, waging wars using governments as the willing instruments for their ends, with the rest of humanity either willing participants in the crimes against the world, or as mere hapless onlookers counting the advancing footfalls of collective Doom. I am not painting a picture of dread, or doom. Chomsky expresses his worrisome apprehensions in his *Hegemony and Survival* (at p.139) thus:

“Deluged by such propaganda from infancy, people may then accept their meaningless and subordinate lives and forget ridiculous ideas about managing their own affairs. They may abandon their fate to corporate managers and the PR industry and, in the political realm, to the self-described “intelligent minorities” who serve and administer power.”

(5) It can be noticed that most of the assumptions of the greed-driven capitalism are founded on economic fundamentalism. It is also worth noting that the technique of cognition that the ‘think tanks’ of ‘capitalism’ adopt, is unscientific. Scientific method is to draw conclusions from critically observed facts and factors, mostly on the predominance of probability. This process must be done with detachment, and humility. It is always essential to remain ready to modify its technique and assumptions in the light of the realities which emerge from moment to moment. The tragic trait of the economists working for ‘capitalism’ is that they “choose their assumptions to fit their conclusions”, and try to convince people, through ‘computer simulations’, the economic benefits of the structures they build without taking into account the immanent Uncertainty Factor that operates in all the spheres of thoughts and actions. This is the consequence of the fact that our technology has not been able to factorize MAN. Man is still an indeterminate equation. The tragic trait of the corporate capitalism is its failure to realize that its structure, and also assumptions, might break to pieces, as had happened to the image in Nebuchadnezzar’s dream: Daniel describes the image with rich suggestions—

“The image’s head was of fine gold, his breast and his arms of silver, his belly and thighs of brass, his legs of iron, his feet part of iron and part of clay.”

(6) I had called the model of exploitative capitalism as ‘the Taj Mahal Economy’ about which I have written in Chapter 25. On the deceptiveness of ‘reforms’, which are the refrains of the neoliberal capitalists, I had written in an article:

“The word ‘reform’ has continued since its dim past as a hallucinatory word more mysterious than the utterances of the three witches in *Macbeth* which made Macbeth hear what he wished to hear.”

The effect of the neoliberal reforms is, to quote Chomsky, the creation of a “virtual Senate” of investors and lenders who can exercise “veto power” over government decisions by threat of capital flight, attacks on currency, and other means.

When Mammon Reigns

That is the most perfect government under which a wrong to the humblest is an affront to all. —Solon.

We notice a craze in our country to entrust our destiny to the ‘eminent’ economists. We fail to realize that ‘economics’ is not the sacred *shastra* that the name *arthashastra* suggests to us. *Arthashastra* is the sacred and profound work of a great master teaching us just and fair ways of earning, and managing wealth for the benefit of people. ‘Real benefits’ and ‘common weal’ are the constant loadstones guiding all the pursuits in that realm. ‘Economics’ is much different. The *Encyclopedia Britannica* rightly says: “the appearance of capitalism give rise to the discipline now called economics.” It becomes worse if a particular person has been trained, or brainwashed by the IMF or the WTO, or if there is objective evidence demonstrating that he has interiorized the thesis dear to the economists pursuing the neoliberal paradigm. We should carefully evaluate a person for the high constitutional post only after measuring his commitment to the mission of our Constitution. Further, to say out of context: the most learned persons who seem to matter these days, remind me of what Bhartrihari had said:

बोद्धारो मत्सर-ग्रस्ताः प्रभवः स्मय-दूषिताः
अबोधोपहताः चान्ये जीर्णम् अङ्गे सुभाषितम्

[The learned are wrrenched with envy, the lords overbrim with hubris, and the rest are caught in ignorance. High ideals and things of beauty become stale only to perish in mind itself.]

It is dangerous to give wide powers to the technocrats. I have touched this point at p. 322 of this Memoir saying “This phenomenon is engineered by the global economic interests. We cannot entrust the technocrats to run our socio-economic system which is sure to shape our cultural values, even our aesthetic sense.” Difficult though it is to devise a system which can provide us competent persons with high moral wherewithal, and high commitment to public weal, we owe this as a non-shifting duty to ourselves and our God to work for that.

History has told us several times what happens in an unjust society that allows GREED to become its guiding loadstone. The Hellenic society, affluent in the material wealth for some to gloat, and many to sob and suffer, had reaped the sad consequences of collective misdeeds and indifference (see p. 390). Even after noticing the high technological fast changes adding much to our GDP, we are in bad times. The need of the hour is for us to set our priorities right, and to cultivate humility realizing that all fundamentalist assumptions, religious or economic, might go wrong, and become harmful.

(ii) ‘Corporatocracy’ rules the world

“In the corporate economies of the contemporary West, the market is a passive institution. The active institution is the corporation ... an inherently narrow and short-sighted organization The corporation has evolved to serve the interests of whoever controls it, at the expense of whomever does not.” —William M. Dugger [Quoted by David Korten in *When Corporations Rule the World* p. 173]

I advise my readers to keep Chapter 26 (‘The Realm of Darkness: The Triumph of Corporatocracy’) of this Memoir in their mind. They can read for more information and critical comments Chapter 9 (‘A Corporation cannot be an

impervious coverlet of gross abuse'), and Chapter 10 ('Fraud unravels everything') of my book *Judicial Role in Globalised Economy*, the full text of which is now put on my website : www.shivakantjha.org

"‘Corporation’ had been created as a commercial vehicle. It emerged in the early 17th century as an institution for international trade; but became an engine of imperialism". It was never conceived to be an impregnable and impervious coverlet of gross abuse, but it has become that. Writing about the invisible empire of America, Pandit Nehru had aptly said in *Glimpses of World History* (at p. 570): "This latest kind of empire does not annex even the land; it only annexes the wealth or the wealth-producing elements in the country. " The Supreme Court of the USA held, in *Dartmouth College v. Woodward* [17 U.S. Reports 518 (1819)], that the 'corporation' is "... capable of acting... like one immortal being". And over years later, this immortal being was endowed with the rights of the human beings. Its effect has been, what Abraham Lincoln had said in the pregnant words I have already quoted above. The corporate pressures and persuasions led to devise the mechanism of control over the organs of the state. It is interesting to see how an artificial creature, without conscience, got judicially recognized as a living being. The process of this strange transformation is well captured by Noam Chomsky, in his *Failed States* (at p. 207): to quote what he has written in the context of the USA —

"The political system that is the subject of these critiques bears some resemblance to the initial design, though the framers would surely have been appalled by many subsequent developments, in particular the radical judicial activism that granted rights of persons to "collectivist legal entities" (corporations), rights extended far beyond those of persons of flesh and blood in recent international economic arrangements (mislabelled "free trade agreements")."

In the Introduction to my *Judicial Role in Globalised Economy* (2005), I had observed:

"The Chicago University and the Yale Law School are the centres for the study of law and economics wherein economics dominates legal discourse. *Homo juridicus* is becoming *homo economicus*. Public policy of the State is manipulated to come to terms with the ideas of the mainstream neoclassical economics."

I failed to appreciate our Hon'ble Supreme Court's recent judgement in the *Vodafone Case*³ where the Hon'ble Court justified the corporate structuring done in the *Vodafone Case* by quoting Pope Innocent IV. Under the rubric 'International Tax Aspects of Holding Structures', the Hon'ble Court held that the International Tax Aspects of Holding Structures, and the operational pattern of the holding Structure of the MNC, were designed in the light of the ideas of the 13th century Pope Innocent IV, and the 19th century decision of the House of Lords in *Salomon v. Salomon* (1897) A.C. 22. This sort of view helps the emergence of corporate *imperium*. I had seen the neoliberals of the USA trying hard to make the MNCs more important than the nation states. The professionals, like those huddled together at the Uglad House in the Cayman Islands, or at the Cathedral Square of Mauritius, and at other dark places, have provided systems un-

der which ‘corporations’ are hatched in thousands, and made to order. The Rogue Finance and their corporate vehicles resort to the creation of the labyrinthine corporate structures to operate through fog and mist on this planet. True, they tread on the lines that Pope Innocent III and IV prescribed for the Church out to build up its own *imperium*. I had cautioned against accepting this view in the First Edition of my Memoir (Chapter 25 at pp. 424-427). I had felt that if a MNC is structured on that model, it would become an imperious instrument of darkness to wreck our democracy, and all the values, which we believe, give legitimate content to it. We all know how an early MNC, the South Sea Company, committed worst frauds, and entrapped many great politicians in power to serve its illegitimate and fraudulent interests. Its deeds are discussed felicitously in Charles Mackey’s Extraordinary *Popular Delusions* (1841). The summary of the plot of this book, illustrating technique of mega frauds in certain financial/money manias can be read in Chapter 25 of this Memoir. The crooks and fraudsters of all the later times have scripted their nefarious ways on that model. The East India Company that ruled our country for long, was equally corrupt, and fraudulent. Our world knows no technique of deception the prototype of which cannot be found in their ways.

The MNCs, and their experts, consider ‘corporations’ virtually mystical and magical structures, which can be erected on the waves, in the thin air, in the ethereal space choosing their span of life, and the points of their birth, and also of their death. They had once reminded me of the monsters, Sund and Upsund portrayed in our classical literature (see p.438 of this Memoir). The pleaders for ‘corporations’ and ‘corporate *imperium*’ drew their light from the ideas in *Mystici Corporis*, (translated into English as ‘The Mystical Body’) on which Pope Innocent had founded his view. The Church was the mystical body of Christ in the City of God; and the ‘corporation’ became a foil to the R.C. Church in the City of Man, this world of ours!

It is baffling to find how in many crucial situations, even our courts become unmindful of ‘historical perspective’ that recognizes ‘Time’ as the most important distinguishing factor (see also Chapter 28) forgetting the well-known idea that “each generation has an enormous power of shaping its own law” (see Chapter 26 p.439). We have seen how the judicial reasoning in the *Vodafone Case* treaded in the light of the ideas of Pope Innocent IV; we had also seen earlier how in *Maganbhai v. Union*⁴ our Supreme Court relied on *The Parlement of Belge* [(1879) 4 PD 129] in support of its view as to our Executive Government’s treaty-making power without appreciating that such powers are wholly anachronistic as TIME has unfolded new realities. The Court should have appreciated that our Constitution has much widened the range and reach of the constitutionally and legally recognized rights. Though *Parlement of Belge* was decided in the 19th century, it is founded, in effect, on the idea that prevailed in 1686, only 2 years earlier to 1688 when the Glorious Revolution brought about the overthrow of King James II of England. None pointed out to the Court, that the view in *The Parlement of Belge* reflected the political philosophy of the time when the view of Thomas Hobbes (1588 –1679) prevailed. Whilst interpreting law, our judiciary must hear with care the gallops and trots of history, and realize that a law becomes a fossil if it remains attached to the dead past.

The second halves of the 19th century and the 20th century have witnessed strange conspiratorial innovations in structuring 'corporations'. The corporate lawyers and the beneficiaries of the corporations have cast their spell on all realms. They build the impervious 'corporate shell' so that none can know what is being done inside the shell. They have innovated in many other ways to strengthen their powers. They have created the inscrutable financial products in which the Rogue Finance deals, and have created other devices to escape 'taxation' by fragmenting a 'property' into two parts (it can be even more than two): "one, the physical assets of the corporation, operated by its managers; the other, the claim of investors to a share in profits generated by such operation." They have turned 'corporations' into a bundle of rights: one set of rights with the owners of the value that shares represent, and the other set with the owners owning the underlying assets that give value to such 'shares'. Peter d'Errico, who discussed the assertiveness and dominance of 'corporations' in the USA, observed with perceptiveness:

"The doctrine of full-fledged corporate personality in legal discourse coincided with the historical separation of finance capital from industrial management. Two types of property were presented by an emerging fragmentation of corporate political economy: one, the physical assets of the corporation, operated by its managers; the other, the claim of investors to a share in profits generated by such operation."

Korten aptly observes: "Not surprisingly, the history of corporate-government relations since that day [the history goes back to the 16th century when certain privileges were given through corporate charters granted] has been one of continuing pressure by corporate interests to expand corporate rights *and to limit corporate obligations*." (italics supplied). It was natural in the USA where politics is the "shadow cast on society by big business". The aggressive emergence of 'corporations' in the USA led many thinkers of the West to formulate theories to prove that 'corporate entities exist prior to, and independent of, 'state'. It is even said that as the manifestation of 'group life', it is the 'corporation' that provides the *raison d'être* for the 'state'. Some experts even went to say that as the human beings, and the 'corporations' are 'persons' only because law considers them the bearers of rights and duties, there exists basically no difference between humans and 'corporations'! And from this follows inevitably that 'corporations' are entitled to human rights no less than the human beings.

This fragmentation has been used as a device to promote what I consider fraud causing wrongful gain to some, and wrongful loss to the others. I submit with great humility that I failed to appreciate the *Vodafone* judgement in which our Hon'ble Supreme Court, considered this sort of 'fragmentation' of corporate political economy permissible under our jurisprudence. In fact, this became the main reason for holding that *Vodafone* was not chargeable to capital gains in India. I have discussed that judgment in my articles which you can read on www.shivakantjha.org. It is submitted that our Supreme Court failed to frustrate the device adopted to cause wrongful loss to our country, and wrongful

gains to the non-residents operating from the secret jurisdictions and tax havens. There is some wisdom in what Alvin Toffler said in *Power Shift* (at p. 253):

“Few seem to have considered that if we change the structure of business and leave government unchanged, we create a gaping organizational mismatch that could damage both. An advanced economy requires constant interaction between the two. Thus, like a long-married couple, government and business eventually must take on some of each other’s characteristics. If one is restructured, we should expect corresponding changes in the other.”

Corporations are interested only in profits, and contrive the systems which ensure such pursuits. The corporations always work to transform a ‘nation state’ into a ‘sponsored state’. This is the inevitable outcome of an *entente* between the government and the Big Business. When this happens, ‘a symbiotic relationship’ between the state and the corporation’ gets established. The corporate structures, involving a split between the power of the shareholders and the professional managers, have produced detrimental psychological effect on the functioning of ‘democracy’: see Chapter 26, p. 426. As the ‘corporations’ do not possess human consciousness, they have no compunction in doing things even so unfair as these:

- ◆ to dispose of their toxic wastes in poor countries, because poor people have both ‘shorter life spans and less earning potential than wealthy people’;
- ◆ to commit all noxious acts to the detriment of humans believing that it is ‘a moral duty of the rich countries to export their pollution to poor countries because this provides poor people with economic opportunities of which they would otherwise be deprived.’

I have told you with anguish how our Government betrayed the just claims of the sufferers of the Bhopal Gas-leak disaster, even after assuring them that the Government would play the role of *parens patriae* for their benefit (see p. 328). It was the betrayal of trust reposed in the government by the suffering souls. Like eternal Peter Pan, the government, under the spell of the corporate *imperium*, is accustomed not to learn from experience. The way we are going ahead establishing nuclear plants in our country, shows that we are carefree about the gruesome tragedies awaiting us. History tells us that the power-wielders have strong, but often most unworthy reasons, to work without responsibility — ‘the prerogative of the harlot throughout the ages’.

(iii) ‘Capitalism’ and ‘Corruption’ go together

I do not intend to write a chronicle of corruptions, but I have felt, on good reasons, that ‘corporations’ and ‘capitalism’ need ‘corruption’ to promote their ends: to establish the *imperium* of corporatocracy at the wreck of democracy. This apprehension is based on a close study of the realities we see these days.

G.B. Shaw said in his *The Revolutionist’s Handbook*: ‘What experience and history teach is this— that people and governments never have learnt anything from history, or acted on principles deduced from it.’ My reflections on human affairs have led me to think that whilst the politicians do not learn from history,

the economists, and their foster children, the corporations, learn a lot from history but in wrong way, and for wrong reasons! The economic imperialists learnt from history that the forces of patriotism must be countered so that the founts of inspiration for revolutionary actions in the 'target societies or nations' must get dry. They have dragged all values to market for sale, and they have established the corporate canon of faith that whatever helps market is to be promoted, whatever hinders must be dispensed with. The political realms of our democracies have not learnt how to develop law, and establish an effective mechanism to save our society from the greedy corporations trying to catch all institutions under their octopus-grip, and also how to discipline the High Finance operating from tax havens and secrecy jurisdictions (see Chapter 26 p.412-416). The corporate imperialists have learnt from their experience that the most effective magic wand to achieve all, legitimate or illegitimate ends, is 'money power'.

We know how Jesus had worked against the corruptions in the society he lived in. He was a political rebel that worked against the money-changers of Jerusalem. If Jesus would come amidst us, he would surely fight against the ills of our Stock-Market. The *Exodus* said (23:8): "Don't take a bribe, because a bribe blinds the clear-sighted and subverts the cause of those who are in the right." I feel if the great Jesus comes amidst us, he would find no difference between that Pilate, and the most of those who control our destiny in this world.

I have told you in Chapter 21 how rampant corruptions destroyed the political institutions that the great Roman Republic had built, because the people of Rome could not keep the constitutionally established institutions under their effective vigilance. It amazes us most how the R.C. Church, which carried the holy mission of the Lord, itself became corrupt by turning into "banks in which the pious, speculating on eternal rewards, in exchange for cash receive drafts on the hereafter." Those eager to go to heaven could buy from the Church 'indulgences for the remission of sins of every kind' as that authority had been granted to it by St. Peter and his successors enabling it to exercise 'the privilege of dispensing to the faithful an inexhaustible treasury of merit.' 'Some were allured to pay for rebuilding St Peter's; some were bidden to pay for the crusades on the assurance of 'the everlasting bliss of heaven'. "Usurping the prerogative assumed only to belong to the Almighty, the banker Pope claimed not only to remit the temporal penalties for sin but even to expunge the sin itself."

In order to evaluate the dreams which the present-day neoliberal capitalists sell to the poor of the world, it is good to remember how the rainbow used to be painted by the Church in the mind of the people of those locust-eaten years. When 'the scandal was afoot in a great money-raising campaign for the new St. Peter's, the people were deceived with dreams painted by persons like the Dominican preacher, John Tetzel. A contemporary is said to have written:

"It is incredible what this ignorant and impudent friar gave out. He said that if they contributed readily and bought grace and indulgence, all the hills of St. Annaburg would become pure massive silver, which so soon as the coin rang in the chest, the soul for whom the money was paid would go straightway to heaven."

Consider for a moment the assurance that we get from the leaders of this market-driven globalisation of our days. Peter Watson says—

“Regarding racial discrimination, Friedman took the long-term view, arguing that throughout history capitalism and free markets had been the friend of minority groups, whether those groups were blacks, Jews, or Protestants in predominantly Catholic countries. He therefore thought that, given time, free markets would help emancipate America’s blacks. He argued that legislation for integration was no more and no less ethical than legislation for segregation.”

But two things happened which helped expose the deception that the then Church practised on people. We are driven to believe that God has many ways to correct the humans. Two events made the castle of fraud crumble: the first was the isolated and cumulative effects of the Renaissance and the Reformation; the second was the assertions of intellectuals who somehow had succeeded in saving their souls, persons like the great Dutch scholar Erasmus, who published in 1519 his *The Praise of Folly*, “of which it has been said that ‘the Jokes of Erasmus did the Pope more harm than the anger of Luther’”. Folly, he wrote, is the chief source of happiness. It rules the world, and particularly the Church.”

I do not want to reflect on things further because the pattern that you have noticed till the end of the medieval Western world, continues in the Western history to our modern times. There were instances of kings taking and giving bribes; there were instances of Prime Ministers who stooped low for favours; and there were years when ‘the way to Parliament often led through the pigsty.’ It is amazing to see how many bribe-takers and corrupt crooks hoisted themselves as benefactors to the society to which they belonged: Robert Clive, who amassed huge wealth through massive corruptions in India, justified his acts as a noble service to Britain. Warren Hastings, whose maxi-bribes and mini-morality were well-known in India, felt that his corruptions were to be ignored by the authorities in England as he had done good service to the British administration in India. No punitive actions were taken against them as the crooks had become close friends. Please recall the story that Chesterton had narrated, and I have quoted above.

But I must draw your attention to the two great corporations which must have been built on Pope Innocent’s ideas, the ideas which provide model for all the MNCs and TNCs of later times. These two great corporations were: the East India Company (founded in 1600), and the South Sea Company (founded in 1711). I have mentioned at several places in my Memoir, the ignoble deeds of the East India Company that ruled over us (see: Chapters 24 and 26). The South Sea Company produced a set of manias to swindle people, and, thus, brought to perfection the technique of deception. The scandal showed how bribery helped the corporations to win over the government of the day, and how it helped evade Parliamentary vigilance on public acts. Most investors of the Company were ruined. What the Prime Minister Robert Walpole did, is well described thus highlighting his depravity:

“Parliament demanded an inquiry, thus raising the possibility that members of the government and the royal family would be openly

implicated in financial scandal. He used his influence in the Commons to blunt the parliamentary inquiry and managed gradually to restore financial confidence.” [*Encyclopaedia Britannica* says (Vol. 29 p. 66)]

Robert Walpole, generally credited with being the country’s first Prime Minister, presided over a ministry so steeped in bribery, chicanery, electoral malpractice and gerrymandering that he became known as the ‘Grand Corruptor.’ I am sure you would be baffled on seeing the painting of the “CORRUPT LEGISLATION”, (done in 1896 by Elihu Vedder) to which I have already made reference in Chapter 22 (at p. 330)

The trends of ‘corruptions’ have increased over the recent years. I am convinced that my initial perception that ‘capitalism, corporations, and corruptions go together’ is sound. Abraham Lincoln was right in apprehending the end of the republican polity in his country. Perhaps India is seen trying hard to excel the USA in this unworthy skill. The USA has a lot of power and a lot of wealth so the evil consequences can be kept under carpet. This shock-absorbing capacity, this ability to divert attention to other stage-managed issues, is the exclusive privileges only of the super-rich and hegemonic powers.

(iv) ‘Corruptions’ in our country

“The most odious of all oppressions are those which mask as justice.” Jackson, J.

‘Corruptions’ have become endemic in our Indian society. At various places in my Memoir, I have referred to them: [see at pages 133-139, 143-153, 154-177, 178-187, 235-236, 299-306 and 422-430].

Prof. Arun Kumar is right in saying: “Illegality in India today touches almost every economic activity. It is both systemic and systematic.” There are countless scams and scandals in our country. I need not mention them as they have been widely discussed in the media, and at diverse public fora. It is distressing to read the observations of Francis Fukuyama in his *The Origins of Political Order* (p. 6):

“Nonetheless, Indian democracy, like sausage making, looks less appealing the closer one gets to the process. Nearly one-third of Indian legislators, for example, are under some form of criminal indictment, some for serious crimes like murder and Indian politicians often practice an overt form of patronage politics, in which votes are traded for political favours.”

But his ideas add nothing to our knowledge because we know the morbidity and sordidness of our systems full well. The real problem is: what should be done to remedy the ills?

Our reflections on the morbidity of our public life should strengthen our resolve to act against ‘corruptions’ by taking steps including the following two steps:

- (a) to set up a strong and effective Lokpal with a comprehensive jurisdiction over the acts of those who perform public acts, and whose acts affect public wealth and resources; and
- (b) to restructure our political systems in order to make them more accountable and transparent to our people, and more responsive to our needs. The author believes that this can only be done if our Parliament works, and works well, as this institution alone can remedy the evils which are rampant in our polity and governance. It is with this hope that I have reflected on our 'Parliament at work' in Chapters 22 and 30 of this Memoir.

SEGMENT 'C': Bound upon the Wheel of Fire

"A society of sheep must in time beget a government of wolves."
— Bertrand de Jouvenel

The *Mahabharata* tells us a very suggestive story. The Kauravas and the Pandavas had assembled in the battle-field of Kurukshetra. All efforts for peace and amity had failed. Yudhisthira, the eldest amongst the Pandavas, made a last-ditch effort for peace. But his 'hope' faltered. Yet he went to pay respect in order to get blessings before the inevitable was accepted, and the war began. He cast aside his arms, and moved in silence towards the Kaurava forces. Seeing him going thus, Arjuna rushed to be with him. Krishna too accompanied them. Whilst all others were at a loss to understand what all this drama meant in the battle-field, Krishna could well understand the purpose for which Yudhisthira was going. Krishna told Arjuna and his other brothers that Yudhisthira was going to seek permission to wage war from most respected Bhishma, Dronacharya, Kripacharya and Shalya. If Bhishma, would have revolted against Duryodhana, the destructive Mahabharata War could have been avoided. On meeting Bhishma, he sought, with utmost humility, the permission to wage a war against him, and his blessings to rise to the occasion. Bhishma appreciated his supplication, and gladly granted him the permission he sought. He blessed him to emerge victorious as his cause was righteous. Then Bhishma explained his reasons why he could not prevent Duryodhana by effectively opposing him. What he said, deserves deep reflections. He said:

अर्थस्य पुरुषो दासो दासस्त्वर्थो न कस्यचित्। इति सत्यं महाराज, बद्धोऽस्म्यर्थेन कौरवैः।

[Men are the slaves of wealth, and, for that reason, they have no freedom but to obey their masters. As I had enjoyed the Kauravas' patronage and wealth, and as I was bound by my words to support the Kauravas, I had no option but to be on their side.]

When Yudhisthira sought blessings from the other three venerated persons, they blessed him wishing his victory as his cause was just, but explained to him the reasons which had prevented them from opposing the gross injustice done to the Pandavas. If they would have asserted for the just cause, Bharata would have escaped the horrendous and most destructive war. They, like Bhishma, suffered anguish, but felt wholly helpless.

I must tell you the remorse that wrenched Bhishma when he was nearing death on the bed of the spikes of arrows in the battle field of the Mahabharata. It

is said that Yudhisthira called on him to learn the lessons of *Rajdharma*, as he was the greatest authority even on this subject. Bhishma realised his own tragic trait best described by the poet 'Dinkar' in these words drenched in remorseful tears, stated with utmost candour:

कर पाता यदि मुक्त हृदय को मस्तक के शासन से, उतर पकड़ता बांह दलित की मंत्री के आसन से,
राज-द्रोह की ध्वजा उठाकर कहीं प्रचार होता, न्याय-पक्षलेकर दुर्योधन की ललकारा होता;
स्यात सुयोधन भीत उठाता पग कुछ अधिक संभल के, भारतभूमि पड़ती न स्यात, संगर में आगे चल के।

[Could I then free myself from the thralldom of my self-assumed obligations to the tyrannous government I served, and could I assert for the cause of Justice, perhaps Duryodhana could not have gone that far to pursue his unjust objectives; and this great Bharat could have escaped the devastation that the War brought for this great nation to groan with agony for long.]

But how can this capacity to speak for truth and public weal be cultivated when we see all around untruth prevailing helping the greedy to reap rich harvest of wrongful gains. It seems *Satyameva Jayate* survives only to the extent that the liars alone know the truth which they shroud with stealth and deception. The words of Hannah Arendt come to mind: "The trouble with lying and deceiving is that their efficiency depends entirely upon a clear notion of the truth that the liar and deceiver wishes to hide." We see all around us tremendous corporate and collective efforts to create systems under which public weal suffers slings from the masqueraders and deceivers of all sorts. But this plight of humanity has been wrought only because we have not equipped ourselves to be on the side of 'Satya' and 'Dharma' by perceiving our *Kartavya* to do our duty. We must not fear 'Darkness' as it has no existence; it terrorizes us because we have not put Light on. Once the Sun shines, Darkness vanishes. For this to happen, we must know what has caused our present morbid plight, and also what can help us to save ourselves. It will be a terrible agony to allow our country to sob, like humiliated Draupadi, in some sort of the Kaurava Sabha of the present-day pretenders and deceivers.

Let that Sun shine so that darkness goes. The story of Icarus is enlightening. This great hero of the Greek mythology could not successfully escape from Crete on his wings as these melted under the Sun. Let us not move towards the day when the cockroaches would become the sole survivors on this beautiful planet, and would have sufficient reasons to cast a verdict that God had erred creating men with the full freedom to become great or mean, divine or devilish, *devik* or *asuric*. It would be the gloomiest of all moments when we shall have no option but to confess before our Lord, or Conscience: we were born to bear witness to Light through our ideas and actions, but we spent all our times remaining witness to human follies by groping in darkness contrived by lust, greed, and wrath.

What a piece of work is a man! Mind goes to the great Karna's dream

The 'Udyoga Parva' of the *Mahabharata* (Ch 143) tells us a suggestive story. After his failure in dissuading Duryodhana from dragging humanity to a most destructive war, Krishna found an opportunity to converse with Karna. He felt, Duryodhana would not proceed on the destructive course if Karna shifted his

loyalty towards the Pandavas. But Karna stuck to his loyalty to Duryodhana. When Krishna expressed his apprehensions, Karna told him about his dream he had seen. He had seen Yudhisthira sitting comfortably on the huge heap of dry bones (अस्थि संचयमारूढ), enjoying his repast of sweet food (घृतपायसम्, *kheer*).

When I see the present-day wielders of powers, and their co-partners enjoying sweet food on the dry bones of the suffering millions, I feel that there are good reasons to believe that some cataclysmic Mahabharata is not far off. When we build our gold castles in the tax havens, secret jurisdiction or cyberspace, when we degrade environment to pursue our limitless greed, when our demonic zeal invites, with maddening pace, our collective doom, aren't we seated on the heap of dry bones, seeing the chimerical dance of delight with our brain mortgaged to the present day followers of Mephistopheles. The story of Faust is the story of modern man in this brave world⁵: abundantly ambitious but abysmally foolish. But whatever the infernal magician of extractive capitalism may say, in the end it is यतो धर्मस्ततो जय (victory is where dharma prevails). This is what we HOPE.

SEGMENT 'D': CONCLUSION

"Don't cry, I'm sorry to have deceived you so much, but that's how life is."
Vladimir Nebokov, *Lolita*

I am not bothered whether my ideas, set forth in my Memoir, are appreciated, or rejected, or worse still, are simply ignored treating them mere buzz of a busybody. I would not be the first to be so weighed, and so dumped for stating, with utmost good faith, decoding what I see written on the walls. After having written the great *Mahabharata*, the great Vyasa had an iron in his soul. He said: "I keep shouting to caution, but none listens to me." If we remain merely as the collaborators with the criminals, or even as fence sitters, the day is not far when some Vyasa would console us too in the words once used to console Yudhisthira. The great Rishi asked him to see for himself what the Supreme (we may call it God, Destiny, Time, or our own Karma) had wrought: पश्य कालस्य पर्ययम् (see, what Time has done). The greatest irony in human history is the fact that Duryodhana did not hear Krishna, but followed a nefarious crook, Shakuni! Again कालस्य पर्ययम् !!

I had begun this Chapter with the words of Lord Krishna: we are our own friends, we are our own foes. I would underscore this idea by quoting, at the end of this Chapter, the holy and inspiring words from the Holy *Quran*:

इन्लाहो ला युग्य् यरो मा बिकौ मिन्।

हत्ता युग्य् यरो वा बिन क्तसे हुमा।

"Almighty God will not change the condition of any people unless they bring about a change in themselves"

It is interesting to note that in providing us this most important instruction, the *Bhagavad-Gita* and the *Quran* strike the same note, say the same thing. In my assessment, the quoted words constitute the profoundest piece of wisdom that mankind has received to understand the very grammar of human existence.

THE PORTRAIT OF OUR TIME

NOTES AND REFERENCES

1. Translated by Dr. Radhakrishnan.
2. O. Hood Phillips' *Constitutional and Administrative Law* 7th ed 371.
3. *Vodafone International Holdings v. Union of India & Anr* (2012) 6 SCC 613.
4. AIR 1969 SC 783.
5. Shiva Kant Jha, 'Let us play Columbus to explore the regions of Darkness on our good Earth: The Cayman Islands; The Virgin Islands; The Bahamas; Mauritius'
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30

A MISCELLANY OF MY IDEAS FROM MY *PERSONAL JOURNAL*

SYNOPSIS

Time debateth with Decay	509	Learning from the Treaty of	
Grammar of Existence: DHARMA	510	Allahabad	520
The Rocks speak : Inscriptions in		Parliament at work	521
the Parliament House.	511	The role of parliament: topic	
Idea of Secularism and Dharma	514	revisited	522
Whether to be spiders, bees, or		Political Parties revisited	523
artists	515	Strategies of the corporate imperium .	523
Polity, Politics and people's Duty	516	'Reforms': the Mohan Raag that	
If our Parliament goes on Shava-		deceives	524
shana	516	Setting up political trajectory in our	
Parliament's decline both in England		villages	524
and India	517	Restructuring our polity	526
Prime Minister, the Sun or the		Political Parties and Democracy	527
Cipher	518	Invocation to act	528
All for the Holy Grail, FDI	518	A Note on <i>Charitra</i> (Character)	528
FDI for whom ? for what?	519		

“By what authority doest thou these things? and who gave you this authority to these things?” (*Mark 11:28 in King James Bible*).

“No question is ever settled until it is settled right.”

Ella Wheeler Wilcox, Settle the Question Right

SOME FUNDAMENTAL IDEAS

(i) Time debateth with Decay

History proves: nothing survives except good deeds. All of us are lucky to have opportunities to do good for the benefit of all. The beauty and majesty of all our institutions last only to the extent the good work is done by them. None should forget that the world itself is the subject-matter of a continuing debate between Time and Decay. How perceptively Shakespeare said: to quote —

When I consider every thing that grows
Holds in perfection but a little moment,
That this huge stage presenteth nought but shows
Whereon the stars in secret influence comment;....
Then the conceit of this inconstant stay
Sets you most rich in youth before my sight,
Where wasteful Time debateth with Decay,
To change your day of youth to sullied night;.....

(ii) The Grammar of Existence : DHARMA

I had an occasion to read *Message from Parliament House* in which Justice Dr. Rama Jois had compiled the inscriptions as on the walls of our Parliament House. Some of the *shlokas* tell us profound wisdom providing us an insight into *Dharma* essential to the art of the management of the public affairs to.

Text of the inscriptions	English rendering of the text	The place where the inscriptions exist
धर्मचक्र-प्रवर्तनाय (Lalit Vistara Ch, 26)	For moving the Wheel of <i>Dharma</i> .	overlooking the Speaker's Chair in the Lok Sabha.
सत्यं वद धर्मं चर (The Taittreeyopanishad Shikshavalli)	Speak Truth; follow <i>Dharma</i>	on the top of the entry gate to the Rajya Sabha.
एकं सद्ब्रिष्वा बहुधा वदन्ति (The Rigveda I-164-466)	'One alone exists, the learned call Him in many names.	on the top of the entry gate to the Rajya Sabha.
इन्नलाहो ला युग्यं यरो मा बिकौ मिन्। हत्ता युग्यं यरो वा बिन क्तसे हुमा॥ "Almighty God will not change the condition of any people unless they bring about a change in themselves."	"Almighty God will not change the condition of any people unless they bring about a change in themselves" (as translated in <i>Message</i>)	inscribed in the arc-shaped outer-lobby of the Lok Sabha.

The quotes on the rocks have been carefully chosen to show those canons of practical ethics which inhere in *Dharma*, and always govern the discharge of the *Kartavya-karma*. '*Dharma*' has no doctrinal bias, no sectarian bias, and no sectoral underpinnings. They are the profound instructions for right actions to all our Arjunas present in Parliament how to act in discharge of their duties.

The most fundamental concept that we know is of *Dharma*. This word cannot be translated in any other language of the world because nowhere else the very grammar of existence was discerned with greater profundity and clarity. At the cosmic level, *Dharma* sustains everything so that it can run its course in accordance with its own existential grammar

The concept of *Dharma* has great practical relevance. *Dharma*, as Medhatithi says, means *kartavya* which is generally translated as 'duties' (*Dharmasbhadra kartavyata vachanah*). An expert has explained it as a set of norms followed by those learned in the Vedas, and are "approved by the conscience of the virtuous who are exempt from hatred and inordinate affection." The Vaishesik philosophy defines its objective as the promotion of welfare (*yatobhodayani*). Bhishma

tells King Yudhisthira that the core of *Dharma* is: to love others ('Shantiparva' Ch. 260). *Dharma* sustains everything, human and non-human, and controls and regulates their nature and their acts. *The Mahabharata* has emphasised, at several places, that victory always goes with *dharma* : '*Yato Dharmahstato Jayah*' [reiterated by Karna ('Ydyogaparva' Ch. 142; by Drona ('Ydyogaparva' Ch.148); by Arjuna ('Bhishmaparva' Ch.21); by Sanjaya ('Bhishmaparva' Ch.65) ; and by Bhishma ('Bhishmaparva' Ch.66)].

(iii) The Rocks speak : Inscriptions in the Parliament House

Teach us to sit still
Even among these rocks,
Our peace in His will
And even among these rocks

T. S. Eliot's 'Ash-Wednesday'

Some of the *shlokas* compiled in *Message from Parliament* are sound instructions to our representatives assembled in Parliament. They express the profound wisdom set forth in our *Shastras*. I marvel at the wisdom and insight of those who selected such *shlokas* for inscriptions for the guidance of our representatives assembled in Parliament to discharge their great constitutional duties.

We know how in our ancient days great kings considered themselves bound by the instructions given in the *Shastras*. Our Constitution itself is *ashastra* for us. One such a situation I had explained thus in my book *Judicial Role in Globalised Economy* (published in 2005)¹: to quote from (Chapter 3) -

"Our literature provides us a suggestive story from which much wisdom can be derived. It is nuanced in the epic to turn into an expanded metaphor of deep import. The *Valmiky Ramayana*, in its Kishkindhakand (the Part dealing with what happened in Kishkindha), tells us a lot about Bali's guilt which invited the divine curial justice. Sugriva was the victim of his wrath. Lord Rama came to help him. He struck Bali with a fatal arrow from a hide. Bali was furious, and he charged the Lord in scathing words. His charges were well reasoned. The poet devoted a full canto to set them forth, succeeded by a canto wherein the Lord replies in his defence quoting authorities. He made it clear that even He was working under constitutional limitations. Tulsidas has laconically described Bali's charges in these two celebrated lines of the *Ramacharitmanasa*:

Dharma hetu avatarhu gosayin, mara mohi byadh ki nayi.

Main veri Sugriva piyara karan kawan nath mohi mara.

[O Lord! you came to ensure the triumph of *dharma*, but you have killed me behaving as an ordinary hunter. Tell me the reasons why have you discriminated me from Sugriva.]

Bali charged Rama invoking his Fundamental Right to Equality. Lord Rama neither lost temper nor brushed him off in the huff. He explained to Bali his cognizable faults. He explained his fundamental duties, which left him no alternative but to kill him. He does not silence Bali with any ex cathedra assertion. He justified his conduct

with reference to binding authorities. He refers to the duties of king as mandated by the tradition and the *Manusmriti*. He suggested that even he was bound by dharma, which even he *cannot* break! Under our tradition even God is questioned.”

Here I intend to dwell only a few of those *shlokas* which provide directions to our representatives to think and act. Their import would be stated with utmost brevity leaving the pursuit of developing them comprehensively for persons abler than me.

न सा सभा यत्र न सन्ति वृद्धाः वृद्धा न ते ये न वदन्ति धर्मम्
धर्मं स नो यत्र न सत्यमस्ति, सत्यं न तत् यत् छलमभ्युपैति

Mahabharata 5-35-58

[‘Sabha’ (parliament) does not exist where there are no elders; and they are not elders whose speech does not accord with *Dharma*. Their speech cannot be righteous (*dharmic*) if it is devoid of truthfulness, and bears the taint of deceit.]

An assembly does not exist if wise persons are not there. In this *shloka*, the word वृद्धा (*briddha*) means ‘the wise and learned’. Sanskrit literature contemplates three types of *briddha*: *vayobridha* (old in age), *gyanabridha* (mature in wisdom and experience), and *andaagamabridha* (mature with acquired knowledge). But none can be considered ‘wise’ unless he promotes righteousness. And there can be no ‘righteousness’ unless it accords with ‘truth’. This *shloka* deserves to be read with the hymn with which the *Rig-Veda* ends. I have quoted those lines in Chapter 22 (‘Our Democratic Republic and its great institutions’) at p. 333. The *shloka* tells us about essential traits, in effect, the qualifications, of the members of the Sabha* (here ‘parliament’): (i) they should be learned and wise; (ii) they should have courage and imagination to say what is right, (iii) they speak truth, and (iv) and they must be capable to realise that Truth never exists where craft and collusion, fraud and deception and delusion operate.

* If I rack my mind to find out the best model for a Sabha, I see it in the ‘Udyogaparva’ of the *Mahabharata* (see Chapters 1-7). They had gathered there to discuss matters to decide on the course of actions. Yudhishthira to whom a lot of injustice had been done by the Kauravas, was now in a position to demand justice. The Sabha had to decide what was needed to be done. They were to decide whether a war could be avoided. The deliberations led to the initiation of various efforts to come to a peaceful solution. The Mahabharata War occurred when all efforts had failed. The Instrument of Justice (the Greeks had called it Dike, we call it using the most comprehensive term: *Dharma*) had to exercise its *ultima ratio*. Krishna presented the problem for consideration with utmost precision and detachment. He explained what *Dharma* demanded. He left everyone free to deliberate. Everyone had the problems in the round and in the right perspective. None was under pressure or wrongful persuasion. Various shades of views were expressed with utmost candour. Some of the ideas went even against Krishna’s, and the motion could have failed. But the Sabha had a common pursuit, the members were learned, and all wished justice to be done. So in the end the motion was adopted. All possible efforts were to be made to achieve just and peaceful solution.

Whenever I think of the way our Parliament works. I feel our representatives in the House can derive much wisdom by reflecting on the proceedings of that Sabha than just by reading such tomes as Thomas Jefferson’s *Manual of Parliamentary Practice* (1801), *Robert’s Rules of Order Newly Revised*, or Erskine May’s *Treatise on the Law, Privileges, Proceedings and Usage of Parliament*.

सभा वा न प्रवेष्टवया, वक्तव्यं वा समंजसम्
अब्रुवन, बिब्रुवन वापि नरो भवति किल्मिषी

The Manusmruti, 8/13

[One may enter the Assembly Hall, or may not do so. But once he goes there, there is no option but to speak truth in a righteous way. The one who does not do that is a sinner".]

This is an instruction to those in the House who believe keeping their mouth shut when their duty is to speak for public cause. When the *shloka* requires the members to speak, it requires them to say only what is right and true. Those who violate these norms are sinners. When one is under duty to work for *lokakalyana*, one must say, assert, and do what promotes welfare of people. One is free to enter, or not to enter, the House to play the role of people's representative. But once one does that, there is no option but to play that role with fidelity and excellence. One must cultivate competence to understand issues, and one must acquire strength and imagination to fight for the right cause.

स्वे स्वे कर्मण्यभिरतः संसिद्धिं लभते नरः

The Bhagavad-Gita 18-45

[One attains perfection by discharging one's Duties.]

We believe that our Constitution expects all the organs of the State to discharge their constitutionally and legally prescribed duties (कर्तव्य *kartavya*). The *shloka* bids everyone to do his duty. Article 51A of our Constitution prescribes the fundamental duties of 'every citizen'. Article 84 prescribes that none can ever be a member of Parliament unless he is 'a citizen of India'. Hence, it is clear that all the duties, which Article 51A casts on ordinary citizens, are also the duties prescribed for the members of Parliament. I recall, while delivering my concluding address before the Hon'ble Delhi High Court in the Indo-Mauritius Tax Treaty Abuse Case, I quoted Lord Nelson's electric signal to his fleet at the battle of Trafalgar; "England expects that every man will do his duty"; and then I, as the Petitioner before the Court, added: "India expects that every citizen will do his duty".

The determination of one's *skartavya* in a given moment is difficult. It is context-specific, and can change from moment to moment. *Kartavya* is one's perception of the right line of action. But '*kartavya*' can be determined by a person only when he knows things well, only when he can perceive things with detachment, and decide in the light of wisdom (*viveka*).

अयं निजः परो वेति गणना लघुचेतसाम्
उदारचरितानां तु वसुधैव कुटुम्बकम्

The Panchtantra, 5-21

[The petty minds see the categories of 'mine' and 'not-mine' (or thine), but the broad minded persons see the whole world just as a family.]

This *shloka* brings to our mind what I call the 'Dhritarashtra syndrome'. We

all know that the Mahabharata War was caused by Dhritarashtra's 'mine' and 'thine' notions: the Kauravas were his ('mine'), the Pandavas were different ('thine'). The idea that this *shloka* expresses is relevant to our times. The idea that the *shloka* expresses is most important for us living in the days when materialism and consumerism have made us embrace the culture of narcissism. Christopher Lasch has portrayed the state of affairs in this sort of society in his well-known book *The Culture of Narcissism* (1979). He identifies our generation as 'the Me generation'. The *shloka* tells us to treat all humans as the members of one family. This is our vision of 'globalization'. For the weal of all we must remain ready to receive noble ideas coming from all sources. It warns us all: GREED IS NO GOOD".

सर्वदा स्यान्नृपः प्राज्ञः, स्वमते न कदाचन। सभ्याधिकारिप्रकृति-सभासत्सुमते स्थितः

The *Shukraniti*, 2-3

[The ruler should be wise, not ego-centric, in deciding matters. He should consider the views of the public functionaries, and also of those present in Court. In short, he should consider all the relevant views before taking decisions.]

This *shloka* is an instruction to the ruler. He must 'always be wise and intelligent'. 'Wisdom' is evidenced by his sense of propriety, proportionality, discrimination, fairness, and dedication. He should listen to what others, in the House, say before deciding crucial issues. He is to act for the weal of all. The *Padma Purana* considers such work done for: सर्वलोकसुखप्रदम्; and the *Shankhya Darshan* considers that a pursuit for 'general weal' (अत्यन्तलोकहितम् सत्यम्).

(iv) The Idea of Secularism and 'Dharma'

In the West, the idea of 'secularism' emanated from the idea of anti-clericalism. The Renaissance and the Reformation Movement led to the emergence of the powerful waves of atheism and agnosticism. Francis Fukuyama, the author of *The End of History and the Last Man* has said that we are living in a period of time that is analogous to the Reformation which made, in the West, 'religion' and 'politics' go apart." In the 20th century and the years which have followed, the quest at 'political liberation' has led to libertinism and narcissism, and all the nonsense that goes under the rubric 'post-modernism'. These have conspired to bring about corporate culture produced and conditioned by the soulless corporations. Peter Watson has aptly said that the shift in the ideas occurred in the 19th century itself: Owen Chadwick has portrayed the change in attitudes in his *Secularisation of the European Mind in the Nineteenth Century* (1975). This shift in the Western intellectual history was on account of several factors including the factors and vectors which emanated from the challenges posed by the 'social' and 'intellectual' problems: these included Karl Marx's materialism, industrialization, and anticlericalism, and the impact of science on the ways the humans think and work. It is interesting to note that Earnest William Barnes wrote his *Scientific Theory of Religion* (1933) recognising the existence of "a Universal Mind which inhabits all matter in the universe, and that the purpose of the universe is to evolve consciousness and conscience in order to produce goodness and, above all, beauty"¹, Peter Watson has made a very insightful comment when he said: "

Chadwick's more original point is that as the nineteenth century wore on, the very idea of secularisation itself changed." Besides, 'Christianity' itself is developing its 'secularist' dimensions, It would be clear from what an expert has said about the developments in 'Christianity':

"The movement towards secularism has been in progress during the entire course of modern history and has often been viewed as being anti-Christian and antireligious in the latter half of the 20th century, however, some theologians began advocating secular Christianity. They suggested that Christianity should not be concerned only with the sacred and the otherworldly, but that people should find in the world the opportunity to promote Christian values. These theologians maintain that the real meaning of the message of Jesus can be discovered and fulfilled in the everyday affairs of secular urban living."²

The study of the Chapter 24 ('Our Worldview & the Trends of our Times') would help you realise that it is unwise to confuse '*Dharma*' with 'religion'. 'Religion' is a set of doctrinal assumptions which a particular society cultivates, and pursues to achieve its ends. History has shown that the sets of combative assumptions acquire respectability. Reject all doctrines, banish all gods, forget all scriptures, yet *Dharma* would be there to sustain nature. We never allowed 'religion' and 'politics' to become collaborators, so we never thought to set them apart.

The concept of 'Secularism' in the Preamble to the Constitution of India must be understood in the context of our culture. It means '*sambhava*', the capacity to see the 'One' in all. The *Bhagavad-Gita* tells to become *samdarshinah* [The *Bhagavad-Gita* (V.18)]. Its import is to be understood in the light of the mission of our Constitution, and the fundamental cultural assumptions shared by the people of India.

H. M. Seervai rightly explains the import of secularism in his *Constitutional Law of India* (P. 277) thus:

"Secular" may be opposed to "religious" in the sense that a secular State can be an anti-religious State. In that sense, the Constitution of India is not secular, because the right to the freedom of religion is a guaranteed fundamental right. The word "secular" may mean that as far as the State is concerned, it does not support any religion out of public funds, nor does it penalize the profession and practice of any religion or the right to manage religious institutions as provided in Arts. 25 and 26. The secular nature of our Constitution has to be gathered from these and other Articles of our Constitution, like the Articles relating to a common Citizenship (Part II) and Articles 15, 16 and 29(2).

(v) Whether to be spiders, bees, or artists

A spider conducts operations that resemble those of a weaver, and a bee puts to shame many an architect in the construction of her cells. But what distinguishes the worst architect from the best of bees is this, that the architect raises his structure in imagination before he erects it in reality. At the end of every labour-process, we get a result that

already existed in the imagination of the labourer at its commencement.

— Karl Marx (*Capital*, Vol. I, Chap. 7, Pt. 1)

We are free. We can become spiders to ‘spin dirt and poison’ out of our entrails; we can become bees to act in instinctive routine, as they have done over all the times gone, for own benefits; or we can become artists in order to shape our destiny with creative vision. We are free. We are free to ascend the *dharmaratha* for actions; we are free to calculate the gains and losses till we exist here. We are free to become non-thinking clod, or activists. We are free to make Krishna as our guide, or the Devil as our mentor. We are free.

(vi) Polity, politics and people’s Duty

The edicts on the walls of our Parliament underscore the sanctity and nobility of the society’s political pursuits compendiously called ‘polities’. Krishna was Himself a great politician whose politics illustrate the best in politics. Acharya Chanakya stressed on the egalitarian objectives in the art of managing public affairs. Acharya Kautilya said in his *Arthashastra*:

प्रजासुखे सुखं राज्ञः प्रजानां च हिते हितम्
नात्मप्रियं हितं राज्ञः प्रजानां तु प्रियं हितम्

(“In the happiness of the subjects lies the king’s happiness, in their welfare his welfare; what pleases himself the king shall not consider good but whatever pleases his subjects the king shall consider good.” from *Message*)

‘Polities’ becomes dirty when we play dirty games. Under our Indian tradition, ‘politics’ is the *Rajdharm* that casts non-negotiable and non-shifting Duties on the members of a democratic society to work for the weal of all by complying with the demands of *Rajdharm*.

If the ‘politicians’ of these days are feared and looked down upon, it is because our people have been constrained to judge them that way. They have been weighed, and found wanting. But we hope that better days are ahead.

ON OUR POLITICAL SYSTEM

The people — the people — are the rightful masters of both Congresses, and courts — not to overthrow the Constitution, but to overthrow the men who pervert it

— “Abraham Lincoln, [September 16-17, 1859]

(1) If our Parliament goes on *Shavashana*, it can see its Plight

It is said that when Charles II (1630 – 1685)¹ ruled England, parliament was dissolved for many years, and the king ruled the realm with the cabal of advisors one of them was the most deceitful and crafty the Duke of Buckingham. Someone who saw that government at work, observed:

“Who rules the kingdom?” “The king.” “But who rules the king?”
“The duke.” “Who rules the duke?” “The devil.”

Once I was absorbed thinking about the ways our government worked. I heard two birds twitter in the bush on the roadside. They seemed to say:

“Who rules our country? Our Parliament”.

Who rules out Parliament? The Cabinet under the dictatorship of the Prime Minister.

Who rules the Cabinet? The MNCs and the syndicate of the foreign investors, and the domestic calculators.

(2) Parliament's decline both in England and India : a fleeting overview

(a) In England : We know that the Glorious Revolution of 1688, and the Act of Settlement, of 1701, led to the establishment of the supremacy of parliament. One of its committees evolved into the council of ministers from which grew another body, tinier in form but mightier in power, called ‘cabinet’. The institution of ‘Crown’ emerged to make the king and the ministers close friends and strong collaborators. The King was glad as the executive government’s activism on the globe enriched the country, and made the Crown glamorous by helping it to become a great imperial power. This domination by the executive government was initially resisted by parliament, but it got reconciled to its destiny under the new despotism of the cabinet. After World War II, the grandeur of parliament further diminished when the executive government virtually sold itself to the USA where the corporations rule. The decline of parliament began with the fast onset of neoliberalism. Thatcher and Reagan were influenced by the ideas of Milton Friedman and Feldstein, and many others who shared the ideas that worked for the dominance of the market forces. Their thesis pleaded for the roll back of the activities of the State. Monetarist and supply-side policies came to dominate. The technocratic structure subjugated other institutions. All these increased the might of the international high finance, and the MNCs, and also of the ‘high net worth’ individuals. The idea of ‘social justice’ and ‘equality’ lost relevance. This process began in the forties, and acquired great momentum after the election of Margaret Thatcher in 1979 as the Prime Minister of the United Kingdom and a year later, of Ronald Reagan as president of the United States. Bertrand Russell had highlighted, in his letter to Maurice Amos, the decline of Parliament by adopting the principle of the proportionality with reference to the pages of a book on the British constitutional law!

“I am very much interested in what you say about your book on the British Constitution, and especially amused that you had written 46,000 out of the 50,000 requisite words before you reached Parliament. Parliament has become a somewhat unimportant body. In the 19th century the Prime Ministers resigned when defeated in parliament until Gladstone altered the practice; now by the threat of dissolution they terrorize Parliament.”³

(b) In India : Writing about our Parliament in the early years of our Constitution, Granville Austin observes⁴:

“Parliament has ‘immense powers’ and ‘functions within the bounds of a written Constitution’ True at any time in theory, the assertion’s accuracy as regards Parliament’s service to the seamless web depended upon the time it was made. The first Speaker, G. V. Mavalankar, built Parliament ‘as an independent institution not to be

seen as an extension of government or of party' — ideals running counter to a number of the nation's cultural traits. Nehru supported him. ."

Nehru was assertive and dominant, but he respected our Constitution, and allowed Parliament to have its way as constitutionally conceived. Nehru wrote (Chapter 193 of *Glimpses of World History*) on August 6, 1933 about the circumstances which wrought Parliament's decline. He even quoted Harold J. Laski: "Our government has become an executive dictatorship tempered by fear of Parliamentary revolt." Even other members of our Constituent Assembly carried this worry in their mind. The plight of our Parliament has been portrayed in Chapter 22 of this Memoir; see pp. 318-332.

(3) The Prime Minister, the Sun or the Cipher

As the British constitutional history shows, the Prime Minister always tried to increase his powers, and role. The monarch had his own reasons to be support the Prime Minister. My study of the British constitutional history proves that the culture of the executive government, whether in the 17th century or in the 21st century, has been the same: to acquire great powers by means fair or foul. Historical circumstances helped the Prime Minister emerge very powerful and domineering person. The institution of the Prime Minister even become autocratic as the parliament failed to realize, and assert, its powers.

He could become imperious by threatening the dissolution of the House forcing the members to go to the hustings to try their luck again. In normal course there is nothing to fear facing again and again own people. Frequent elections are often good as people have better knowledge of the political systems at work, and also as the representatives are made more accountable and responsive to people. Besides, if someone is good and deserving in the eyes of people, there is no reason to get worried in facing fresh elections. The real reason is their fear psychosis as they are not sure to get re-elected as they know they have not endeared themselves to their people. In this game of self-preservation, the persons belonging to different political parties, otherwise at loggerheads, shake hands to come together! But, why should they tremble to face re-election ? why should elections require money, and that too so much? I have suggested a model for selecting persons for elections where expenditure would be just zero (see Chapter 22, p.338).

Why has our Parliament failed in controlling the 'cabinet' effectively? Why should we allow situations to emerge when the great institution of parliament becomes non-functional. Things are bound to become worse if we allow the 'corporations' to dominate. It is not difficult to see why the Big Business is so happy with the Executive Government. The dominance of the Executive Government helps the mighty international investors, and sharp operators to have their ways. Democracy languishes, and 'Constitution' is made a mere scarecrow. We must realize that we all are on trial before the Bar of History: a waiting verdict.

(4) The extraneous quest: All for the Holy Grail, the FDI

It is shocking to see how 'sovereignty' is privatised in terms of the Bilateral Investment Treaties for obtaining more and more of FDI, and higher and higher

GDP, without measuring their long-term effects on our nation's interests, and cultural values which it has cultivated so assiduously. This craze has been so glamorously romanticised, and so assertively promoted, that, not to say of our Government, and the other minions exercising power over us, even our Supreme Court has fallen in love with it. The *Vodafone Judgment*⁵ makes a clear departure from our Constitution's mission of a Welfare State, and accepts, in its effect, the neoliberal paradigm, most clearly expressed in its zest for FDI from tax havens and secret jurisdictions thus benedicting an opaque system of global fiscal operations dear to the neoliberal thinkers. I have heard the paean to the FDI over all the years I dealt with the Indo-Mauritius Tax Treaty Abuse Case [*Union of India & Anr. Vs. Azadi Bachao Andolan & Anr. (2004) 10 SCC 1*]. I heard our Government's passionate pleas for this Holy Grail (FDI) that the then Solicitor-Generals and the Attorney General had made. I made my research wading through the newspapers pertaining to years 1980 to 2000. I discussed with many who mattered, including Dr Manmohan Singh. They said that without FDI, our country would not survive; without FDI everything would be lost.

The judicial logic in the *Vodafone* judgment is just a categorical syllogism that runs thus: the *major premise*: what promotes the incoming of the FDI is good; the *minor premise* : that the Income-tax Department's action would obstruct its incoming; the **conclusion**: the Department's action against Vodafone was wrong. But it is difficult to appreciate this syllogism as its major and minor premises are wholly extraneous to the Income-tax Act, 1961. When the courts decide issues extraneous to the statute, the decision brings to mind Justice Holmes said in his classic dissent in *Lochner v. New York*⁶:

"This case is decided upon an economic theory which a large part of the country does not entertain. If it were a question whether I agreed with that theory, I desire to study it further and long before making up my mind."

To reach the conclusion, our Hon'ble Supreme Court, in *Vodafone*, justified the labyrinthine corporate structuring with reference the medieval ideas of the Church, and ignored the 'soft structure' of the egalitarian ideas at the heart of the Constitution Bench decision in *McDowell & Co.*⁷, and allowed the 'corporation' to wear impregnable structure that precludes 'see through'. That judgment has been undone through a retrospective legislation. I had sent two letters suggesting retrospective legislation to then Finance Minister. You may read them at my website www.shivakantjha.org.

(5) FDI for whom ? for what?

Joseph Stiglitz has an undoubted authority to speak on the relevance of FDI, and he has posed serious embarrassing questions about it in his *Globalization and its Discontents*. Some of his comments deserve close study. Stiglitz says (pp. 71):

FDI " often flourishes only because of special privileges extracted from the government...." "The foreign direct investment comes only at the price of undermining democratic processes. This is particularly true for investments in mining, oil, and other natural resources, where foreigners have a real incentive to obtain the concessions at low prices." "There is more to the list of legitimate complaints against

foreign direct investment. Such investment often flourishes only because of special privileges extracted from the Government.”

It is time for us to consider this just for FDI. The rich would get richer, but the **Consolidated Fund of India** would suffer. In terms of Article 266, all revenues, go to the Consolidated Fund of India; and are to be spent in accordance with our Constitution’s provisions, and under a close Parliamentary control. Such resources are under trust to meet expenditure for public cause. FDI, on the other hand, comes and goes for the corporate benefits, and the High Net Worth Persons. Clouds are formed in India but they rain elsewhere!

(6) Learning from the Treaty of Allahabad

Through the WTO Treaty, the BITs (Bilateral Investments Treaties), and other trade pacts they have already succeeded in making two systems in one country, as had been done when we were under the servitude of the East India Company. The WTO Treaty, the DSB of the WTO, the overriding provisions in the BITs and other regional trade pacts have established tribunals at the international fora to decide the disputes raised under those treaties. The jurisdiction of our domestic courts stands ousted.

What I see, takes me to my undergraduate days when I had read the following lines, written by my teacher Dr. R.C. Majumdar in the *Advanced History of India*:

“In the meanwhile a new element had been introduced by the establishment of the Supreme Court in Calcutta, in 1774, by virtue of the Regulating Act. This court, established by the Crown and consisting of a Chief Justice and three Puisne Judges, was vested with jurisdiction over British subjects only,..... The legal principles and procedure which they followed were foreign to India and extremely vexatious.”
(p. 789)

We have witnessed in the recent years the thrill of our Executive Government on entering into the WTO Treaty, the Indo-US Nuclear Deal, and the numerous Bilateral Investment Treaties (BITs). All these treaties were signed through an opaque system that precludes Parliamentary deliberations, and deprives our common people to assess the effect and impact of the obligations by which our nation becomes bound. Such morbid occasions call to our mind the Treaty of Allahabad which Emperor Shah Alam II signed without understanding the terms which led to the establishment of the power of the East India Company at the wreck of the Mughal Empire in India! In 1765, the Treaty of Allahabad granted the Diwani of Bengal, Bihar, and Orissa to the East India Company. I wish you read the first few lines of that Treaty of Allahabad to realize how foolishly the Emperor allowed himself to get trapped by the compradors, go-getters, hirelings and harlots who thronged around him. The terms were couched in ambiguous and imprecise words which could be made to mean whatever the Company Bahadur wanted them to mean in order to promote its sinister interests. Our Government did no better when one of its ministers signed the WTO Treaty in Marrakesh (in Morocco) on 15 April, 1994. The said Emperor reaped the consequences of his deeds but his story has ceased to matter as he and his Empire are

now down in the dustbin of history. What our Government did in 1994, and what it keeps on doing over all the years thereafter are the matters for our citizenary to deliberate. I wish time is not far when such treaties would be challenged before our Supreme Court on the grounds that our Executive Government entered into such treaties without competence as it transgressed mandatory constitutional restraints (see p. 295 of this Memoir).

(7) Parliament at work

Shri Bimal Jalan (*The Future of India* Chapter 1) has drawn our attention to a fact that is of great concern for us. He says: “The domicile requirement of candidates for Rajya Sabha elections has been removed. Member of the Rajya Sabha no longer have to be residents of the state that elects them.” This feature becomes most worrisome when most “parties are now characterized by arbitrariness, haphazardness, lack of deliberative purpose and tolerance for corruption.” His critical examination of our polity shows that “the ordinary people of India are disenchanted with the working of the political system.”

After the 2004 general elections, the Congress emerged as the largest political party. We thought that its Chairperson, Smt. Sonia Gandhi, would be made the Prime Minister of India. The nation was surprised when Smt. Gandhi wanted Dr. Manmohan Singh to be made the Prime Minister. Dr. Singh had never succeeded to win a Lok Sabha seat. He had been elected to the Rajya Sabha in 1999 from Assam, and was re-elected later from that State only to the Rajya Sabha. He was administered oath of the office of the Prime Minister on 22 May, 2004.

It is not good for democracy that a person who fails to acquire the people's confidence to get himself elected to the Lok Sabha (our House of People), becomes the Prime Minister ! It is strange that the go-getters bend the norms of constitutional propriety by resorting to legalese, and hyper-technical interpretation of the words in our Constitution. This practice breeds 'democratic deficit' in government which, interacting with many other degrading factors, produces 'moral deficit' that breeds scandals and scams.

I respect Dr. Singh for his humility that I have admired in this Memoir (see p. 347). I have nothing against the Congress Party for which I have had words of high admiration (Chapter 3, also at page 451). But I have expressed my ideas on this episode so that my ideas may get noticed, and considered, so that if ever again similar situations occur, we must act with vigilance and prudence.

True, our Constitution does not debar one from becoming the Prime Minister if he is not a member of the Lok Sabha. But to allow someone, not elected to Lok Sabha, to become the Prime Minister, is to wreck the democratic spirit of our Constitution. Art. 74(1) provides that “there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in exercise of his functions, act in accordance with such advice.” The Members of the Lok Sabha are effectively accountable to 'We, the People'. The heart of our nation throbs only in the Lok Sabha (*lok* = people), not in the Rajya Sabha where the members go to represent our Constitution's federal constructs, and the interests which deserve appreciation and distinction even in polity. But here the limited point is: whether the decision to make someone the Prime Minister, holding

seat only in the Rajya Sabha, accords well with the Constitution of our country? Even if at a particular point it is felt that the needed jewel can come only from the Rajya Sabha, it is prudent to ensure that he is elected to the Lok Sabha soon. When Mrs. Indira Gandhi became the Prime Minister of India in 1966, she was a member of the Rajya Sabha. She knew that the constitutional propriety demanded her to get elected to the Lok Sabha. The norms of the democratic propriety and constitutional morality were obeyed. She 'was elected to the Lok Sabha soon thereafter' which 'shows that it is considered desirable that the Prime Minister should belong to the Lok Sabha.'⁸

The Congress had fought the 2004 election in which Smt. Sonia Gandhi was the leader under public eyes. She appeared to us as the possible Prime Ministerial candidate. It was not proper even for her to back out from accepting her responsibility by nominating someone else. If such things happen, our polity can just become the fiefdoms of some arbitrary satraps.

(8) The Role of Parliament : A topic revisited

Over all these days, we have heard passionate panegyric being sung in favour of Parliament in order to run down people's protest outside Parliament. I do not want to comment on the role of Parliament as illustrated by the realities of our day. It is time to make Parliamentary institutions work for a genuine democracy rich in ethical values.

Lord Hailsham in his memoir, *A Sparrow's Flight*, bewailed at the plight of 'Parliamentary government, and of democracies' in the words which deserve to be pondered over (at p. 128):

"Like many others before me, I have often reflected on the weaknesses of parliamentary government, and of democracies in their differing forms, the Weimer Republic of Germany, the Third Republic in France, the hesitations and vacillations of our own constitutional governments under different prime ministers and owing allegiance to differing political parties and various political ideologies. Democracy at work is not invariably inspiring example in this or any other age, until, like Winston Churchill, engaged on the same quest, other types of political authority, one comes to compare the blunders and villainies committed, with very exceptions the world over, by other regimes ruled by other types of political authority."

If you go through Chapter 22 of this Memoir, you will realize that Winston Churchill and Lord Hailsham had good reasons to express their worries. We in India are more worried about our parliamentary democracy as it is seen at work. Superbly democratic Weimer Republic (1919-1933), and its great Constitution died slowly but certainly because of growing corruption, ever-increasing public distrust, and its incompetence. The Republic survived on a ventilator till Hitler drove it off into a limbo even without shredding its Constitution to pieces. The way the Weimer Republic yielded place to Hitler recalls the way the Roman Republic ended in the ancient times (see Chapter 21, pp. 303-310). The Third Republic in France had its tragic trait in allowing the emergence of a wide cleav-

age between the people and those who wielded powers. 'Democracy' is good, 'Parliament' is great only when they create, and come from, true democratic ethos in which justice, equality and accountability remain uncompromised. I have written with heavy heart on 'democracy' and 'parliament' in Chapter 22 of this Memoir. I would tell all those who write incessant panegyric for our Parliament to read the following tiny extracts from Chapter 176 of Nehru's *Glimpses of World History*:

"The conflict between capitalism and democracy is inherent and continuous; it is often hidden by misleading propaganda and by the outward forms of democracy, such as parliaments, and the sops that the owning classes throw to other classes to keep them more or less contented."

In democracy all institutions, including Parliament are on continuous trial. The question is: what sort of Parliament?, what sort of government?; and how do they respond to the wishes of people? Self-glorification is no good. When wide hiatus grows between government and people, the recitation of *mantra* of 'Parliamentary democracy' can never save the government from inevitable nemesis.

(9) The Political Parties revisited

We have seen over all the recent years that the Members of Parliament forget their promises made so generously to people at the election time. This lack of truthfulness undermines political morality, and helps the unworthy to reap undeserved benefits. With great perceptiveness, Bertrand Russell has observed:

"What hope is there for Parliamentary democracy when the leaders of a Party, upon achieving office, act in direct contradiction to their electoral promises? Those Labour Party members who do not like treachery have hitherto kept quiet in the interests of unity. But what is the use of unity in evil? The cardinal virtues in gangs of criminals are unity and loyalty. " ⁹

(10) The Strategies of the corporate *imperium*

In this neoliberal world, in which the MNCs rule, two strategies have been forged/invented by and for the corporate *imperium* with shocking and sinister effects:

- (a) the Treaties and international Agreements are being devised to subdue and subvert the constitutions of the nation States, and to trump all the laws which their Parliaments frame; and
- (b) a new prism has been invented so that the wielders of power can see things only as the prism makes them see: a technique that works in tandem with the device that manages even neurons as if they too were the subject of the Management by Objective (MBO), a technique that the B-Schools teach. The sinister effect of incessant false propaganda is gruesome.

(11) 'Reforms': the *Mohan Raag* that deceives

"Reforms are needed, I've always said that, but economic reforms with a human face that gives India's common man a real hope."

(Dr. Manmohan Singh).

But for a common man the words 'reforms' and 'human face', as occurring in this enticing *Mohan mantra*, are difficult to comprehend when they are considered in the context of the facts we see. The word 'reform' has continued since its dim past as a hallucinatory term more mysterious than the utterances of the three witches in *Macbeth*. 'Reform' can mean so many things to so many persons that it stands denuded of all its content. It often becomes a mere collocation in the abracadabra of the neo-liberal economists. Certain words do not mean, they are made to mean. I recall, in *Alice in Wonderland*, Alice has asked Humpty Dumpty: "The question is, whether you can make words mean so many different things". The reply was: "The question is, which is to be master?. That's all." **Now to 'human face'**. Who, still in his senses, believes is yet to know the 'human face'?

But what is there in 'face'? I do not intend to write on the art and craft of the 'imperial deception with a smiling face' that for long the imperialists had put on, and what the exploiters of the present-day Economic Globalization are accustomed to do. Jack Prelutsky composed a poem on a crocodile's smile. He cautions you against the guiles of a smiling, but crafty, crocodile which invites an unwary to "join him in the river Nile and swim with him a little while". Whilst the persuaders and advertisers are all around to tender such an invitation to all, it is for us to fall flat for it, or to spurn the damsel of delight as had been done in Keats's *Lamia* to expose the serpent masquerading as a lady of joy. Didn't Hamlet say: 'one may smile, and smile, and be a villain'? My reader, I assume, must have read about Bottom and Tatania in Shakespeare's *A Midsummer Night's Dream*. He must be remembering how Puck had played, whilst in a forest, a practical prank by turning Bottom's head into a donkey's. When Tatania waked up, she unhesitatingly planted all sorts of voluptuous kisses on his donkey's head (perhaps she did so as she saw in him a heart of gold where love over-brimmed for her). So, what is there in a face?

We want the 'human face' with 'human heart' that is never without the milk of human kindness. Let us appreciate, and catch the import of, the rhetorical question put in the Song of Solomon: "What mean ye that ye beat my people to pieces, and grind the faces of the poor?" It is said that Gandhi had given a talisman to the decision-makers in free India, it said: "Whenever you are in doubt or when the self becomes too much with you, ... Recall the face of the poorest and weakest man....".

**(12) Setting up political trajectory in our villages :
Steps towards the *Panchayati Raj***

European civilization is no doubt suited for the Europeans but it will mean ruin for India, if we endeavour to copy it.

Mahatma Gandhi, *Young India*, 30-4-'31)

Independence must begin at the bottom. Thus, village will be a Republic or panchayat having full powers. It follows, therefore, that every village has to be self-sustained and capable of managing its affairs even to the extent of defending itself against the whole world.

Mahatma Gandhi in the *Harijan* 1-7- '47.

Two movements must go on at the same time to achieve a sound and satisfactory political process (analogically as distinct and as integrated as the Earth's well known two movements going on simultaneously: 'rotation' that causes day and night, and 'revolution' that causes seasons): these get expression in —

- ◆ Steps to make the *Panchayati Raj* work effectively to achieve its ideals, and
- ◆ Steps to make our Parliament effectively mission-conscious, and accountable to our people.

Granville Austin has aptly appreciated the reasons Nehru had advanced to go ahead with the community development and *panchayati raj* programmes 'whose purpose may be said to have been integration through decentralization and unity through participation, in addition to their obvious aims of economic development and social improvement in villages. These programmes were to be the ideal combination of the grand themes of unity, democracy, and social revolution' [Granville Austin, *Working a Democratic Constitution* p. 167]. It was this high idealism that led to the framing of the Article 40 of our Constitution prescribing, as a directive principle for State policy, and to the organization of village *panchayats* to function as the units of self-government. Now the Part IX of our Constitution deals with the *Panchayat* by clarifying its role and prescribing its wide powers, and reach. Article 243G of our Constitution contemplates that this institution would play a role in 'the preparation of plans for economic development and social justice', and also in 'the implementation' of such schemes as are entrusted to the *Panchayat*.

As I have observed in Bihar, the institution has not worked well for many reasons, which include these: (i) the political parties do not allow people's participation at the grass roots levels as they fear that their monolithic and vertical power-structure, under the top-down command system, would suffer; (ii) the political parties love controlling power at the top because it delights their controlling caucus which in turn builds up a hierarchy of their Samurais (fighters) down the line to promote their powers, and to reap and distribute the ill-gotten gains; (iii) the transparency, natural under the *Panchayati Raj*, is disliked by all the beneficiaries of the Realm of Darkness which permit the crooks and looters operate unseen and undetected; (iv) the *Panchayati Raj*, if successful, would set afoot a system under which 'economic development' would get priority over the idea of the GDP-indicated 'economic growth'; (v) the 'corporations', the MNCs, their mentors, protégées and lobbyists want centralised government where things can be easily managed, and manipulated; (vi) the crooks and the criminals dislike the *Panchayati Raj* as they cannot afford to play their game under people's direct gaze, and also because they cannot build filters, shelters, hiding places, and Alsatias to escape being caught. Granville Austin correctly felt that the "State politicians resisted village power for fear of losing influence", as

the 'segmented structures and primitive institutions' of rural society 'could not generate a responsive and creative leadership'. Austin felt that these "same factors would continue to inhibit the development of *panchayats* and community programmes for years to come." [Granville Austin, *Working a Democratic Constitution* pp. 168-169]. It is our constitutional duty to make the Panchayati Raj work.

**(13) The Restructuring our polity :
The Gram Sabha-centric village Panchayats**

History tells us that the decentralization of powers makes a polity participative, accountable and shared. The best way to organize our polity is by an amalgam of the right measure of 'decentralization' through the rural republics that the *Panchayati Raj* aims to establish, and by the legitimate and purposive centrality through our federal structure: both to be integrated to work symbiotically with the strong Central Government, itself under strong constitutional restraints. It is easy to see how this model of political restructuring is in tune with our people's genius, and our long and rich traditions. The structure of our polity should be so designed as to make our villages the grass-root matrix of our economy, and the effective units in our democratic organization. Gandhi had told us in course of our Struggle for Freedom:

"Independence must begin at the bottom. Thus, village will be a Republic or *panchayat* having full powers. It follows, therefore, that every village has to be self-sustained and capable of managing its affairs even to the extent of defending itself against the whole world."
(*Harijan* 1-7- '47)

This vision was expressed by our Constitution in: its Article 40 says —

"The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-Government."

The Gram Sabha of the villages, and the Lok Sabha of our country, are essentially 'deliberative' assemblies'. The skill that can be learnt from the right functioning of the Gram Sabhas would surely stand us in good stead when our representatives go to function in our Parliament, and in other similar bodies. The *Panchayat* would provide a close and inter-active world for integrated cordial actions, where the participants can themselves see that what they reap are only the consequences of what they do.

The 'decentralization of powers', through *Panchayats*, would establish nearness between the wielders of power, and the people under their care. The absence of such a close bond between people and the Government would always imperil 'democracy'. J. Bronowski had aptly said in his *The Ascent of Man* (p. 435):

"We must not perish by the distance between people and government, between people and power, by which Babylon and Egypt and Rome failed. And that distance can only be conflated, can only be closed, if knowledge sits in the homes and heads of people with no ambition to control others, and not up in the isolated seats of power."

If the *Panchayati Raj* works to set up vibrant village republics, great socio-psychological changes would be brought about under our polity and governance. The possibilities of this great experiment in the decentralization of powers were recognised early. Our leaders had great expectations from these indigenous and village-centric political experiments. Amartya Sen and Jean Dreze have rightly noticed that the “implicit belief, expressed in some writings, that government interventions are, by and large, guided by the demands of social progress is surely a gigantic folly.” They have recognised what can be done best: to supplement ‘reforms’ with a more active programme of social change going “hand in hand with an expansion of public initiative and social movements aimed at more widespread literacy, a stronger political organization of disadvantaged groups, and a more vigorous challenge to social inequalities, they would represent a real opportunity to transform village politics in rural India.” It is possible to develop good education in the villages only after involving the grass roots level institutions. I would endorse the view of Amartya Sen and Jean Dreze: “In most states, teachers are accountable to the Education Department, not to the village community. Official complaints have to go through complicated bureaucratic channels, and are particularly difficult for parents to understand.....” “Reforming the chain of accountability, and bringing the levers of control closer to the village community, are important means of improving teaching standards.” Socio-economic measures can work better if they are conducted under the local vigilance, supervision, control and audit. The authorities at the higher structural levels should only help, and supervise.

This system would make the Right to Know, granted under our Constitution, more effective. Besides, the participative political process would give our people the satisfaction of discharging public duties, and would also help them develop their skill better. We find in our villages many persons illiterate, but they are not unwise. I feel it is the time to trust our villagers’ wisdom. They are loyal to our country, and are patriotic: they are under no temptations to steal our country’s wealth to carry that to the tax havens and other dark destinations abroad. Let us structure our polity by giving it a creative touch best done by reposing trust in our people

(14) Political Parties and Democracy

The present system of elections facilitates party dictatorship. Parties are dominated by the persons whose supreme interest is just to remain in power somehow. Francis Fukuyama aptly said: “The mere fact that a country has democratic institutions tells us very little about whether it is well or badly governed. This failure to deliver on the promise of democracy poses what is perhaps the greatest challenge to the legitimacy of such political systems.” We know that political parties, by themselves do not guarantee the existence of ‘democracy’. We all know how the two political parties, holding a majority in the *Reichstag*, had worked only to destroy German democracy.¹⁰ We have seen how dexterously our watchers ditched us to rue our fate because we failed in maintaining eternal vigilance.

(15) Invocation to act

Tis in ourselves that we are thus or thus. Iago in Shakespeare's
Othello

Life's but a walking shadow; a poor player,
That struts and frets his hour upon the stage,
And then is heard no more: Macbeth in Shakespeare's
Macbeth

The above mentioned two quotes from William Shakespeare came to mind when I read Chapter 193 (The Failure of Parliament) of Nehru's *Glimpses of World History*. The framers of our Constitution knew what had happened to Parliaments in the West. So they devised our Constitution unique in many ways so that democratic control of polity is never subverted. Two points I mention:

- (i) our Constitution is made by our people under their own authority expressing their own WILL. It was not minted in the foreign office of some foreign power; and
- (ii) it grants not even iota of power to any of the creatures of our Constitution which is not subject to the limitations imposed by the provisions of the Constitution itself. No authority set up by it possesses any extra-constitutional power. Our Constitution has not issued the Executive a "blank check". I have summarized our 'constitutional fundamentals' in Chapter 21 at p. 295 of this Memoir.

These two fundamental principles are yet to be appreciated by our Parliament. It is high time for our Parliament to subject the Executive Government to its effective writ. For this 'party dictatorship' must go; for this electoral process be fair and democratic; for this the people of the political constituencies alone should decide who would go to Parliament to represent them; for this the Panchayats must play effective and aggressive role; and for this our people must have the 'right to recall' the representatives they elect.

I would end this Chapter with my invocation to our people (assembled in Parliament through their representatives), in the words of Jambavantha. The *Ramcharitamanasa* tells us how he could inspire Hanumanji to realize his great capabilities to do the great things in Lanka after crossing the ocean in search of Sita. The great Tulsidas tells us how this invocation was made. My invocation to Parliament is just my most humble call to everyone to act, act, and act with imagination and moral courage. I would end my invocation with the words which had an electrifying effect on Hanumanji inspiring him to do what he did.

कवन सो काज कठिन जग माहीं, जो नहि होइ तात तुम्ह पाहीं

(16) A Note on Charitra (Character)

India is essentially *karmabhumi* (land of duty) in contradistinction to *bhogbhumi* (land of enjoyment).

Mahatma Gandhi in the *Young India* of 5 February 1925

At school, I had read in the *Free India Reader* Book IV, Mahatma Gandhi's short essay on 'What the Students can do'. He had stressed that without good character a man always falls, and a system that he builds up always collapses. Anna is perfectly right in holding that our country can grow under conditions of social

justice and fairplay only if we succeed in establishing a corruption-free, and accountable polity. But it is not likely to happen if 'character' is lost.

I think it is worthwhile to consider what Anna means by 'character', and how it differs from the concepts, like "character," "duty," "will," hard work, and 'thrift' about which we read so much in the Victorian literature. We all have found good ideas stated by Samuel Smiles in *Self-Help* (1859). To the Victorians, 'character' provided traits which helped them to acquire more power and amass great wealth for the Victorian upper crust, and to evolve institutions and norms to protect and promote such gains. The general run of the fortunate Victorians considered it their 'duty' to build up an acquisitive society which never had the qualms of conscience at the abysmal inequality, inequity, and social injustice. The Victorian 'will', 'earnestness', 'hard work' were at work to promote an unjust society in which the corrupt power elite ruled, and suffering masses sobbed unnoticed and ignored. You may read H.G. Wells's *Tono-Bungay* (1909) in which "English society is seen as a large country house, with the lower classes concealed below stairs in the servants' quarters, while the upper classes enjoy life in the elegant drawing-rooms."¹¹ In the novel *The Man of Property* (1906), John Galsworthy portrays the Victorian upper middle class, "whom he saw as reducing everything to property values, including life itself....The story is centered on two pieces of 'property': a country house Soames is building for himself; and his wife Irene, whom he is losing to another man."¹² The political and economic leaders of the Victorian era entertained extremely ill-informed notions about certainties and assumptions (which we find also being shared by the fundamentalists of the present-day economic liberalism). I would conclude my reflections on the Victorian culture with certain words from *The Encyclopedia Britannica* (Vol. 29, at p. 81): "Many Victorians were as eager to read about crime as to read the Bible."

NOTES AND REFERENCES

1. Peter Watson, *A Terrible Beauty* p. 290
2. *The Encyclopaedia Britannica* Vol. 10, p. 594
3. Bertrand Russell, *Autobiography* p. 434
4. Granville Austin, *Working of a Democratic Constitution* p. 660
5. (CIVIL APPEAL NO.733 OF 2012): the Judgment delivered on January 20, 2012.
6. (1904) 198 U.S. 45
7. (1985) 154 ITR 148 SC
8. The reasons are thus stated: A well established convention in Britain has been that the Prime Minister should belong to the House of Common..... The House of Common is elected on the popular basis, reflected the public opinion more truly and faithfully than does the House of Lords, and plays a decisive role in the governmental process." M.P.Jain, *Constitutional Law of India* p. 134
9. Bertrand Russell, *History of Western Philosophy* p. 719
10. *The New Encyclopaedia Britannica* Vol. 20, p.121
11. Bernard Bergonzi in his article in *The Oxford Illustrated History of English Literature* edited by Pat Rogers (at pp. 403-404).
12. *ibid* p. 402

31

SOME REFLECTIONS ON MY LIFE'S SONNET: THE CLOSING CHAPTER

*I saw Eternity the other Night
like a great ring of pure and endless light,
all calm as it was bright,
and round beneath it, Time in hours, days, years,
driven by the sphere
like a vast shadow moved; in which the world
and all her train were hurled.*

Henry Vaughan

*The song that I came to sing remains unsung to this day.
I have spent my days in stringing and in unstringing my instrument.*

Rabindranath Tagore *Geetanjali*

'I intended an Ode,/And it turned into a Sonnet'

Austin Dobson

I

At the confluence of the past and the present

I have seen over years how my frail self has rowed its canoe through the peaceful, slow moving rivulets into stormy seas whose waves it could survive only by God's grace. After my retirement, I felt to withdraw to my first love, literature. I recalled the day, sometime in 1960, when, on being selected to pursue my study at Cambridge, perhaps at Christ's College, I toyed with the idea of spending sometime under that mulberry tree in whose thick bower John Milton had composed his *Lycidas* (1637). I had discovered in *Lycidas* answers to problems which off and on had vexed me. I was in a frame of mind which most often gnaws many in their early years: how to decide which way to go when at a crossover point. For more than three decades in the Government service, I remained busy in the affairs pertaining to kings and cabbages. I felt, this Pegasus had become a rocking-horse. But that faded world has remained ever present in my inner oeuvre from which I keep on drawing both inspiration and solace. Sitting in my balcony of the MS Flat at Shah Jahan Road, New Delhi, I was trying to see before my mind's eye the course I was destined to adopt in my post-retirement years till

the call to return comes from the Supreme Commander of the Universe. Besides, I knew that if a boat stops moving, when it is through eddies and swirls of waves, it trembles, even capsizes: so it must move on. On the morrow of my retirement, in 1998, I recalled the Kanchenjunga which I had seen, both when it was dawn, and when it was dusk, marking the shifting patterns of light and shade creating illusions of various shapes. What I have seen of life before and after my retirement, has brought to my mind Bohr's idea of complementarity which was suggested by certain mountain peaks he had seen in Japan. His disciple L. Rosenfeld had once described such scenes in these lines:

"At sunset the top of Fujiyama disappeared behind a curtain of gold-fringed clouds: the black mass of the mountain, surmounted by this fulgent crown, conveyed an impression of awe and majesty. On the next morning, it offered an entirely different spectacle: the pointed summit alone, covered with shining snow, emerged from the dense mist filling the valley; the landscape was radiating gladness and joy. So, Bohr mused, the two half-mountains together are not simply equal to a mountain: to each belongs a peculiar, individual impression, and the two are complementary."

I had seen much of life from a set track over decades, now time had come for me to see things from a changed observation-post. On the morrow of my retirement I felt I was hurled onto the cusp trying to solve existential conundrum. My mind had become a chrysalis: the idea to write this Memoir sprung in my mind at that time.

My Three Passions

In the Chapter 3 of this Memoir ('Profile of my Father') , I had quoted some lines from Bertrand Russell's *Autobiography* in which he summarized, with crisp candour, the three passions for which he had lived, and worked:

"Three passions, simple but overwhelmingly strong, have governed my life: the longing for love, the search for knowledge, and unbearable pity for the suffering of mankind."

I know my life has neither that plenitude, nor that profundity. But I know that even a glow-worm can have good grounds to think that the flickering light that inheres in it is great as it is an infinitesimal part of the Sun that makes the whole heavens luminous.

When I muse on the heaps of gone moments, when I cast a bird's-eye view on the peaks and valleys I have seen, trudged, and crossed, I feel that even this humble self has gone through his years, in some ways at least, not much different from Bertrand Russell's to whom I am infinitely indebted, and eternally grateful. When an ordinary person, like me, claims some similitude with the views of a person at such a lofty height in eminence, he himself feels flabbergasted, and knows not how to express himself. The words of John Milton (in *Paradise Lost*) creep into mind to liberate, and yet to enmesh. It is not unnatural if he finds himself on the edge of

.....that Serbonian Bog,
'Twixt Damiata and Mount Casius old,
Where armies whole have sunk.

My Memoir : An Overview

'The Fragrant Years' broods over what could be the best in love that suffused my early years the fragrance of which has continued in mind to save me from the torrents of negative feelings, and to sustain me even when life cast me in some sort of gas chamber. Those moments have spread before my mind's eyes the rich rose petals on which I have read and enjoyed the lyrics which my Destiny composed. 'A Cog in the Machine' appears to me the years when, like the Earth, I had two movements at the same time: one trying to bear the heat and burden of the Revenue Service of our country, and the other, attempting to study men and manners, laws and morality, the earth and the galaxies, myself, and my maker..... During this period of my life, I was enriched on seeing life in the raw: I felt my several illusions stood pricked. Delight and distress came in varying proportions. I experienced enormous joys, and deep distresses. I shared the agony when my heart broke both literally and metaphorically. The slings of misfortune pierced often most unkindly making me realize the relevance of what Dante said in his *Divine Comedy* (Inferno V.121): "There is no greater grief than to recall a time of happiness when in misery". 'Illusion and Reality' traps me in the continuous intercourse with realities, rough and inclement. I had many moments when 'illusions' seemed 'real', and 'reality' turned 'illusive'. *The Bhagavada Mahapurana* tells us (in Canto 11) how Krishna sat in silence under a *peepal* tree. He was struck by a hunter's arrow. It is difficult to think what verdict he might have passed on his life in those final moments. But whenever I reflect on my life with fidelity, I get absorbed counting my life's yellow leaves, some fallen, some yet to fall, some severed from the twigs but still dancing in the breeze before acquiring rest on the soil. I have marked their beauty and rich poetry. I have my reasons to marvel, and to get amazed, at my Destiny's choreography of my life. I have enjoyed many pursuits but what has delighted me most is that 'noiseless sound' of the cavalcade of events about which I have written in this Memoir. When I hear this 'noiseless sound', I recall the words of Keats in his poem 'I Stood tip-toe upon a little hill':

A little noiseless noise among the leaves,
Born of the very sigh that silence heaves.

II

If I could have done

For all sad words of tongue or pen
The saddest are these: 'It might have been'

-Whittier

I realized that I made a serious mistake by not acquiring proficiency in Sanskrit which had the richest treasure of human wisdom. My study of T.S. Eliot, Yeats, Maugham, Huxley and Isherwood convinced me that it would be humanity's worst disaster if the wisdom of the orient is not invoked to enlighten the way of life that the present-day Western civilization has adopted. Eliot was a great poet, but was also an expert in finance who had handled the foreign accounts at Lloyds Bank. He had studied under some most eminent European

minds, and believed that individual talent works best under its own cultural tradition. He had studied our Indian cultural tradition and thoughts, and was greatly proficient in Sanskrit. He had written that his study of Sanskrit left him “in a state of enlightened mystification”.¹ For a year I too studied Sanskrit. I felt inspired by Robert Oppenheimer, the physicist who had directed the Manhattan Project with an assignment to develop the first nuclear weapon. He found learning Sanskrit easy. He quoted *ashloka* from the *Bhagavad-Gita* on seeing the first effulgence of the nuclear explosion.

III

My Life : its grammar and lodestone

In writing this autobiographical Memoir, I have reached my journey's end. Reflecting on a baby, J. Bronowski called him “a mosaic of animal and angel.”² Life is just a process for a bud to flower. I have not forgotten those scintillating gems of thought on the art of life which I had heard from my father and mother. Once he explained to me *ashloka* from the *Kathopnishad*. It considers human body as a chariot, one's soul as the actor on the chariot, human propensities as the horses carrying chariot, mind as the controlling force, and one's *buddhi* (wisdom born of *viveka*) as the charioteer (बुद्धिं तु बी सारथिं विद्धि). Ascendant on this chariot, one explores one's actions and their consequences, complex though their ways are (गहना कर्मणो गतिः *The Bhagavad-Gita* IV.17). I always saw that my mother's deepest reflections drew for support expressions from the *Ramcharitmanasa* of Tulsidas. Several times, she made me recite to her certain lines of that epic in which Rama tells Vivishan about the chariot of righteousness (*dharmarath*) which enables one to win victory in life. I have quoted the English rendering of those lines in Chapter 4 of this Memoir. I have felt over all my years that the ideas stated in those lines are of perpetual relevance in all human societies. Over my years, I had several occasions to participate in the management seminars organized by certain masters of Business Management. I had occasions to go through several research papers written by distinguished masters of some well-known B-Schools. I wish the text of those lines is made an essential part of study at all B-Schools. The complex existential problems are best solved only in the light of the wisdom that those lines convey. I often felt that my mother had summarized those ideas in her letter written to me in Maithili six decades back.

‘भगवान के ध्यान राखते काज करैत जाः, औउर दोसर केर कौन भरोस. केबल तौ अपन ध्यान भगवान में राखइत काज करैत जा.’

I would render her instructions into English thus:

“Trust in the Divine power, and go on doing your duties.

Why expect anything from anyone else?

Concentrate on the All Powerful, and go ahead”.

I feel: all instructions of all mothers to all children in all times and all lands cannot be different. When I measure myself by her standards I become crest fallen. But I have always drawn light and inspiration from the wisdom she so informally imparted. This simple sentence combines the *Bhagavad-Gita's* edict

that one's right is to action alone (III. 47), and assurance that one never perishes on the way of right action. I have often judged myself on her touchstone, but I sink into silence that ends in an inner prayer: 'Mercy, not justice'.

I have always felt that God's kindness has never been denied to me. What has sustained me, even in the moments of acute frustrations, is the edict of *Bhagavad-Gita* (Ch.II.47): कर्मन्नेवाधिकारस्ते म फलेषु कदाचनः³

'Your right is to action alone,
Not to its fruits at any time.'

My father explained that *shloka* to me. He said that it was this way of looking at life that led Arjuna never to cringe before anyone for gains; and never to abdicate his duty (अर्जुनस्य प्रतिज्ञे द्वै न दैन्यं, न पलायनम् : Arjuna had taken two vows, no cringing for favour, and no abdication of duty). I have tried to live with these ideas. It has made me bear the tedium of life with patience; it has given me light whenever I was sinking inside the pit of darkness, or when cruel circumstances writhed me in their coils.

IV

I tender an apology : my perspective on self

In this autobiographical Memoir I have concentrated more on some of the events and thoughts which I have been able to recall. Writing about self, with sincerity and candour, is difficult. While exploring my years already gone, I must have overlooked my faults; illustrating the common human folly to economize with truths in own matters. I recall the words of Tulsidas in his great *Ramacharitmanasa*:

जों अपने अवगुन सब कहयूँ, बाढे कथा पर नहिं लहयूँ
ताते मैं अति अल्प बखाने, थोरे महुँ जानिहहि सयाने

[If I tell you all about my failings, my story would become long, wholly beyond my competence to narrate it. This is the reason why I should be brief about that.]

Tulsi's life⁴ was a sprawling banyan tree; my life is no more than a mere tiny twig. Yet my autobiographical Memoir has become long, and that too in a 'learnt' language! Hence I apologize.

If I were my own judge, I would hang myself by the next lamppost. Lord Hailsham of Marylebone, who had been England's Lord Chancellor, called his autobiography *A Sparrow's Flight*. One's life in the world is like a sparrow's stay for a short while. He concludes his autobiography with a prayer for mercy, not with a prayer to be weighed and judged:

Father, before this sparrow's earthly flight
Ends in the darkness of a winter's night;
Father, without whose word no sparrow falls,
Hear this, Thy weary sparrow, he calls.
Mercy, not justice, in his contrite prayer,
Cancel his guilt, and drive away despair;

My feelings find expression in these lines of Rabindranath Tagore:

তোমার কাছে খাটে না মোর কবির গর্ব করা,
মহাকবি তোমার পায়ে দিতে যে চাই ধরা।
জীবন লয়ে যতন করি যদি সরল বাঁশি গড়ি,
আগুন সুরে দিবে ভরি সকল ছিদ্র তার।

[“My poet's vanity dies in shame before Thy sight. O master poet, I have sat down at thy feet. Only let me make my life simple and straight, like a flute of reed for thee to fill with music.”]

V

As we are now

More than seven decades back, I was born in a big joint family resembling a big banyan tree on which, we birds, lived and sang, and saw God's great creations. Over years, all the branches have separated to become separate trees in God's garden. I have told you, in Chapter 2, about my ancestors after exploring the family records spreading over about seven hundred years. If time permits, I would write some day a comprehensive book on my Ancestors, some of whom had contributed a lot to the development of our culture. I have told you, in Chapters 3 and 4, about my father who fought for the independence of our country, and about my mother who made great sacrifice for our nation. Now my family has shrunk to two: myself and my wife, Veena. I have three lovely daughters, Janaki, Kishori and Anju. They are married, and they are playing the role of Sita in their families. My son, Nandan, is happy in his family. And we two live together, like the two birds on the tree, to whom the *Mundaka Upanishad* refers. Like those two birds, our attitudes, and outlook differ, yet the music of our life has never had a note of discordance. Credit for it goes to my wife. She is great in accepting life as it comes, whereas I often grumble at many things, though all in vain. She has learnt the art of life, which I am even now just trying to learn. She has saved me from the soul-scorching ennui that would have otherwise overtaken me making me spend time in counting the broken reeds of a storm-tossed nest that we had built. She has helped me how to live doing our duties, with the *Bhagavad-Gita*, as the ever-present catalyst. On the assessment of all the moments hitherto spent, my judgment on my life cannot be different from Bertrand Russell's: “This has been my life. I have found it worth living, and would gladly live it again if chance were offered me.”⁵

VI

Reflections on My Life

This writing of my autobiographical Memoir has given me an opportunity to converse with myself in utmost privacy. It has also made me look back over the years gone, and reflect over the cavalcade of events which I witnessed as an observer and, also, as a participant. One of my wishes in this whole process has been what a great Urdu poet said:

जिन्दगी भर तो हुई गुफ्तगू गैरों से मगर, आज तक हमसे हमारी न मुलाकात हुई

(I have interacted with all others all my life, but I am yet to meet my own real self.)

After having written a little more than 300000 words, I find myself in a strange frame of mind. I feel I am yet to write my autobiography that I intended to write. I am yet to understand my life in all its changing contexts. I have met and chatted with all others but not with own self. Besides, I have yet not found the right idioms to express my inner self. Often, I feel I can express myself only through silence, or through metaphors. I hope, I shall discover someday apt 'objective-correlatives' to express what has remained unsaid⁶. I think 'truth' is most expressive only in fiction or poetry. I am now convinced that someday I would be able to discover a medium to express myself with utmost candour and good faith.

In the 'Introduction' to this Memoir, I had said; "My life has been, like Keats's a mansion of many apartments." I have told you something about the three apartments in the three Books of my Autobiographical Memoir: 'The Fragrant Years', 'A Cog in the Machine' and 'Illusion and Reality'. But while writing this concluding Chapter of this Memoir, my life seems to me a sonnet the two quatrains of which Time has already composed and recited, and the closing couplet is still to be composed. After having written, with a single finger incessantly kissing the keyboard of my laptop, I thought to go through the written text again to see what I had written about myself and my world to which I would remain eternally indebted and grateful. But I couldn't do that: I felt fatigued counting the old yellow leaves of my life most of them already blown away far and wide by the tempestuous Time. My life seems to me an existential process. "Where wasteful time debateth with decay", to quote a line from Shakespeare's sonnet.

I have drawn up in this Chapter an inconclusive conclusion as my journey is still on. My life's accounting is yet to reach a point when it would be possible for me to draw up my life's final accounts. In fact, life's final accounts are struck only at a point from which none ever comes back to say whether the credits exceed the debits, or the debits outweigh the credits. This metaphor from Accounts had struck me deep when I was studying the Double Entry Book Keeping as a probationer at the I.R.S. (Staff) College at Nagpur. It was 1964. And this metaphor seems to me to have become now a metaphor, the poetry of which is now my greatest delight.

VII

Shri Krishna : My Light and Delight

My study over more than a decade has led me to feel that 'Krishna' is the richest metaphor to reveal all that is the best in our cultural thought. You might have marked what constitutes my observation-post in the Chapter 20 of this Memoir. The poetry of Krishna's personality is all absorbing as it is all satisfying, and all inspiring. Over these days I am writing about Krishna, and am enjoying the greatest joy while reflecting on Him. He seems to me most relevant to our times. Through his acts and thoughts he teaches us not only the art of life, and the ways of socio-psychic management, but also provides a worldview which appears to me most enlightening and satisfying. He propounds, and illustrates through His deeds the principles of the existential grammar under which we work (योगः कर्मसु कौशलम्). When I told my wife that I intended to write on Krishna, she came out instantly: "You want to write about Him. You need not do that. A black bee hums on the lotus only till it has not tasted pollen: once it does, it becomes silent. Better make Him your soul's song, and sing inside. (हरे कृष्ण हरे कृष्ण, कृष्ण कृष्ण हरे हरे hare Krishna hare Krishna, Krishna Krishna hare hare)" I could see what she meant, but could say nothing. A black bee hums a lot before it descends on a lotus flower: once it does that it becomes silent even when, at the end of the day, it gets imprisoned in the flower for the whole night.

I consider Krishna the richest 'objective correlative' that our culture ever conceived in its most creative moments. I feel, on deep reflections, that many things which I could not express, in this Memoir, about myself, and about the world I have witnessed, would get felicitous expression in my reflections on Krishna, if this book gets ever written. I intend to discover the metaphorical implications of the high poetry of the *Bhagavada Mahapurna* and the *Mahabharata* which express Krishna's thoughts that found expression in His actions. I intend to undertake a quest to understand Krishna from my present-observation-post. Krishna is of great relevance to our modern times. We need Him as the *Jagadguru* to guide us how to move towards love and light. We need Him to help us save ourselves from the present-day versions of Kamsa, Jarasandha and the Kauravas. We need Him to expound the *Bhagavad-Gita* in modern idioms. We need Him to play again His flute for the world's light and delight.

VIII

I bring this Memoir to an end with the lines once recited by my father-in-law, Shri Hem Narayan Jha⁷, from a poem by Shiv Mangal Singh Suman⁸

The Hindi text	Rendered into English
<p>चलना हमारा काम है कुछ कह दिया कुछ सुन लिया, कुछ बोझ हलका कर दिया अच्छा हुआ तुम मिल गए, कुछ रास्ता ही कट गया क्या राह में परिचय कहूँ, राही हमारा नाम है. इया विषद विश्व प्रबाह में किसको नहीं वहना पड़ा सुख दुःख हमारी ही तरह किसको नहीं सहना पड़ा पर व्यर्थ क्यों कहता फिरूँ मेरा विधाता बाम है. . मैं पूर्णता की खोज में दर दर भटकता ही रहा प्रत्येक पग पर कुछ न कुछ रोड़ा अटकता ही रहा पर हो निराशा क्यों हमें जीवन इसी का नाम है.</p>	<p>To tread ahead alone is my duty. It is good we have met on the way. We said and heard each other: and thus have avoided the tedium of marching all alone. What sort of introduction about myself should I give while still on our way? Who has escaped from being caught in the cosmic flux? Who has not undergone pain and pleasure as I have done? But why should I grumble against my lot? I have been on the quest for perfection, despite odds at each step. But why should I become despondent? This is the life we all live.</p>

NOTES AND REFERENCES

- 1 T. S. Eliot, 'After Strange Gods: A Primer of Modern Heresy' (London: Faber, 1933), p. 40
- 2 J. Bronowski, *The Ascent of Man*, p. 31
- 3 The English version from http://www.atmajyoti.org/gi_bhagavad_gita_intro.asp
- 4 Tulsidas, the poet who composed the immortal epic *Ramcharitmanasa*.
- 5 Bertrand Russell, *Autobiography*, p. 9
- 6 The concept of 'objective-correlative' explained in Chapter 25.
- 7 www.shivakantjha.org
- 8 These lines, as composed by the poet, can be read on <http://www.kavitakosh.org>; and can be heard as sung by my father-in-law, on my www.shivakantjha.org.



The Force that sustained me, the Light that led me.

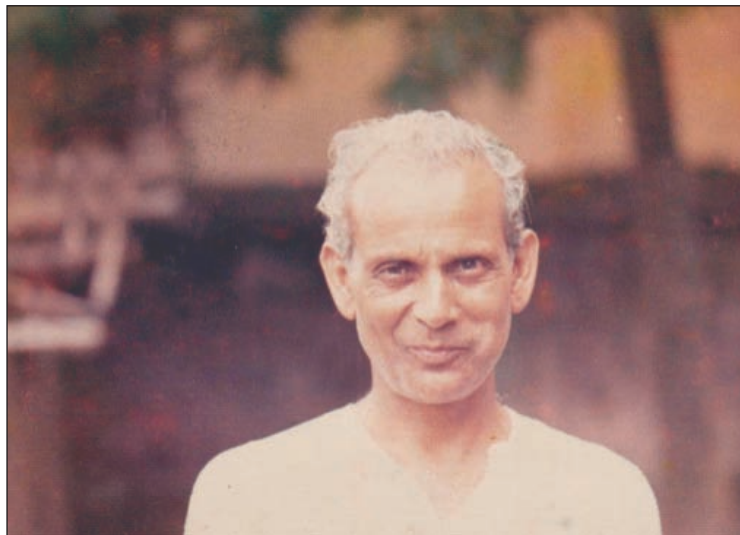
जीवन का मैने सौप दिया सब भार तुम्हारे हाथों में
उद्धार पतन अब मेरा है सरकार तुम्हारे हाथों में

(Binduji in *Mohan-Mohini*)

[My massive heart-attack, in 1989, brought me to the brink; and my wife into the veil of ceaseless tears. My friends had written me off as a spent squib. The photograph portrays us as we were in the Madras Mail on way to Madras to get medical treatment at the Apollo Hospitals.]



Addressing the National Seminar on treaty-making power of the Government, organized on July 21, 2007 by National Working Group on Patent Laws (NWGPL). The Seminar was inaugurated by the Former Prime Minister Shri I. K. Gujral, and was presided over by the Former Chief Justice of India Shri J. S. Verma. Special address was delivered by Shri D. Raja, M.P. Dr. Murli Manohar Joshi, M.P. delivered the Valedictory address.



My father-in-law late Shri Hem Narayan Jha.

POSTSCRIPT I

FURTHER REFLECTIONS ON OUR ANTI-CORRUPTION MOVEMENT: CHALLENGE & RESPONSE

Corrupt influence is itself the perennial spring of all prodigality, and of all disorder; it loads us more than millions of debt: takes away vigour from our arms, wisdom from our councils and every shadow and authority and credit from the most venerable parts of our constitution.

Sir Edmund Burke

(I)

The Anna Hazare-led Anti-corruption Movement would last in our national consciousness for long, both for what it could do, and what it couldn't do. It would surely shape our people's response to the challenges which rampant corruptions pose to our governance in these difficult times. It has triggered new pursuits, and it has spawned new ideas inspiring us to think about new socio-political experiments. In my Memoir, I have written a few words on this Movement as I had seen it unfolding in our country. My readers may go through those words at pages 337-339 and 477-479 of this Memoir. I have retained them in the Second Edition of this Memoir as they had appeared to me. I wish you to share that jubilation, laced though that was with apprehensions, wrenching my mind as I failed to see light at the end of the tunnel. But I was sustained by faith in ourselves which most demanding moments generate (the moments when 'it would be unwise to be sanguine' and 'unphilosophical to despair').

I draw your attention to the Line of Fire (see p. 338) as it can help us measure how movements and revolutions, we have witnessed in history, ascend or descend, or even turn stagnant: sometimes aggressive, sometimes faltering, and sometimes mere quiescent; but also sometimes diamond hard and diamond bright. Destiny goes on scribbling our history on the Stream of Time! Things present 'chiaroscuro effect': sometimes inviting us to our journey's end with scintillating passion, but sometimes driving us to our wit's end as things seem all wrapped up in mystery, even lost!

POSTSCRIPT I : ANTI-CORRUPTION MOVEMENT

The initial crescendo in the Anti-corruption Movement, spearheaded by a group of persons, compendiously called 'Team Anna', sagged towards the end of 2012. Differences in the Team Anna had emerged on account of their practical considerations of the issues being pursued: whether it was prudent to carry on the way Anna had done adopting Gandhian technique of protests through fast, and wordy persuasion, or to innovate a new strategy as a matter of practical prudence to provide a 'political alternative' that could, with peaceful combativeness, work towards the node 'C' on the Line of Fire.

On 26 November 2012 a new political party was formed under the leadership of Arvind Kejriwal whom I had known during 1996 and 1997 when we worked as the Members of the Indian Revenue Service: I, as one of the three Chief Commissioners of Income-tax in New Delhi, and he, as an Assistant Commissioner of Income-tax; and also when I, as a PIL Petitioner, had conducted the well-known Indo-Mauritius Tax Treaty Abuse Case before the Supreme Court of India (see Chapt. 23 of this Memoir).

Time had come when the Movement was up against the wall. Serious thinking was being done for adopting the future course of actions. I had my own ideas for the restructuring our polity for establishing a new socio-political paradigm¹. It is enough for the present to say that I broadly agreed with Kejriwal that it was worthwhile to work for a new political alternative through the restructuring of the electoral system to make our polity responsive and mission-oriented. I have touched this topic at several places in this Memoir, and also in many of my articles which can be read on my website².

I must say with candour that my reflections led me to believe that the right course for the Movement was to work for 'a political formation' rather than to set up a new political party on the conventional lines. I suggested that the 'formation' should consist of the people's representatives chosen by the people in their own constituencies out of their own people. I felt it was a mockery of democracy to permit some Trojan horse to intrude into a constituency from outside. I sent my suggestions to India Against Corruption when the ideas for forming a new political outfit were on the anvil. You may read my ideas on these issues briefly set forth in Chapter 22 ('I suggest that time has come to Restructure our Polity'), and also in Chapter 30 of this Memoir. But Arvind and his team thought it prudent to go ahead with their agenda in the light of their perception of the prevailing realities in which our Government was seen unwisely astute in delaying, even evading, the enactment of an effective and comprehensive Lokpal Bill. They formed the Aam Aadmi Party (AAP, for short) to carry on the struggle to achieve their mission.

I realised that nothing turned on mere semantics of 'party', or 'formation'. What mattered was its culture and commitments, its agenda and its capacity to

1. **'OUR POLITICAL PARTIES'** 333-336; **'Restructure our Polity'** 338-339 'Setting up political trajectory in our villages' 522; 'Restructuring our polity' 524-525; 'Political Parties and Democracy' 525; Articles in the folder on 'DemocracyWatch' on www.shivakantjha.org, and also http://www.shivakantjha.org/openfile.php?filename=governance/partyless_democracy.htm

2. see at http://www.shivakantjha.org/openfile.php?filename=dwi/anna_hazare_revolution.htm

POSTSCRIPT I : ANTI-CORRUPTION MOVEMENT

sacrifice for good of our people. I felt a new ascent on the Line of Fire had been made towards the node 'C' (see the 'Line of Fire' at page 338 of the Memoir). This Aam Admi Party registered an amazing ascent soon after its formation. In the 2013 Delhi Legislative Assembly election, it emerged as the second largest 'party' winning 28 out of 70 seats, and it formed, on 28 December 2013, a minority government in Delhi with the support (conditional?) of the Indian National Congress. What this new government did, and what led it to resign from the power (only 49 days later) is a baffling story which is all in public domain.

(II)

I have mentioned above that the Movement had begun as an anti-corruption movement, and its immediate objective was to get an effective Jan Lokpal Bill enacted as the law of this land. We all know that the odyssey of our efforts to achieve this objective had remained, over decades, terribly frustrating. But there was a sudden turn in the events; the reasons for which were obvious. The political parties had witnessed our people's resentment against our Government's inaction in setting up an effective anti-corruption law and its enforcement mechanism. They wanted to improve the prospect of their success at the hustings in the fast-advancing General Elections 2014. Perhaps, they insightfully read what had led our people's overwhelming response for the AAP in the Delhi election, and so prudently decided not to be seen indifferent to the agitation against corruption for which our people had shown their passionate commitment. So after several decades, and numerous versions, the Lokpal and Lokayuktas Act, 2013, was passed by the Rajya Sabha on 17 December 2013, and by the Lok Sabha on 18 December 2013. It received the Presidential assent on 1 January 2014.

(III)

A Quickie Legislation

History has shown that statutes alone do not solve problems which corruptions pose in a political society. We need a strong political will, and the existence of a conducive sociopolitical climate for 'anti-corruption' operations. We have seen it illustrated in the past. Neither the Corrupt Practices Act of 1854, nor the Corrupt and Illegal Practices Prevention Act 1883, could eradicate the corrupt practices of the politicians in the U.K.; nor the Foreign Corrupt Practices Act of 1977 of the USA could bring that measure of transparency as to make the anti-bribery measures really effective. We have seen how the OECD's Convention on bribery failed to give a good account of itself. Neither the Criminal Justice Act 1987, nor the Anti-terrorism, Crime and Security Act 2001, of the United Kingdom could ensure an investigation, by the Serious Fraud Office, into the Al Yamamah arms deal despite the allegations of bribery; see [2008] UKHL 60. Yet, we believe, a sound statute, if well implemented, has a good chance to achieve its mission. The real question always is how honest and serious a political society is in targeting corruptions bedeviling it. Thucydides aptly said: "It is men, and not the wall of wooden ships, who make a city."

POSTSCRIPT I : ANTI-CORRUPTION MOVEMENT

A Domestic Melodrama

The Lokpal and Lokayukta Act, 2013, has been framed. It has evoked a lot of dissatisfaction, and is open to serious criticism on many counts. I do not wish to comment on its provisions as several persons abler than me are already carrying on the crusade against 'corruption'. But before I end this Postscript, I would like to touch two points: (i) what does the history of our Government's concern to set up an effective anti-corruption mechanism *reveals*; and (ii) what does the quickie style of the deliberations and enactment of the Lokpal and Lokayukta Act, 2013, *highlight*.

As to (i), we have witnessed over the years after Independence, the establishment of an Axis of Evil between the politicians and the civil servants (see pp.173-74), which, after 1991, turned into virtually a Triple Alliance of the corrupt politicians, the corrupt civil servants, and the corrupt Big Business. The years have shown a continuous operation of one shocking constant; total absence of 'political will' to stop this evil.

As to (ii), the Bill that hibernated for decades amidst indifference, and was lapped up, and thrown down, many times for years, was turned into an Act bringing the quest for an effective Lokpal law to a melodramatic end. I felt that it would have been more prudent to ask our Law Commission to suggest effective measures to respond to the challenges emerging in this phase of the market-driven Globalisation. The Commission could have studied the geo-political profile of the present-day world in which the Big Business and the MNCs have intruded into the vast areas of the domestic space of the nation states. They do so either by becoming participants in the multilateral trade treaties regimes, or as the beneficiaries of concessions and favours through commercial contracts, or as the beneficiaries under the bilateral or regional treaties which allow the private investors of other countries competence to access treaty benefits.

I believe it is essential to put even the private sector, and corporations, under direct and effective scanner of criminal law. Without subjecting them to punitive justice, anti-corruption measures are not likely to succeed to our satisfaction. The raw realities, we see all around us, are graphically captured by Stiglitz in his *Making Globalization Work* (at p. 138):

"When these corporations head overseas to the developing countries, outright bribery comes into play. In the highly competitive world of international oil, it is easier for an oil company to show high profits by bribing government officials to lower the price they have to pay than it is to be more efficient than everyone else while paying full market price."

Stiglitz is reported to have observed in an interview published by *The Times of India*, New Delhi (January 11, 2014), which I have just read:

"The US is a good competitor to India in corruption. The US drug industry succeeded in getting a provision incorporated wherein the

POSTSCRIPT I : ANTI-CORRUPTION MOVEMENT

government cannot bargain with the industry on drug prices. That added \$500 billion in costs to the government's healthcare expenditure. Such provisions happen because of campaign contributions that are a form of corruption. We tend to focus on public sector corruption, but there is corruption in the private sector. The US financial sector was rife with corruption. The absence of corporate governance (as demonstrated in the 2008 financial crisis) is a form of corruption. Walmart demonstrated in Mexico that is an export in corruption. Credit rating agencies were paid by investment banks— so they competed to give the banks good ratings. So corruption in India is not extraordinary, but you are in the top league. Erosion of honesty and trust has become global. You have to have checks and balances."

POSTSCRIPT II

SOME OF MY RECOMMENDATORY COMMENTS FOR OUR GOVERNMENT AND CITIZENRY TO CONSIDER

1. As the security of our Motherland is most pressing and important, I wish our Government learns lessons from what we had suffered on account of the Chinese Aggression in 1962: [see the Memoir pp. 117-119].
From our performance, we can learn lessons in better public relationship. To find better ways for our preparedness for war is the best guarantee of peace. “I noticed two points which deserve to be mentioned to be remembered: one pertains to the nature of our people’s response that put our government’s endeavour at pathetic contrast; and the other, the Chinese attitudes towards nuclear weapons” [see the Memoir at p. 119].
2. As I have remained closely associated with many universities over half a century, I have briefly set forth my ideas on the ‘Plight of Education’ for our countrymen to consider: [see the Memoir pp. 119-122].
We must be cautious against the corporate contrivances and conspiracies. In search for technological wonders, let us not become indifferent to the nobler virtues of education which purify what is dross, and ennoble what is base. There should be a collective endeavour to tackle with the ‘Wallace Paradox’ [see this Memoir pp. 266-268], so that “we shall find the only effective and permanent remedy for Depression of Trade.” [see this Memoir p. 54].
3. In a great nation’s life, moments do come when a quest for justice leads to movements and revolutions. This Memoir portrays some of the greatest revolutionaries, like Sita (see p. 19 of the Memoir), Krishna, Jesus, Buddha, Muhammad, Marx and Gandhi (see Chap. 20 of the Memoir). It also states the core of the grammar of revolutions. [at pp. 281-282]. You may appreciate the Line of Fire that is conceived to measure the ascent, or descent, in movements and revolutions: (see p. 338, and Postscript 1). Reflections on these would help you catch many ideas not stated in so many words, but implied.
4. We must read and reflect on the fundamental ethical principles which I read on a board at the Wardha Ashram. The photograph of this Gandhian Edict can be seen in Chapter 3 of this Memoir. We must avoid those ‘Seven Social Sins’ and we must not lose the Gandhian *talisman* (see p. 333) that can help the decision-makers of our country in building up a just society.
5. In 1973, I had suggested, in my LL M dissertation on the International Law pertaining to the Maritime Resources, for a multilateral treaty, under the

POSTSCRIPT II : SOME OF MY RECOMMENDATORY COMMENTS

- U.N. supervision, to set up a maritime regime by establishing international organs, like (i) the Sea Assembly, (ii) the Sea Council, (iii) the Director General of the Sea Authority, and (iv) the International Sea Court (see 139-140 of this Memoir). I was glad that almost two decades after, the International Seabed Authority was set up in 1994 to operate in terms of the United Nations Convention on the Law of the Sea (UNCLOS). On its modality, I have suggested the setting up of the International Tax Authority (ITA) to deal with the problems in the realm of international taxation (see pp. 223-224 of this Memoir). I wish our Government, and the UNO consider my suggestions for setting up the International Tax Authority. This might help us tackle the problems of black money and black economy.
6. In the light of more than three decades of experience as a member of the IRS, I have discussed some seminal problems pertaining to the income-tax law and administration. I would feel amply rewarded if my ideas help improve our tax administration the heat and burden of which I bore for long with pleasure and pain (see Chapters 16 & 17 of this Memoir) that enriched my mind that has guided my nimble fingers to scribble almost about 300000 words in this Memoir in my late seventies.
 7. The need for setting up an institution, to be called 'the Union Administrative Services Commission', has been stressed so that it can do for the administrative services what the High Courts are supposed to do for the subordinate judiciary (see p. 236 of this Memoir). Besides, it is the time to consider whether it is worthwhile to adopt *droit administratif* in our country (see pp. 234-235).
 8. For the first time the imageries noticed on the architecture of the Supreme Court of India have been studied to bring out what these convey holistically to the lawyers, litigants and the Hon'ble Judges involved in the administration of justice (see Chapter 19). Chapter 25 summarizes 12 short stories each of which is an 'objective correlative' for expressing some of the profoundest ideas of practical relevance deserving concentrated study and reflections by our citizenry.
 9. The problems posed by the tax havens and secret jurisdictions, and the new 'states system', have been examined, and many suggestions have been advanced how to deal with the problems they have posed (see Chapters 23, 26, and 29). Lessons deserve to be learnt from the PIL that I had conducted seeking remedies against the abuse of the Indo-Mauritius Double Taxation Avoidance Convention: see Chapters 23 of this Memoir.
 10. It is time for us to evaluate the assumptions of the neoliberalism, and to notice how the *entente* of Fraud and Collusion has emerged to deceive us by painting a mere treacherous and shifting rainbow of hope. To appreciate this view one must be clear about our own worldview, and the basic assumptions which we share. Chapter 24 examines our worldview, and Chapter 29 discusses the main strands in the Western intellectual traditions that help us to discover how 'Capitalism, Corporate *imperium* and Corruption' go together in our modern society. The ideas set forth in them would help us understand the ideas, actions and traditions of different societies of the East and the West. I have drawn up the portrait of our times in Chapter 29 of the Memoir.

POSTSCRIPT II : SOME OF MY RECOMMENDATORY COMMENTS

11. If our democracy is to function well, we must consider how to re-structure our democratic polity in order to make it really accountable, and greatly responsive, to our people. (see Chapters 22 and 30 of the Memoir).
12. We must resist the generation of consumerist, hedonist, self-centric attitudes as that would surely denude the humans of all those great qualities without which the beauty and light would go from life, our literature and arts would turn barren, and all the fine treasures that humanity has yet amassed would be lost. None should forget what history teaches: Rome fell; Babylon fell; the imperious Church fell,.....and the Pax Mercatus's turn too will come sooner than it can be imagined.
13. All efforts deserve to be made to ensure that our Constitution is not diluted by subjecting its egalitarian mission to a neoliberal gloss; that our domestic institutions are not weakened and devalued by outsourcing their powers and functions to foreign bodies; that our Rule of Law is not subverted by creating two legal systems in one country (one for the natives and the other for those who can invoke remedies at the foreign fora); that we must not allow intrusion into our domestic space to the extent as to make our Constitution itself dysfunctional.
14. As the sovereignty of the Republic of India is essentially a matter of constitutional arrangement, which provides structured government with conferred powers and prescribed duties, our Executive Government does not possess any "hip-pocket" of unaccountable powers" to be exercised in the domestic sphere, or at the international plane. Hence, the treaties and agreements in disobedience to the mandatory constitutional restraints, deserve to be declared 'domestically inoperative' by our superior courts.
15. Our natural resources and human resources should be used to enrich our country in order to create conditions under which the socialist vision, set forth in the preamble to our Constitution, can be realised for the weal of all of us alive, and for those who will come after us, always preserving and protecting our environment and resources. To say metaphorically: we must ensure that clouds formed in our country, rain here rather than trail away to shower in alien jurisdictions, secret sanctuaries, dark holes, and the virtual vaults which the crooks have created in our times. The crooks can make even clouds 'bad patriots' like the salmon which comes to reproduce in fresh water but deserts that, once the purpose is served, by migrating to the deep ocean! My Professor of Maritime International Law had aptly told me 1970 that the salmon is a 'bad patriot' ! I wish our clouds be not seduced causing wrongful loss to us, but providing wrongful gains to others. I need not develop what is obvious: have we not seen our clouds' downpour in Mauritius, Switzerland, Liechtenstein, the Cayman Islands, the Virgin Islands !..... We know all these, but we evade the reality. Evasion of reality is our tragedy. [see Chapters 21 & 29 of the Memoir]

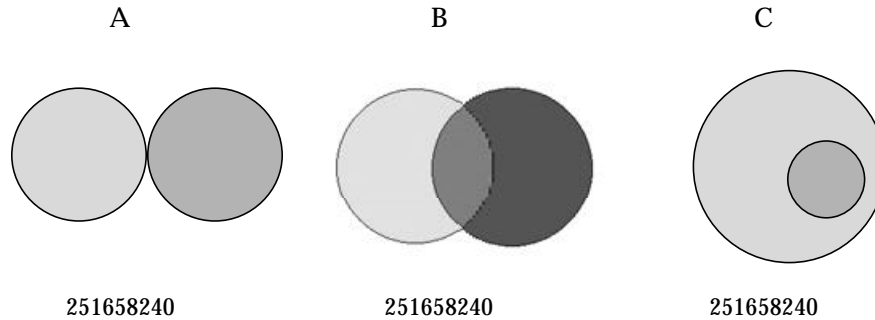
AN ASIDE

An overview of our world in which we and our institutions are on trial

The neoliberal agenda intrudes into our 'domestic space' through the acts of the IMF, the World Bank, the WTO, and the scores of foreign corporate investors

POSTSCRIPT II : SOME OF MY RECOMMENDATORY COMMENTS

intruding into our domestic space. Our economy and polity have become bifocal: one system for the common people, and the other for the Big Business. Our Government has become Janus-faced (see p. 488 of the Memoir). I think the following three diagrams would throw some light on the state of affairs of our times. Please consider the following diagrams:



The dark is our domestic space where the writ of our Parliament runs; the grey is the space where international law operates. Roughly speaking, till World War I, 'A' was broadly the functional model in the world. After World War II, the grey circle kept on encroaching on the dark circle: first at a creeping pace, and then aggressively (see diagram 'B'). The diagram 'C' presents a phase, advancing fast on tiptoe, when the process of Globalisation imperiously works to subsume 'domestic space' into its realm establishing subjugation of the political realm (to which our 'democracy' and 'constitution' belong) to the economic realm that promotes neoliberal agenda. Time might come when the 'domestic space' would get wholly subsumed in the global realm wherefrom a new Leviathan would emerge establishing the sovereignty of 'corporatocracy'.¹ And when it happens, the result would be, perish the thought, what Mattias Kumm² so perceptively points out:

“There is no longer a person (the king) or an institution (the parliament), a text (the constitution) or even a source ('We the People') that can plausibly serve as an ultimate normative point of reference and symbol of the unity and coherence of the legal and political world. In this sense, the world may be moving beyond constitutions. “

Such gloomy thoughts make me tense. I recall the words of Bertrand Russell (*Autobiography* p. 629): “Like Cassandra, I am doomed to prophesy evil and not be believed. Her prophecies came true. I desperately hope that mine will not.”

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1. “This means that the concept of ‘domestic jurisdiction’ does not denote specific areas which are clearly defined, irreducible or in any way inherently removed from the international sphere. It rather circumscribes areas which, taking into account the situation at issue, are not even *prima facie* affected by rules of international law...In order to remove an area from the sphere of domestic jurisdiction, it is sufficient that this area be regulated by international law only in certain respects.” Ian Brownlie, *Principles of Public International Law* p. 454 (8th ed.)
 2. Mattias Kumm, ‘The Legitimacy of International Law: A Constitutionalist Framework of Analysis’ *The European Journal of International Law* Vol. 15 no.5 © EJIL 2004

POSTSCRIPT III

WHAT I BELIEVE

1. To be born a human being is great fortune. One gets life ('बड़े भाग मानुष तन पाया') as an instrument for action [*karma-samigri* (कर्मसामिग्री)] to participate in the *cosmickriya* (actions) of which what we think, see and do become the integral parts. One's unalienable duty is one's *kartavya karma* (duty) the consequences of which are to be gladly accepted as they cannot be evaded. This existential grammar is both peremptory and inexorable.
2. The best way to judge the acts of others is to find out, whether or not his *reason* is pure and equable, by observing the external actions of man; 'otherwise, a man will by his mouth say that his Reason is pure and equable, and by his hands do whatever he likes.' The best way to judge one's actions is to measure them in the light of what one does for one's *kalyana*, and also for the good of the world believing that it is God Himself who is getting revealed in this world. The *Srimad Bhagavata Maha Purana* says: 'आद्योऽवतारः पुरुषः परस्य' ('the world is God's first incarnation'). This is the true 'globalisation', not that which followed the post-Bretton Woods phase (see p. 345 of this Memoir).
3. Our Constitution sets up as our core mission to work for social justice that establishes a great egalitarian society. I believe that our best manifesto for governance, and agenda for action, are well articulated, and powerfully stated in the Preamble to the Constitution of India which we can be compendiously described as our 'constitutional socialism'.¹
4. The institution of 'property' is for the welfare of people. One must put in one's best to earn it, augment it, and preserve it, as much as it is possible without compromising the nobility of the means for acquiring that, and also for amassing that. The propriety of 'property' depends on two factors: the state of one's mind in which one strives to acquire property, amass it, and protect it; and the way one puts it to use: whether for himself alone, or for the benefit of society treating 'property' as held in trust.
5. It is our duty to tread on the straight line of right and justice but always without violence. I believe that that Governments are instituted among Men, deriving their just powers from the consent of the governed as

1. Shiva Kant Jha, 'Our Constitutional Socialism: its vectors and praxis' http://www.shivakantjha.org/openfile.php?filename=articles/constitutional_socialism.htm

expressed in the Constitution, created by 'We the People', and sustained, in the end, by the same 'We the People'.

6. I believe (i) that both in life and polity, a fast changing technology and decadent morality would become disastrous; (ii) that the right approach in dealing with grave socio-political problems is to adopt pragmatic, and piecemeal approach recognizing our own limitations and the constraints within which we live and work; (iii) that we must bridge the distance between people and government, and also between people and power; (iv) that the principles of Accountability and Responsibility must operate without allowing pockets of tyrannies to grow because of the lack of vigilance by 'We the People'; (v) that we can enjoy peace and prosperity only if we do not allow non-human actors (like the corporations and their consortia) to become dominant and decisive; and if we promote measures to promote peace and love amongst the humans of all lands under the aspects of social justice and equality.
7. I believe that to achieve our constitutional objectives we need minimum government but maximum governance not only because this model provides synergic participation, and collective-collaborative creativity for common weal, but also because it accords well with our national genius, and is in tune with our classical thought for collective welfare.² Both conjointly run the affairs of the State³ preserving even the best of the 'market' and the best of the 'government'.⁴ thus ensuring pragmatic, democratic, and purpose-driven exercise of the political power. The role of the government

2. C.Rajagopalachari aptly discussed this point in his *Our Culture* from which N.A.Palkivalla has quoted in his *India's Priceless Heritage* Pg. 35-36. In *Our Culture*, C.Rajagopalachari makes the significant point that India, probably more than any other country, had the largest number of very big intervals between one effective government and another. There were a great many long periods during which the people had neither central nor regional governments exercising effective authority. "Not only was order maintained, but trade and arts flourished, the fine arts as well as the common artisans' work so essential for life. The absence of government made no great difference. A mere figurehead of a king was enough to do duty. Sometimes even that was not found necessary..... "I do not believe culture managed affairs on such a vast and effective scale among any other people in the world and through such long periods of governmentless civilisation."

3. Jean Dreze and Amartya Sen state in course of their exposition of the Government, the State and the Market in their *India: Economic Development and Social Opportunity* p.17

"The distinction between the state and the government may be of some significance in this context. The state is, in many ways, a broader concept, which includes the government, but also the legislature that votes on public rules, the political system that regulates elections, the role given to opposition parties, and the basic political rights that are upheld by judiciary."

Also see Shiva Kant Jha, *Judicial Role in Globalised Economy* p. 80

4. After a close analysis, Jean Dreze and Amartya Sen were led to make the following two perceptive comments:

"The implicit belief, expressed in some writings, that government interventions are, by and large, guided by the demands of social progress is surely a gigantic folly."

"The recent history of Asia and Africa provides plentiful examples of market exchanges being used to made profits out of the miseries of millions."

POSTSCRIPT III : WHAT I BELIEVE

becomes most crucial as it has to ensure that laws and the Constitution operate effectively for all without 'democratic deficit' or 'moral deficit'.

(The parts illustrate and represent the whole; and the whole itself inheres in the parts. The whole and the parts are all perfect.)

8. I believe that even a little effort done to do good has salutary effect. Nothing done for public weal turns in vain, good work done never perishes. A step towards that is itself enough. I believe that the *Bhagavad-Gita* provides the very grammar of life, and it never fails one in the moments of need. It has never failed me; it shall never fail you, wherever you be, and under whatever conditions. I believe what Bal Gangadhar Tilak says in his *Bhagavadgita Rahashya*:

"Keep in mind the universal rule that, "Nothing happens unless something is done", and devote yourselves to Desireless Action ; that is all. The Gita was not preached either as a pastime for persons tired out after living a worldly life in the pursuit of selfish motives nor as a preparatory lesson for living such worldly life; but in order to give philosophical advice as to how one should live his worldly life with an eye to Release (*moksha*) and as to the true duty of human beings in worldly life. My last prayer to everyone, therefore, is that one should not fail to thoroughly understand this ancient science of the life of a householder, or of worldly life, as early as possible in one's life."⁷

9. Admitting a margin of error that creeps in to most generalizations, my intellectual journey through the Western thought, has led me to believe (i) that the intellectuals of the West were almost always pursuing their given, or assumed, briefs: they seldom acted as the independent inquirers of truth in the quest of wisdom that lasts the momentary changes specific to a country, regime, or phase of passing time; (ii) that their tomes of learning are erected to provide to their authors the same measure of thrill that the visitors of Mount Everest, or the Moon or Mars get on unfurling their flag there, or what a chef gets after preparing a recipe that makes him move here, there, and everywhere for a patent. A resume of my exploration is given in Chap. 24 of this Memoir. If some of the ideas, set forth in this Memoir, do not please the intellectuals at the high academic, or administrative echelons, I beg to be excused. In my defence I would just refer to Bhartrihari's *sshloka* that I have quoted at page 43 of this Memoir which my father, himself a revolutionary and freedom-fighter, thought it fit to quote in an apt context.
10. We are responding to the challenges in these difficult moments. These moments are neither for depression nor for elation, but for actions, actions, and actions. The words of Vyasa in the great *Mahabharata* are enlightening and inspiring: to quote —

5. at p. xxi (translated by A.S. Sukthakar)

POSTSCRIPT III : WHAT I BELIEVE

‘Sorrow which we share in common, it is unwise to shed tears thereon;
It is prudent to find and forge some ways, to diagnose the
cause to get rid of the ailments.’

POSTSCRIPT IV

SIT ON BLACK MONEY: THE FIRST DECISION OF THE MODI GOVERNMENT

I resume the thread I left in Chapter 28 of the Memoir

After telling you something about the world, I now come to pick up the thread which I had left in Chapter 28 Section 'C'. I have told you how the UPA Government made the sad mistake of questioning the directions in *Ram Jethmalani & Ors. v. Union of India & Ors.* [2011] 8 SCC 1 that had appointed the SIT to function under the two eminent former judges of the Supreme Court. It is good that the Narendra Modi-led BJP Government's first decision was to set up the SIT on Black Money, to pursue its objective with all commitment. But before I come to brace up with the SIT at work, I would deal with some apprehensions, the awareness of which will help us forge appropriate course of actions.

II

The Problem in the raw : the chiaroscuro of Hope and Gloom

I agree with Prof. Arun Kumar of Jawaharlal Nehru University, Delhi, that black money is a tiny component of the huge black economy. Black money is the illegal income in legal business, or illegal income in illegal business. It is the money acquired causing wrongful gains to the recipients, and wrongful loss to others. At several places in my Memoir, I have reflected on 'black money' [see Chapter 10 under the sub-heading: 'The Problem of Black-money: the Art of pretending to solve the problem without ever solving it,' (at pp. 130-131)]. Prof. Kumar's answer to the question [How can the foreign-based black money be retrieved?] is worth consideration.

"First of all, I think going after just the foreign component of black money is a diversion. The bulk of the money is right here in the country! It is very difficult to get money out of foreign tax havens unless someone has been really stupid. Let me clarify that all Indians with foreign accounts are not criminals. If it is untaxed, unreported income then it needs to be tracked and brought to book. No amount of agreements to avoid double taxation, or information sharing will yield information on real account holders. There are devious means by which money is transferred through several layers of shell companies. If you ask a Swiss bank, they might tell you the 'names' they have but these are not the real people. It will require a great deal of

meticulous work here to get the right persons. This is what the US did in the case of its citizens who had stashed money in UBS. They prepared a case in US and presented it to the Swiss. That's what India should do. The only other way is to wait for somebody to steal the data as happened in the case of LGT — the Lichtenstein based trust."

Prof Kumar bewails the lack of political will, and the conspiratorial nexus of a triad: business, politicians and the executive arm of the government. These two morbid features have existed, since long. Various committees and commissions noticed how corruption generates black money but no worthwhile effective step has been taken yet. People have a lot of hope from this SIT. It is good as the Supreme Court is supervising this SIT. And we have a dynamic government in power that has assured us that good days are now just round the corner. But the proof pudding is only in eating. I know Prof Arun Kumar well. I cannot dismiss his doubts about the success of the SIT. He says:

'My feeling is that the Special Investigation Team (SIT) set up by the government under Supreme Court pressure will be of limited use. So, there has never been a political will to tackle the black economy in the past, and I doubt that the present government has it.'

In the context of Chapter 29, when I read what Prof Arun Kumar apprehends, the story that I had narrated at page 491 of this Memoir, comes to mind to make me suffer deep agony. He seems to say precisely what Bertrand Russell said (*Autobiography* p. 629): "Like Cassandra, I am doomed to prophesy evil and not be believed. Her prophecies came true. I desperately hope that mine will not." But for the philosophical repose of Prof. Kumar, I would refer to what Freud had told Einstein when he had been dismayed by mankind's failure to respond to the challenge that could have saved us from the devastation of World War II. And the valiant PIL Petitioner, Shri Ram Jethmalani can have his peace reflecting on the pregnant *shloka* from the *Panchtantra* which I have quoted after enjoying its wholesome effect on my own much ruffled self (see p. 345 of the Memoir).

III

Things demanding prompt attention from the SIT

(a)

Introduction

I would have restrained myself from the comments on the SIT appointed by the Supreme Court. But I would set forth some of my legitimate expectations from it. I am sure, over the passage of time, the Supreme Court's directions would be subjected to creative narrowing. It would, of course, be unfortunate. The reach of the directions of the Court should be read in the light of the ideas so powerfully stated in the first Part of the order in *Ram Jethmalani's Case* discussed in Chapter 28. There would also be attempts to narrow down the reach of the judicial directions subjecting them to the confines of the Prayers in the Writ Petition. I would not be surprised if there are attempts to eclipse the Part 'A' of the said order as mere judicial effervescence of solemn judicial wrath at the ways the authorities have acquitted themselves in recent years. There may even be an attempt to read the words of the order in the light of the Notification dated May, 2014 [The

Gazette of India Extraordinary of May 29, 2014]. I do not wish to go into their details. I wish the SIT discovers the deeds of Khans and Tapurias. I hope these creatures are not found mere figments of delight, or their wealth does not turn out camphor that could vanish in the thin air. I hope the SIT would discover how the authorities made castles in thin air, and would explore what made them build castles that way. When such things happen, people's trust in administration reaches its vanishing point. Someone abler than me would help find out strategies to frustrate the devices for resorting to intricate corporate structuring to make the clouds formed in India shower only outside India. It is good that the SIT will have the powers to supervise till the matters are taken to logical conclusion. It is hoped that this body would be well equipped to explore the origin of the tainted wealth, to examine the process of concealed transmissions through space or the virtual world. It would also gather information as to the destination of such wealth through all the intricate process of transformations, and its odyssey outside India; and again its intrusion into India in many ways one of which is round tripping. Even a little work done in that noble pursuit is great.

I think the most important work assigned to the SIT is mentioned in these words:

“The special Investigation Team shall also be charged with the responsibility of *preparing a comprehensive action plan*, including the *creation of necessary institutional structures* that can enable and strengthen the country's *battle against generation of unaccounted monies, and their stashing away in foreign banks or in various forms domestically.*” [italics supplied]

Whilst, as a citizen of the Republic of India, I wish the SIT to succeed at all fronts, I would be satisfied if a permanent institution for pursuing the aforementioned three objectives are created in our country. This would involve the study and analysis of some of the great institutions of the West in order to see how they are structured, and what sustains them. A lot of light can be drawn from critically studying all that produced Bernard Lawrence Madoff in the US economy, and all that led to the discovery of his dark deeds leading to his imprisonment for 150 years and forfeiture of \$17.179 billion. It may be good to gather information how things are creatively managed from the Uglan House in the Cayman Islands, or from the Cathedral Square in Mauritius. The ways of the Stock-Market must be understood. It is wonderful that Raja Parikshit allowed the Kaliyuga only five places of repose from his wrath: of the five places one is *dyut* (speculation) that rules in the Stock-Markets!

This body must be independent, its expenditure wholly charged on the Consolidated Fund, it must be accountable only to the Supreme Court. Its structure should be a honeycomb of hexagonal cells manned by persons of competence from different services and professions out to study all that is happening on the planet, or in the virtual world, having bearing on the work assigned to the SIT. They should operate on the pattern of Conseil d'Etat of France having jurisdiction on functionaries in the matter of “all disputes touching recruitment, pay, promotion, duties and discipline within” ‘*la fonction publique*’. Public confidence in the institution had been built over years. This faith was not

‘ruffled by a decision of the Conseil d’Etat against his government’.¹ Can’t we too have a body like that? Straw boats cannot help us cross the tempestuous oceans to find out our stolen treasures !

(b)

I SUGGEST SOME POINTS FOR THE SIT TO CONSIDER

I know persons abler than me would help the SIT with ideas to determine its zone of operations. Within the constraints of this Postscript of my Memoir, I mention the following without claiming that they are exhaustive or final.

1. Some measure of regulated exchange rates and control, as required under the Bretton Woods system, had kept certain vital segments of economy under government vigilance, but its dismantling removed close public vigilance. This triumph of the neoliberal strategy, going on in this phase of Globalisation, has, in effect, destroyed public vigilance from the private and corporate acts. [see Chap. 23 p. 345 and Chap. 26 p. 416 of this Memoir]. Measures of public vigilance must be established.

2. At several places in this Memoir, I have mentioned how indiscriminate welcome of FDI is bad for our country. It has been seen that in the passionate pursuits for more and more FDI, corruptions flourish, black economy is patronized, and black money flourishes. It is not the right place for me to go into such details, it would be sufficient to quote from *Globalization and its Discontents* wherein, with much perspicacity, Joseph Stiglitz has written thus (at pp. 71-72):

“There is more to the list of legitimate complaints against foreign direct investment. Such investment often flourishes only because of special privileges extracted from the government. While standard economics focuses on the *distortions* of incentives that result from such privileges, there is a far more insidious aspect: often those privileges are the result of corruption, the bribery of government officials. The foreign direct investment comes only at the price of undermining democratic processes. This is particularly true for investments in mining, oil, and other natural resources, where foreigners have a real incentive to obtain the concessions at low prices.” — “The international financial institutions tended to ignore the problems I have outlined. Instead, the IMF’s prescription for job creation – when it focused on that issue – was simple: Eliminate government intervention (in the form of oppressive regulation), reduce taxes, get inflation as low as possible, and invite foreign entrepreneurs in. In a sense, even here policy reflected the colonial mentality described in the previous chapter: of course, the developing countries would have to rely on foreigners for entrepreneurship. Never mind the remarkable successes of Korea and Japan, in which foreign investment played no role. In many cases, as in Singapore, China, and Malaysia, which kept the abuses of foreign investment in check, foreign direct investment played a critical role, not so much for the capital (which, given the high savings rate, was not really needed) or even for the entrepreneurship,

1 H.M. Seervai, *Constitutional Law* (4th ed.) p. 3059.

but for the access to markets and new technology that it brought along.”

This process of privatization and corporatization makes a country lose twice, to say in the words of Stiglitz, “first from the unfair contract or privatization, and then from the political turmoil and adverse attention from the international investment community when an attempt is made to set things right.”²

3. They all swear by transparency, yet they all desire and work for ‘darkness’. I have shown in Chapter 27, why and how ‘darkness’ is needed for corruption and black money to grow more and more. We had seen in Chapter 23, the Delhi High Court struck down CBDT’s Circular 789 holding:

“An abuse of the treaty or treaty shopping is illegal and thus necessarily forbidden.”

“No law encourages opaque system to prevail”.

The Union of India went on appeal to the Supreme Court. The long story has been told in short in Chapter 23 of the Memoir. The Supreme Court reversed the High Court. Read the Chapter for yourself and ask your conscience whether what had happened was good for our people. The Supreme Court did not provide any remedy against the fraud. It made a solemn cry to Parliament to think about the step that was needed (see p. 416). Parliament has done nothing till now. The abuse is continuing to help the crooks to generate black wealth, and to shuffle that from jurisdictions to jurisdictions most of them created with ignoble motives. Instead of eradicating this evil, the Direct Taxes Code Bill, 2010, sought to incarnate the Circular in a statutory form (see Chapt 17 p. 232, & Chapt. 26 p. 415). But the things have exceeded all bounds of decency when the provisions of the Bilateral Investment Treaties, which, in effect, seek to override our laws and oust our superior courts’ jurisdiction, grant the benefit of Treaty Shopping to all the foreign investors in ways most morbid and fraudulent ! How this globe-trotting fraud has been crafted would be discussed in the Postscript 7 of this Memoir. If our Government has sincere desire to take steps against black economy and black money, it must work sincerely to withdraw the Circular 789 from retrospective effect, abandon the idea to provide for the issue of a *Carte de Sejour*, and consider all the 80 and odd BITs domestically inoperative (for the reasons see Postscript 7 of the Memoir). I have written about the Noah’s ark in which crooks of all lands could sail across to loot India hoisting the Mauritian Certificate of Residence (see p. 348 of the Memoir). I had asked Dr. M. L. Upadhyaya³ to examine its propriety, The concluding paragraph of the said Opinion by Dr. Upadhyaya considers Treaty Shopping a fraud on our law and constitution: to quote -

“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

² Stiglitz, *Making Globalization Work* p. 144.

³ Prof. (Dr.) M.L. Upadhyaya, former Professor & Dean of the University of Calcutta, and later Professor & Vice President, Amity Law School, New Delhi.

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 gives 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.”

4. All the statutory provisions in various Acts introduced in the recent years should be reviewed. Most of the provisions, through studied omissions and commissions, have been devised to make things easier for the looters and crooks. From 1990s various legal provisions have been altered to adapt to the demands of the neoliberal agenda. We all know how many laws were altered because of the WTO commitments. The Foreign Exchange Regulation Act was replaced by the Foreign Exchange Management Act after subjecting it to changes to make it compliant with the neoliberal policy of the WTO-IMF-World Bank. It was the same strategy that was afoot crafting the provisions of the Prevention of Money Laundering Act 2002. All the laws deserve to be considered to see if by omissions and commissions, through their tilts and tenor, they favour, or facilitate, the evil of black money, and its concealed movements within and outside India. I understand that the SIT is already on this track.

5. I have already told you in Chapter 23 of the Memoir, the circumstances under which the Circular 789 had been *got issued*. (It is my view as none knowing the tax law and tax administration, would have issued that). If you want to go deeper and wider you may see my *Judicial Role in Globalised Economy* now placed on my website: www.shivakantjha.org. If the Circular was right, and the officers who passed nearly 20 orders denying the Mauritian residents the benefits under the Indo-Mauritius DTAA were wrong, the statutory and constitutional authorities could have granted them the right remedy. To allow pressure groups and the lobbyists to bend the course of law is clear subversion of the Rule of Law. The CBDT was excusably wrong by forgetting the right role of the Assessing Officers. The role of the Assessing Officers has been well explained by Delhi High Court in *Gee Vee Enterprise v Addl. CIT*⁴

“The civil court is neutral. It simply gives decision on the basis of the pleading and evidence, which comes before it. The Income-tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return, which apparently in order but calls for further inquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry.”

6. The SIT may consider setting up some mechanism to keep under surveil-

4 (1975) 99 ITR 375 at 386.

lance the domestic operators under the 'opaque system' of the present-day Rogue Finance. This topic is not manageable to be dealt with here. You may go through Chapter 2 of my *Judicial Role in Globalised Economy*. But effective steps would require measures of international coercion, and diplomatic pressure; or, a mix of both. I do not wish to flog these points here because I find will to do so totally absent both in the domestic sphere and at international fora. True the USA and the UK have succeeded in making certain dirty jurisdictions disgorge their wrongfully acquired wealth, but this cannot be treated as the present-day international norm. They are mighty countries so their writs could run. They have selectively shown will to act, but we have yet to demonstrate the political will to do that.

7. The SIT would examine our obligations under the WTO and the Agreements under its umbrella, and the ways we have chosen to bind ourselves to behave in the globalised world through treaties. Through treaties we had been subjected to slavery, through treaties the Chinese dragon had become a meek bleating lamb, through treaties the nations have moved towards wars, Through treaties, constitutions can be made non-functional, through treaties we can create situations for collective suicide. True, some good can also be gained, but for this to happen our government needs sagacity, and our polity needs corruption-free environment. Alfred Russel Wallace wisely said in his *Bad Times*: "It is, then, by applying the teachings of a higher morality to our commerce and manufactures, to our laws and customs, and to our dealings with all other nationalities, that we shall find the only effective and permanent remedy for Depression of Trade" (see p. 54 of the Memoir). I would revisit this important point in the PS 7.

IV

A FLASHBACK: GLEANINGS FROM MY PAST EXPERIENCE

(Recalling the Judicial Monitoring of the Fodder Scam Cases by the Patna High Court)

The Judicial Monitoring of the Fodder Scam Cases had been done, in 1990s, by Hon'ble Patna High Court. It is the subject-matter of Chapter 12 of this Memoir. It comes to mind whilst I consider this SIT on Black Money. The Patna High Court had assumed jurisdiction under Article 226 of the Constitution: see *Sushil Kumar Modi & ors. vs The State of Bihar & ors* [1996 (1) PLJR 561]. I was transferred, in 1995, from the post of the Director-General (Exemption) that had, then an all-India jurisdiction, to the post of the Chief Commissioner of Income-tax, Bihar, Orissa, Assam, & the North-East. Whilst at Patna, I had to supervise the Fodder Scam Cases from the observation-post of the Income-tax Department. In this Part I reflect on certain things I had witnessed in order to help this SIT sculpt its strategy to discover, & get back black money.

The jurisdiction that the Patna High Court exercised in monitoring the Fodder Scam case, when compared with the jurisdiction of this SIT on Black Money, was both grand and narrow. It was grand because the Fodder Scam cases were monitored by one of the Division Benches of the High Court whereas this SIT is not a court but a 'court-empowered body' exercising the Court's power as granted to it for discharging its duties prescribed. It does not seem to possess the

wide creative powers of the Supreme Court exercising the powers of issuing the continuing mandamus, unless from time to time it seeks authorization for such actions from the Court. I have written something about the structure of investigation in Chapter 12. What was important was the frequent submissions of the 'Action taken reports', and their scrutiny by the High Court. All those days of hearing were the testing moments for the CBI and the Income-tax Department. Those were enlightening moments too as the High Court guided us, helped us to get over obstructions that came in plenty to delay, and distract. Even the judicial censures and sharp criticism for delay in action, or inaction or mal-action, brought to us light and delight. This continuous aggressive vigilance by the Court kept everyone on tenterhooks. Whenever the superior Delhi-based hierarchy of the CBI soft-peddled, or tried to derail the investigation, the High Court was fast and sharp in censuring such derelictions so that things could take better turns. But the CBI was, on most occasions, on the mat. In fact, the CBI's performance used to come up for criticism both in the Court, and in the media. It was only the dedication of some persons, like Dr. U.N. Biswas, Joint Director (East)/CBI, and the close and assertive monitoring by the High Court that things could come to light showing how the public institutions had broken down giving rise to the Fodder Scam (see Chap. 12 of the Memoir).

The High Court advanced its reasons for assertive monitoring by adopting pro-people and pro-justice approach⁵, as our Supreme Court has done in the Part 'A' of its judgment discussed in Chapter 28 of the Memoir. The High Court's Judgment in *Modi's Case* ended with a note of solemn pensiveness: it said—

“The values of public life are fast declining. I do not expect that this judgment and the CBI investigation will improve the system. But, if we are only able to maintain it, by our effort, we will feel gratified.”

How prophetic is the note, how sad is the tone !

While monitoring the Fodder Scam, the Patna High Court had to decide quite frequently the operational problems, mostly created by those who did not want the truth to come out. Quite frequently hierarchic issues and ego-problems were out to delay the work, and to derail the mission. To solve such problems, many issues were even taken to the Supreme Court. Most of the times, the response of the CBI was unsatisfactory. The High Court had been driven to comment the following on the CBI in one of its orders passed in course of the monitoring process: it observed —

“We are satisfied, in the circumstances, that there is clear attempt on the part of the Director, CBI, to not only interfere with the investigation but also scuttle it.”

While the High Court was pursuing its duty cast on it by the Supreme Court,

5 "The people of this State, in different walks of life, have been made to suffer on the specious plea of paucity of funds. The limited funds of the State which could be utilized for the welfare of the people were allowed to be systematically plundered, assuming unparalleled proportions. In such a situation, people naturally have a 'legitimate expectation' that the guilty be punished. It is the duty of this Court in writ jurisdiction to see that these legitimate expectations are fulfilled. It is a fit case, therefore, in which direction should be issued for enquiry and investigation of the entire episode by the Central Bureau of Investigation for the period in question." *Sushil Kumar Modi & ors. vs The State of Bihar & ors.* [1996 (1) PLJR 561 para 53.

the Apex Court guided it with its judicial sagacity and authority. I quote two extracts here from *Sushil Kumar Modi's Case*: one in which the CBI is told how to behave, and the second where all officers received mandatory directions on their duties.

- (i) "At the hearing of the matter we had expressed our plain view that the CBI with its Director at the helm of affairs is duty bound to make a fair, honest and complete investigation into the accusations and to identify all the culprits involved in the scam and to take the necessary steps in accordance with law for the trial of all accused. The ultimate responsibility to ensure a fair, honest and complete investigation into the accusations is that of the Director, CBI, and he is expected to discharge his duty and functions faithfully towards this end. It is also necessary that the Director is not merely to perform his own duty in this manner but he is also to ensure that every officer of the CBI works honestly to achieve this end. This is imperative under the 'rule of law'. The learned Attorney General unhesitatingly accepted this and assured us of the same. It is not necessary for us to elaborate this obvious any further."
- (ii) "We deem it proper to emphasise that every officer of the CBI associated with the investigation has to function as a member of a cohesive team which is engaged in the common pursuit of a fair, honest and complete investigation into the crimes alleged. It is needless to further emphasize that the exercise has to be performed objectively and fairly, mindful of the fact that the majesty of law has to be upheld and the 'rule of law' preserved, which does not discriminate between individuals on the basis of their status, position or power. The law treats everyone as equal before it and this has to be kept in view constantly in every State action to avoid violation of the 'right to equality' guaranteed in Article 14 of the Constitution."

One point more. The Hon'ble Supreme Court failed to notice the features of the criminal conspiracy at work in the generation of black money, the siphoning-off of the black money, and the stashing of black money in foreign jurisdictions. The Patna High Court had made, in the context of its examination of the Fodder Scam, a very pertinent comment. The High Court had observed: "It is clear that the excess drawals were not isolated acts; they were manifestations and results of well-knit conspiracy to commit loot and plunder of public money in a systematic manner, which could not be possible without the support of high-ups." Not only the Government of Bihar, but all other agencies adopted the technique of 'creative delay'. It was this fact which made the High Court warn the officers involved:

"One of the first and foremost considerations which should carry weight not only with the public functionaries but also the courts is that the Government and its functionaries must not only act but also appear to act in public interest. In my opinion, it is the legitimate right of the public to know, and feel assured about, that the investigation is done in correct perspectives and that no guilty person will be spared."

I think, this SIT on black money would cast its ken wide enough to explore

POSTSCRIPT IV : SIT ON BLACK MONEY

facts to see if the craft and covin of conspiracy worked: if they worked, then to what extent. We would expect from this high body to throw light on the *dramatis personae* and the theatres whereon they worked. The SIT would tell us not only what happened on the stage, but also what happened in the green-room. The nation has the right to know how our administration works. I would hope that this SIT would someday submit such an enlightening report that our nation comes to know whether the trust we reposed in our public servants was kept, or betrayed.

POSTSCRIPT V

THE DESTINY OF OUR NATION : THE ADVENT OF NARENDRA MODI

PART I

Prelude

The 2014 General Election seemed unique in many ways. Our nation saw a new star at the horizon. We were fed up with monochromatic agenda of the BJP and the Congress for long years. Our country was turning fast into a republic of scams and scandals. Our democracy was running the risk of degenerating into such morbid corruptions as only Milo's Rome knew. But two features of our people are noteworthy. The first is Hope that is never lost in the worldview shaped by the *Bhagavad-Gita* and the *Quran*, and the second is the philosophy of *karma* and *kartavya* the grammar of which is, again, revealed best in these sacred texts. Many things shaped the context of this Election. But here I do not want to touch on them. Let some more time pass so that a right perspective to judge the drama and its *dramatis personae* becomes available to people. In this Postscript, I would simply concentrate on certain imageries reflecting on them to enjoy their suggestions, and to understand how our destiny is going to play '*Upon this chequer-board of Nights and Days*'.

The imageries on which the mind dwells in this Chapter can be the matters of diverse interpretations as they are rich in suggestions, and profound in possibilities. I saw most of these on the TV screen in my private ward of the Jaslok Hospital, Mumbai where I had been admitted on April 30, 2014 for the treatment of a cerebral stroke that had turned my lower right side almost dead. It was all chaotic darkness in which I felt I got sucked in devoting those troubled moments just gazing at the shredded past-present-future, and counting their micro-fragments floating and melting in the silent dense darkness. The television screen on the wall had all colours and sound, but they were all above me. I was discharged from the hospital on 17 May 2014. Those days were my 'lost days'. Reaching back to Kishori's house at the Pedder Road, was really a return to the world. It was May 20. I was yet not wholly out of delirium. But something strange happened in me.

(i) *Vishwaroop* Darshan in Parliament

One day the TV screen drew my mind with an electrifying sharp jerk. I saw Narendra Modi reverentially bowing to Parliament, touching its stairs with his forehead.¹ He seemed to me Arjuna witnessing Lord Krishna's *vishwaroop*. When

1. Link: <http://indianexpress.com/article/india/politics/narendra-modi-bows-as-he-enters-parliament-for-first-time/>

the lord revealed Himself in His infinite majesty, Arjuna's salutation to Him is thus described in the *Bhagvad Geeta* (XI.14):

tatahsavismayavrsto
hrstaromadhanamjayah
pranamyasirasadevam
krtanjalirabhasata

[Arjuna bowed down his head to the Lord, with hands folded (in salutation)].

I kept gazing, with a measure of suspended disbelief, at the scene I saw on my TV screen. It was amazing to feel that my blocked memory was now free. I could easily recognise that the building on the steps of which the leader bowed was our Parliament, and the man who bowed in reverential salutation was Narendra Modi, the Prime Minister designate. What I saw built for me the chiaroscuro of light and shade. The place wherein 'We the People' are present through our representatives, deserved to be treated as a sacred place. I could recall the Vedic mantra that I had quoted on Chapter 22 (at p. 333). My mind went back to the description of Sabha in the 'Udyoga Parva' of the *Mahabharata* (see page 512 of the Memoir). On reading the inscriptions at various places in Parliament (see: 'The Rocks speak: Inscriptions in the Parliament House' in Chapt. 30), I had the feeling of sublime joy. The expectations revealed by those inscription are high. As there is no ceiling in scaling up excellence, there is no bottom to degradation. We all know how scandals and scams, one after another, shook our faith in Parliament. I have bewailed about them at many a place in this Memoir, But all this does not detract from the institution's sacred character. The duty of the citizenry is to drive the evil out. Jesus opposed when the money changers and usurpers turned the prime temple of Jerusalem into a casino. Those who oppose rapacious or corrupt authority consider even now Jesus an ideal role-model (see Chapt. 20 pp. 272-273)

Seeing the Prime Minister-designate touching the stairs of Parliament before stepping into this shrine of democracy, took me, on flashback, to my school days. Whenever I went to have a dip in the Ganges, I had been trained to seek a pardon for the sacrilege of touching the holy waters with my feet! I remember the song of the great poet Vidyapati that I intoned with deep reverence. The words meant this:

"Forgive me, Holy Mother, for my indiscretion of touching thee with my feet."

Seeing our Prime Minister-designate so reverential, under public gaze, to our Parliament was a great experience. I felt better days were ahead. Days are coming when our corrupt MPs would themselves be not so shameless as to defile the sanctity of Parliament with their presence to represent us in the House. They would consider it a sin to turn a temple into a pigsty. They would not allow Parliament to become a casino, not even a stock-exchange. They would not support the Executive where doing so is just a strategy to survive in power without promoting national interest. Such acts would be both sin and crime.²

2. see page 521 of the Memoir; also, Bertrand Russell, *Autobiography* p. 719

(ii) Our Constitution

The above attitudes towards Parliament are the natural outcome of our highest regards for our Constitution. The BJP manifesto of the 2014 General Election considers that the ‘only epic of a Government should be India’s Constitution’. ‘A constitution is written by citizens to establish the government they live under. The prime purpose of a constitution is to delineate how government will operate and function.’ Our Constitution is unique in comprehensiveness and precision. The Postscript VI is a short note on the ‘Constitutional Restraints’ that binds all the organs of our polity; both domestically and internationally. To some extent the restraints can be modified only by following the constitutional procedure prescribed for bringing about constitutional amendments. I wish the power to make treaties are not allowed to subvert the Constitution. ‘Democratic-deficit’ and ‘Moral-deficit’, evident in the treaty-making process of our country, must end. Our Constitution is unique as it creates the organs of the government, confers powers, and subjects them to strict constitutional discipline. As over years I had the occasions to reflect on these issues, I have drawn up a short Postscript VI highlighting the doctrine of Constitutional Restraints for our Parliament to consider, and enforce so that our Constitution works without a risk of subversion. This Postscript draws threads from Chapter 21 (‘Our Constitution at work’), and would help the exploration and determination of the parameters that govern the exercise of this great power in our democratic republic. You will find the constitutional provisions explained in my article on ‘A Summary of the Constitutional Provisions relevant to Determine the Reach and Ambit of India’s treaty-making power’ at my website: http://www.shivakantjha.org/pdfdocs/parlour/A_Constitutional_Provision_apropos_Treaty_Making_Power.pdf.

(iii) Pravartimarga

Whatever I have been able to know about Narendra Modi, he is a follower of the *Pravartimarga* of the Vedanta philosophy so dear to Swami Vivekananda. Balgangadhar Tilak has explained this marga in the Preface to the *Geeta Rahashya* that I have already quoted in the Postscript III. We have read how close Shri Modi is to the ideas of the Vedanta as expounded by the great patriotic saint. A Vedantic Hindu rises over the barriers of religions and castes. This takes me down my memory-lane. In his resonant voice, Dr. Ramdhari Singh ‘Dinkar’ had said which cannot be faulted. His exposition is extremely valuable for us to know the basic oneness of all religions. I summarize what he had said:

“A true Vedanti is neither a Hindu, nor a Mussalman, is neither a Buddhist nor a Christian, He is just a good soul. Every *dharma* has two dimensions: popularly called *shruti* and *smriti*. *Shruti* is that sphere of Dharma wherefrom all religions originate. *Smriti* is that sphere of Dharma where all religions differ *inter se*. The invisible ultimate reality of Dharma is its *shruti* form.....*Shruti* brings all religions together. *Smriti* takes them apart. The *shruti* form of Dharma is Vedanta

that makes people tolerant, love all, and see the underlying mystery of all.”³

I wish Modi adheres to the vision that unites us, and sees the same God in all. If this happens the very crisis in our civilization, about which I have written at pp. 385-387 of the Memoir, would surely be solved heralding better days for all in the world.

We know that the great Narendranath Datta (1863 - 1902) became a patriotic saint Vivekananda. Vishwanath Himself becomes ‘VEDANTA’ about whom Tulsidas says in his immortal *stotra*:

नमामीशमीशान निर्वाणरूपं विभुं व्यापकं ब्रह्मवेदस्वरूपम्

Please reflect over the world. You can see all gods and all religions in this poetic presentation of Vishwanath who manifests in all religions, whose voice is heard in all that has been said in the sacred and profound books of all times, of all lands. Vishwanath, or Somnath, Baidyanath, or Pashupatinath is the manifestation of Mahadeva whose own religion none knows, whose own caste none knows. He is everywhere because nothing beyond Him is conceivable. Where does all the perception of analogy between Datta and Modi would take us is for TIME to reveal. When all is said the grammar of actions remain the same, as we get in the *Bhagavad-Gita* and the *Quran* to which I would come towards the end of this Postscript.

(iv) Our Politics at a crossover point : HOPE FOR BETTER FUTURE

Our nation’s politics had reached a cusp where it must reveal herself which way it must go. Vartrihari has well described the two faces of ‘politics’ in his *Neetisataka*:

सत्यानृता च परुषा प्रियवादिनी च हिंसा दयालुरपि चार्थपरा वदान्या ।

नित्यव्यया प्रचुरनित्यधनागमा च वराङ्गनेव नृपनीतिरनेकरूपा ॥

(She is truthful, but is less than that even. She speaks with barbs, but at times her words are all delight. She is ferocious, yet kind. She is greedy for wealth but enjoys donating. She is spendthrift but earns a lot. Thus ‘politics’ has, like a courtesan, various faces.)

Narendra Modi has hoisted ‘hope’ for the nation. This in itself is great. In Chapter 25 of this Memoir, I have told you a dozen short stories which are the metaphors for great thoughts. I had concluded that Chapter thus:

“Concluding his *Modern Democracies* (Vol. II p. 670), Lord Bryce perceptively observed: “Hope, often disappointed but always renewed, is the anchor by which the ship that carries democracy and its fortunes will have to ride out this latest storm as it has ridden out many storms before.”

3. Dr. Ramdhari Singh ‘Dinkar’, *Sanskritike Chaar Adhyaya* (1956) p.282 [translation from Hindi by the author of this Memoir].

(v) Modi articulates his vision

On May 20, 2014, after bowing down on the step of our Parliament, Shri Narendra Modi delivered his speech⁴ in the Central Hall of Parliament addressing the BJP parliamentary party meeting. He spoke in chaste Hindi with a high quotient of heart-felt feelings. He recognised/acknowledged/appreciated: (i) the greatness of Parliament as the 'temple of democracy'; (ii) his *parishramyagya* for winning the General Election 2014; (iii) the great contribution of the freedom fighters and the makers of our Constitution; (iv) the power and greatness of our Constitution that enabled a common man to 'reach this height'; (v) his government would be pro-people as it is the people who needs government most. He greeted Mother India (*VandeMataram*), and asserted that the Election made people optimistic: he said 'that this election is of hope, for hope.' He recognised that with this begins an era of responsibility, and in 2019 he would present his report card to the people of this country. His strategy of work would be *sabkasaath, sabkavikash*. He articulated the message of the Election in these suggestive words:

'... the first message that goes out to the world is that it is not important that millions of people have made some party victorious or made someone a prime minister. But it is important that millions have given a good mandate and have held India's position high in the world. [That] is the message of these elections. Who won and who lost is not important. These are the results which will attract the world to India and to its democratic traditions, and capabilities. Hope has been kindled in a common citizen of India and the same hope has arisen in humanitarian forces in the world. This is a very good sign.'

He concluded with words that bring to mind the invocation by Swami Vivekananda in the Parliament of Religions at Chicago held in 1893. He said in the similar tone and tenor: 'Brothers and sisters, once again I express my gratitude to millions of workers who have toiled hard for this victory.' And he saluted the sacrifices made by past five generations. for nationalist causes.

(vi) *nadainyam, napalayanam* (no cringing and no abdication of duty).

I had referred at the beginning of the Postscript to Arjuna's perception of Lord Krishna's *vishwaroop*. I would end the Part I of this Postscript, again with Arjuna. I would bless Shri Modi so that he works successfully with the motto with which Arjuna had worked. I had written in Chapter 7.

'We felt that we had reached a point where everyone could live following the motto which Arjuna had set for himself: *na dainyam, na palayanam* (no cringing and no abdication of duty).'

PART II

Some cardinal assumptions and the goalposts

It is great to read in the BJP's Election Manifesto for 2014, the Modi-led BJP's resonating commitments beautifully articulated thus:

4. <http://www.thehindu.com/news/national/text-of-narendra-modis-speech-at-central-hall-of-parliament/article6030457.ece>

- ◆ the only philosophy and religion of the Government should be India First.
- ◆ the only epic of a Government should be India's Constitution.
- ◆ the only power of a Government should be the power of the people.
- ◆ the only prayer of a Government should be the welfare of its people.
- ◆ the only way of a Government should be 'Sabkasaath, SabkaVikash'.

(a) The only philosophy and religion of the Government should be India First. It means that the dignity and greatness of our country must not be compromised on any count, for any reason. When 'We the People' work with this commitment Bharat can become *Shrestha* (great). To achieve this, India must preserve her sovereignty in managing her natural and human resources, and must formulate her domestic policies in all the spheres which are matters of concern for us. At the international plane we must inter-act and collaborate with other members of the comity of nations for peace and prosperity of all. But the Constitution of India, till it lasts, does not permit any organ of the State to act transgressing our Constitution that has created the organs of the State, and conferred powers for all they are capable of. The neoliberal intrusion into domestic space must be resisted and declared invalid. The present sinister trends can be understood from my 'Aside' at page 546-547 of the Memoir. Over the recent years the gladiators of Globalisation have largely glossed over the original intent of article 15 (8) of the League of Nations Covenant, and Article 2(7) of the U.N. Charter. Ian Brownlie, himself a great international lawyer, concludes his Chapter on 'Sovereignty and Equality of States' with a brief but suggestive comment: "As with other issues associated with sovereignty, domestic jurisdiction has content as a presumption rather than rule."⁵ I would revisit the point later on under the caption 'When our Constitution was defaced and defiled'.

(b) The only *epic of a Government* should be India's Constitution. An epic presents its moral vision in elevated style of rich idioms and metaphors to guide the course of human actions. Every epic becomes a *Shashtra*. The *Bhagavad-Gita* is a *Shashtra*, so is our Constitution. We obey our Constitution because we have learnt to obey the *Shastras* (The *Gita* XVI.23). The obedience to our Constitution is thus a cultural imperative. I am charmed by the expression that considers our Constitution an epic of government. The epic richness of our Constitution has been briefly explored in Chapter 21 ('Our Constitution at Work') highlighting the very mission of our Constitution, and the norms for organising our polity. It not only grants powers to amend the Constitution by the procedure of varying rigidity, it allows itself to become a rich trajectory under which, to quote what *F W Maitland* had written to Dicey, "the only direct utility of legal history... lies in the lesson that each generation has an enormous power of shaping its own law."⁶

5. Ian Brownlie, *Principles of Public International Law* p. 455

6. Cosgrove *The Rule of Law: Albeit Venn Dicey: Victorian Jurist* (1980).

- (c) The only power of a Government should be the *power of the people*. The idea could have been put better by simply stating: The only power of a Government is the *power of the people*. It would have been wholly right for our Supreme Court to hold in *Kesvananda's Case* that 'We the people' in the preamble to the Constitution simply meant that it was the work of the power of our people. True, the Supreme Court had real difficulty in deciding the validity of an instrument under which it was created. The Indian Independence Act came into effect on 15 August 1947. It merely recognized what was *fait accompli*. In terms of Public International Law, the Act, it was a mere *recognition* of an accomplished fact. The people of a political society have two ways to exercise their power: first is the constitutional way in accordance with law of the land; and the second is the way of revolution. The second way may not be liked by the persons in power, but its existence cannot be denied in certain moments when the law falters, the Constitution is defiled, and the voice of sanity becomes still. So long as the writ of the Constitution runs, its discipline is always accepted. But it is a different matter if the transgressions of Constitution are such as to make it a mere instrument for pursuing undemocratic, immoral, or unworthy ends subversive of democracy, promotive of Corporatocracy.
- (d) The only prayer of a Government should be *the welfare of its people*. The notion that the state exists for the welfare of people is innate in our thinking right from the times of Krishna and Chanakya. This commitment is an integral part of our socio-political mores. Krishna's ideas have been mentioned in Chapter 20. What the Court says in *McDowell* [1985] 154 ITR 148, constitutes the very soft structure in the judgment. 'Soft structure' is the judicially approved values, assumptions & ideas in the light of which the judicial quest for finding solutions to the problems is made. The 'soft' structure of *McDowell* has been developed by Justice Chinnappa Reddy in his concurring Judgment. His Judgment shows that our Supreme Court had become conscious of our Constitution's Welfare mission, and was conscious of the State's obligations under the Preamble to our Constitution, and its other provisions⁷. But it is important to know the judicial philosophy of this approach. The main judgment touches this point, but it has been developed in the supplemental judgment wherein Justice Reddy, after enumerating the evil consequences of tax avoidance, articulated a new judicial approach. And Justice Reddy states the judicial duty of the court thus:

7. Justice Reddy said in *McDowell and Co. Ltd. v. CTO* (1985) 3 SCC 230 :

"We must recognize that there is behind taxation laws as much moral sanction as behind any other welfare legislation and it is pretence to say that avoidance of taxation is not unethical and that it stands on no less moral plane than honest payment of taxation. In our view, the proper way to construe a taxing statute, while considering a device to avoid tax, is not to ask whether the provisions should be construed literally or liberally, nor whether the transaction is not unreal and not prohibited by the statute, but whether the transaction is a device to avoid tax, and whether the transaction is such that the judicial process may accord its approval to it."

“It may, indeed, be difficult for lesser mortals to attain the state of mind of Mr. Justice Holmes, who said, “Taxes are what we pay for civilized society. I like to pay taxes. With them I buy civilization.” But, surely, it is high time for the judiciary in India too to part its ways from the principle of Westminster and the alluring logic of tax avoidance, we now live in a welfare State whose financial needs, if backed by the law, have to be respected and met. We must recognize that there is behind taxation laws as much moral sanction as behind any other welfare legislation and it is pretence to say that avoidance of taxation is not unethical and that it stands on no less moral plane than honest payment of taxation. In our view, the proper way to construe a taxing statute, while considering a device to avoid tax, is not to ask whether the provisions should be construed literally or liberally, nor whether the transaction is not unreal and not prohibited by the statute, but whether the transaction is a device to avoid tax, and whether the transaction is such that the judicial process may accord its approval to it. A hint of this approach is to be found in the judgment of Desai, J. in *Wood Polymer Ltd. and Bengal Hotels Limited*, (1977) 47 Com Cas 597 (Guj.) where the learned Judge refused to accord sanction to the amalgamation of companies as it would lead to avoidance of tax.”

Justice Reddy’s views accord with our Constitution that attempts to build a welfare state.

This commitment by the BJP in its manifesto suggests that we are at the threshold of better times when we shall again work for the ideals at the heart of our Constitution (see Chapter 21 pp. 286-293).

- (e) The only way of a Government should be ‘*Sabkasaath, Sabka Vikash*’. This sutra is most salutary in many ways. SABKA SAATH is an imperative need of a stable, people-oriented democratic republic that puts down all barriers of castes and religions. It contemplates united and collaborative pursuits by all the people of India to build our nation. SABKA VIKASH articulates the very objective of the State that provides a right loadstone for development of all, and the right guiding philosophy of governance. The 2014 General Election has shown that whenever our nation is charged with the sublime passion to do good for public cause, all barriers yield to the duty to our nation. *Sabka Vikash* is again our essential democratic and constitutional commitment. But ‘We the People’ would keep our Government under our critical gaze to find: (a) *Vikash*, but what sort of? and whose?; (b) *Vikash*, but at what cost? We must measure all negative externalities in deciding whether to be happy or morose. This holistic vision of our nation on the march is our greatest delight. The mantra ‘*Sabkasaath*,

POSTSCRIPT V : DESTINY OF OUR NATION : THE ADVENT OF NARENDRA MODI

Sabka Vikash’ reminds everyone to do his *kartavya-karma* (duty) the core instruction both in the *Geeta* and the *Quran*:

पार्थ नैवेह नामुत्र विनाशस्तस्य विद्यते ।
न हि कल्याणकृत्कश्चिदुर्गतिं तात गच्छति ॥

The Bhagavad-Gita VI.40

[The doers of good never perish.
A good work done never turn futile.]

POSTSCRIPT VI

**REFLECTIONS ON THE
CONSTITUTION OF INDIA: AMBIT
OF THE CONSTITUTIONAL
RESTRAINTS ON THE
TREATY-MAKING POWER**

(I) FUNDAMENTAL PROPOSITIONS

**(a) The 'State' is itself the creature of Constitution: hence the
Constitution alone is supreme in the domestic jurisdiction.**

K. Ramaswamy, J. said in *S. R. Bommai v. Union of India*¹: “The State is the creature of the Constitution”. This is the view which had been taken by the International Court of Justice in its *Advisory Opinion in the Western Sahara Case*, where it said:

‘No rule of international law...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.’ (ICJ Report (1975) PP. 43-44).

And Oppenheim observes in his *Public International Law* p. 122 fn. 5:

“The existence of a state, as the legal organization of a community, is determined by the state’s internal constitutional order.” *Oppenheim* p. 130 para 40.

Our Supreme Court quoted with approval, in *Bengal Immunity* (AIR 1955 SC 661 at 671 para 13), what Justice Frankfurter had said so perceptively:

“....the ultimate touchstone of constitutionality is the Constitution itself and not what we [court] have said about it”.

“If we take the *Brown opinion*, as it is written, it certainly ranks as one of the great opinions of judicial history — plainly in the tradition of *Chief Justice Marshall’s seminal 1819 dictum that the Court must never forget that it is a Constitution it is expounding.*” {Italics supplied}².

1. AIR 1994 SC 1918.

2. Quoted in Pollack, *Earl Warren: The Judge Who Changed America* 209 (1979); referred by Dr Bernard Schwartz in *Some Makers of American Law* (Tagore Law Lectures) p. 133

(b) The Fundamental Constitutional Principles

The relevant fundamental constitutional Principles are stated thus:

- ◆ The Sovereignty of the Republic of India is essentially a matter of constitutional arrangement which provides structured government with powers granted under express constitutional limitations.
- ◆ The Executive does not possess any “hip-pocket” of unaccountable powers, and has no *carte blanche* even at the international plane.
- ◆ The executive act, whether within the domestic jurisdiction, or at the international plane, must conform to the constitutional provisions governing its *competence*.
- ◆ The direct sequel to the above propositions is that the Central Government cannot enter into a treaty which, directly or indirectly, violates the Fundamental Rights or the Basic Structure of the Constitution; and if it does so, that treaty must be held *domestically inoperative* to the extent it violates the restraints.

In India all the organs of the State have only *conferred* powers and *prescribed* roles, and all these, without an exception, are subject to our Constitution's limitations. **This is the effect of the text and the context of the Articles 53, 73, 245, 246, 253, 265, 363, 368, 372, and 375 of our Constitution.**³ Our Constitution contains no provisions for limitations on national sovereign powers, in the interests of international co-operation⁴. The Sovereignty of the Republic of India is essentially a matter of constitutional arrangement which provides structured government with *powers* granted under express constitutional limitations. There **are** primarily only two Articles in our Constitution supremely relevant in considering the grant of Treaty-making power: these are Art 73 and Art 253. If the executive enters into a treaty, agreement or convention, in breach of the BASIC FEATURES of our Constitution, or the Constitution's mandatory limitations, then such an agreement, or treaty, or convention, would be constitutionally invalid: hence *domestically inoperative*. “Neither of Articles 51 and 253 empowers the Parliament to make a law which can deprive a citizen of India of the fundamental rights conferred upon him”.⁵

Basu makes a significant observation about Art. 253. He says that Parliament shall be competent to legislate on List II items, if necessary, to implement treaties

3. **Articles 53, 73, 245, 246, 253, 265, 363, 368, 372, and 375 of our Constitution of India.**

Art. 53 Executive power of the Union.

Art. 73 Extent of executive power of the Union.

Art. 245 Extent of the laws made by Parliament and by the Legislatures of States.

Art. 246 Subject-matter of laws made by Parliament and by the Legislatures of States.

Art. 253 Legislation for giving effect to international agreements.

Art. 265 Taxes not to be imposed save by authority of law.

Art. 363 Bar to interference by courts in disputes arising out of certain treaties, agreements, etc.

Art. 368 Power of Parliament to amend the Constitution and procedure therefor.

Art. 372 Continuance in force of existing laws and their adaptation.

Art. 375 Courts, authorities and officers to continue to function subject to the provisions of the Constitution.

4. Oppenheim, International Law PEACE Vol. 1 (9th ed.) p. 124 fn.6

5. *Ajaib Singh v. State of Punjab* AIR 1952 Punj. 309 at 319

or agreements. “But other provisions of the Constitution, such as the Fundamental Rights, cannot be violated in making such law”. [*Constitution of India* by Basu (1994 Edn. P. 858)]

(II) The views of some of our great jurists

In Chapter 7 of the *Report of the Peoples' Commission on GATT*, V R Krishna Iyer, O. Chinappa Reddy, D A Desai, (all the former Hon'ble Judges of the Supreme Court) and Rajinder Sachar (the then Hon'ble Chief Justice of Delhi High Court), have examined the text and the context of Constitution, and have stated the circumstances under which the Treaties become subject to Judicial Review before our Supreme Court. The issues deserve to be examined in the light what our Constitution says (at p. 150 of the said *Report*):

“It is true that Article 253 enables Parliament to make laws for implementing any treaty agreement or convention with any other country or countries or any decision made at international conferences, associations or other bodies and Article 73 (1) (b) provides for the executive power of the Union in respect of the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement.

Article 253 and 73 (1) (b) both deal with an ex-post facto situation, that is, a consequential situation arising out of an international treaty, agreement or convention already entered into. They confer the necessary legislative and executive power to implement such treaty, agreement, etc. however made but must be one made according to the Constitution and not contrary to the Constitution. For example, the Union Government cannot barter away the sovereignty of the people of India by entering into a treaty making India a vassal of another country and then invoke Articles 253 and 73 (1) (b) to implement the treaty. Such a treaty would be void *ab initio* being repugnant to the basic features of the Constitution, namely, the sovereignty of the people.

Thus, an international treaty or agreement entered into by the Union Government in exercise of its executive power, without the concurrence of the States, with respect to matters covered by Entries in List II of the Seventh Schedule, offends the Indian Constitutional Federalism, a basic feature of the Constitution of India and is therefore void *ab initio*. The Final Act (of Uruguay Round) is one of that nature. This is our *prima facie* opinion on the question whether the Final Act is repugnant to the Federal nature of the Constitution and we strongly urge the Union Government to do nothing which abridges that principle.”

Our Courts are under the Constitutional duty to ensure that our Constitution never becomes dysfunctional. This is the effect of the right comprehension of our Constitution's provisions. Justice V.R. Krishna Iyer, former Judge of the Supreme Court of India, Justice P.B. Sawant, former Judge of the Supreme Court

of India, and Justice H. Suresh, former Judge of the Bombay High Court explain the legal position thus in their Opinion⁶ :

“1. The Executive has no power to enter into any agreement, either with a foreign government or a foreign organization, which is binding on the nation. The agreement will be binding only when it is ratified by Parliament... There is no provision in the Constitution which gives such authority to the executive. We have a written Constitution and, therefore, we must have a written provision in the Constitution which gives such authority to the Executive.

2. Articles 73 and 253 and entries 6, 13, & 14 in the Union List of the Constitution refer to the powers of the Executive. Articles 73, among other things, states that,...the executive power of the Union shall extend (a) to the matters with respect to which Parliament has powers to make laws, and (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement.” This means that the matters on which Parliament has no powers to make laws are also matters on which the Union Government cannot exercise its executive power. It also means, conversely, that the Union Government cannot exercise its executive powers beyond the legislative powers of the Union. Both these propositions have an underlying assumption that, before the Union Government exercises the executive power, there is a law enacted by the Parliament on the subject concerned. Some argue that the provisions of Article 73(1) (a) gives power to the Executive to act on subjects within the jurisdiction of Parliament, even if the Parliament does not make a law on those subjects. This is both a distortion and a perversion of the said provision and a subversion of Parliament’s supreme control over the Executive. If this interpretation is accepted then the Union Executive can act on all subjects on which Parliament has to make law, without there being any law made by Parliament. You can thus do away with Parliament and the Parliament’s duties to make laws. We will then have a lawless Government. Democracy presumes there should be a rule of law and all Executive actions will be supported by law and that there shall be no arbitrary action by any authority, including the Union Executive. It may also be necessary in that connection to remember that it is for this very reason that when Parliament is not in session and, therefore, unable to enact a law, that the power is given to the President to issue an ordinance (which is a law), so that the Executive may act according to its provisions. These ordinances are to be placed before the Parliament within six weeks of its reassembly, and if Parliament approves they become law. The Constitution-makers were, therefore, clear in their mind that the Executive cannot act without the authority of law and it has no power independent of law and it has no power independent of law made by Parliament.”

6. See at http://www.shivakantjha.org/openfile.php?filename=legal/statement_3judges.htm

(III) Our Government's view on its Treaty-Making Power is invalid. Its Circular to the U.N. Secretary General violates our Constitution.

Our Government has acted contrary to our Constitution by entering into the WTO Treaty. It is a matter of gravest concern for all those who bother about our Constitution that our Executive believes that their acts are under no constitutional restraints in the matters of Treaty-making. It is essential to adopt correct constitutional position because the document⁷ that our Government had communicated to the Secretary-General of the UNO does not portray the Indian position correctly. It wrongly stated that "*the President's power to enter into treaties (which is after all an executive act) remains unfettered by any internal constitutional restrictions.*" So what our Government had communicated its position on India's Treaty-power to the Secretary General of the UNO in 1951 did not accord well with our Constitution.

(IV) 'Our Constitution exhaustively distributes the State's 'Sovereign Functions'

(a) No organ of our Government has unrestrained powers

In sustaining the *Migratory Bird Treaty Act of 1918*, Justice Holmes, delivering the opinion of the U.S Supreme Court, stated his core reason as the following:

"The treaty in question does not contravene any prohibitory words to be found in the Constitution. The only question is whether it is forbidden by some invisible radiation from the general terms of the 10th Amendment."

It is all clear that our Constitution-makers used 'prohibitory words' under all the Articles mentioned on the first page of this PS. Everywhere in the Articles mentioned above, "subject to the Constitution" is a powerful and all-embracing

7. [U.N. Doc. ST/LEG/SER.B/3, at63-64 (Dec. 1952) (Memorandum of April 19, 1951) quoted in *National Treaty Law and Practice* ed. Duncan B Hollis, Merritt R. Blakeslee & L. Benjamin Ederington p. 356-357 (2005 Boston): TO QUOTE—

1. "Under Article 73 of the Constitution of India "the Executive power of the Union shall extend to the matters in respect to which Parliament has power to make laws", and under Article 53 the Executive power of the Union "is vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution." Under Article 246(1), "Parliament has exclusive power to make laws with respect of any matter enumerated in List I in the Seventh Schedule (in the Constitution referred to as the "Union List." List I, clause 14, contains the item: "entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries."
2. Parliament has not made any laws so far on the subject, and, until it does so, the President's power to enter into treaties (which is after all an executive act) remains unfettered by any "internal constitutional restrictions."
3.
4. In practice, the President does not negotiate and conclude a treaty or agreement himself. Plenipotentiaries are appointed for this purpose, and they act under full powers issued by the President. It is, however, the President who ratifies a treaty.
5. Apart from treaties made between heads of States, agreements of technical and administrative character are also made by Government of India with other governments. Such agreements are made in the name of the signatory governments, and are signed by the representatives of these governments. Full powers are granted, ratification is effected on behalf of the Government."

limitation on the Executive's powers [The effect is no different in Article 253 as here too the supreme rider is the constitutional validity]. Had the U.S. Constitution subjected all powers under specific limitations, *Missouri v. Holland* would have gone the other way. And Justice Sutherland would not have granted a 'blank cheque' to the President in exercise of foreign affairs powers in *Curtiss-Wright*. To undo his view Mr. Bricker moved a constitutional amendment to subject the Treaty-making power to the constitutional control. It was passed by the Congress but could not be cleared by the Senate mainly because the President Eisenhower did not like that for obvious reasons. No Executive Government would ever like to subject its brute power to constitutional discipline. But credit goes to the U S Supreme Court which in *Reid v. Covert* (1957) had held certain provisions of certain treaties unconstitutional.

(b) The Government has no inherent Power

It is submitted that the proposition that "the power of entering into a treaty is an inherent part of the sovereign power of the State", is again wholly *obiter* and *per incuriam* both. This observation occurs in *Azadi Bachao* that harks back to what itself is merely an *orbiter* observation in *Berubari Union (In re)* (AIR 1960 SC 845). As the observation in *Berubari* was clearly *per incuriam*, its repetition later is bound to be also *per incuriam*. 'We the People' have distributed the entire gamut of the State's 'sovereign power' in terms of the provisions of the Constitution leaving no residuary, or reserved, or extra-constitutional power to our executive government. Writing about *Berubari*, H. M. Seervai observes:

"Our Constitution confers on the Union of India exclusive legislative and executive powers which embrace the total field of external sovereignty: see Art. 245 and 246 read with the undernoted entries.⁸ In any event, in India no part of external sovereignty can be outside the Constitution, since the residuary power would cover it." [*Const. Law* p. 304]

David M. Levitan has put it felicitously when he observed: Government just was not thought to have any "hip-pocket" of unaccountable powers.⁹ Examining the concept of Sovereignty *Oppenheim*¹⁰ observes:

"The problem of sovereignty in the 20th Century. The concept of sovereignty was introduced and developed in political theory in the context of the power of the ruler of the state over everything within the state. Sovereignty was, in other words, primarily a matter of internal constitutional power and authority, conceived as the highest, underived power within the state with exclusive competence therein."

Under our constitutional framework the question of inherent power does not arise. The right question is: whether the government possessed the legal power to do what it has done.

The theory of inherent power emanating from Sovereignty is on account of not noticing a fundamental difference between the British Constitution and the

8. Fn. 3a at p. 304

9. *The Yale Law Journal* Vol. 55 April, 1946, No 3 p. 480

10. *Oppenheim, Inter. Law* 9th ed. Vol. 1 'Peace' p. 125

Indian Constitution (or the U.S. Constitution). In the U.K., seen in the historical perspective, the Crown had, once upon a time, all the powers conceivable. It lost many of such powers, in course of its grand constitutional history, to Parliament and the Courts so that people could enjoy the fruits of democracy under the Rule of Law. But it still retains powers, which Parliament or the Courts have not chosen to deprive it of. We call this “prerogative power”. Under our Constitution no such cobwebs of the past survive. In the U.K the Crown is still the inheritor of *inherent powers* not yet deprived of.

“Constitutional restrictions: It is well established as a rule of customary international law that the validity of a treaty may be open to question if it has been concluded in violation of the constitutional laws of one of the state’s party to it, since the state’s organs and representatives must have exceeded their powers in concluding such a treaty. Such constitutional restrictions take various forms.” Lord McNair states his legal position in the same way. But the first point in his “Conclusion” deserves a specific notice because of its contextual relevance: to quote—

“A treaty which is made on behalf of a State by an organ not competent to conclude treaties or that kind of treaty, or which fails to comply with any relevant constitutional requirements, such a consequent of a legislative organ, is, subject to what follows, not binding upon that State....”

In *Poin dexter v. Greenhow*, 114 U.S. 270 (1885), the US Supreme Court explained the Constitutional principle:

- (i) That draws a distinction between the ‘Government’ and the ‘State’; and
- (ii) That points out when the Government can itself become guilty of the usurpation of power.

Under our constitutional framework the question of inherent power does not arise. The right question is: whether the government possessed the legal power to do what it has done. Ours is a government under the constitutional limitations, and hence, by inevitable logic of law, under the legal discipline imposed by parliament and the courts of law. Prof. Laski observed:

“We have to make a functional theory of society in which power is organized for ends which are clearly implied in the materials we are compelled to use. The notion that this power can be left to the unfettered discretion of any section of society has been revealed as incompatible with the good life. The sovereignty of the state in the world to which we belong is as obsolete as the sovereignty of the Roman Church three hundred years ago”.

Our State has no Sovereign power, unbridled and unlimited, to enter into a treaty even at the international plane; it has only a Treaty-making *capacity* under the constitutional limitations. As the Executive represents our State at international plane, it acts only as *the authorized agent of the State*, and as such it is incompetent to transgress the obvious limitations on its power imposed by the Constitution which creates it and keeps it alive only with controlled competence. “In general it seems that the Crown makes treaties as the authorized representa-

tive of the nation.” (Keir & Lawson, *Cases in Const Law* p.160). Oppenheim observes¹¹ :

“If the Head of State ratifies a treaty without first fulfilling the necessary constitutional requirements (as, for instance, where a treaty has not received the necessary approval from Parliament of the state), his purported expression of his state’s consent to be bound by treaty may be invalid.”

(c) : The Political Question’ Theory

When the Central Government’s power in exercising Treaty-making is questioned, it is done on constitutional grounds and not for political reasons. H. M Seervai aptly said *Constitutional Law* pp. 2636: “It is submitted that there is no place in our Constitution for the doctrine of the political question.” He said further:

“In this sense, there is nothing outside the judicial process. The jurisdiction of a court may be excluded by the Constitution.” (at p. 2640)

Whilst invoking this Doctrine, the following points have been noticed by H.M. Seervai in his *Constitutional Law of India*. They deserve notice (references are to Seervai’s book):

- (a) Doctrine evolved with reference to U.S. Constitution, (at p.2636 of Seervai)
- (b) Doctrine has no place in our Constitution, (p.2636)
- (c) Doctrine based on separation of powers, (p. 2636)
- (d) Doctrine drained of its content in U.S. (p. 2636, 2642)
- (e) Power of President of India and the President of U.S., differences in, (p.2636)
- (f) President only constitutional head of Executive, (p. 2637)

After examining the WTO Treaty and the other Agreements under its umbrella, V R Krishna Iyer, O. Chinappa Reddy, D A Desai, (all the former Hon’ble Judges of the Supreme Court); and Rajinder Sachar (the then Hon’ble Chief Justice of Delhi High Court), have thus summarized the law in their *Peoples’ Commission Report on GATT*: [p. 141]

“The Supreme Court has therefore taken the view that where it is asked to determine the nature, scope and power of the Executive under a provision of the Constitution, it was irrelevant that the nature of the Executive’s decision was wrapped up in the political thicket. The Supreme Court in *S. R. Bommai* (1994) 3 SCC at pp. 200-201, observed:

“The question relating to the extent, scope and power of the President under Article 356 though wrapped up with political thicket, *per se* it does not get immunity from judicial review.”
“....pure legal questions camouflaged by the political questions are always justiciable.”

11. Oppenheim, *International Law* (Peace) ibid p 1232 para 606

(V). Right Legal Perspective that we have shared with the U.K

Brownlie, in *Public International Law* (12th ed.) pp. 63-64, summarises the position that prevails in the United Kingdom as India too has adopted the “dualist” model (rather than the “monist” approach). Both in the U.K. and in India, even the norms of International Law are recognised only after they have been recognised by our courts. The following cardinal points, as stated in Brownlie, deserve to be taken into account to appreciate what is wrong with the WTO Treaty and the Agreements under its umbrella, and the Bilateral Investment Treaties (BITs) [to be referred hereinafter as the ‘Questioned Treaties’]. The settled principles are : to quote —

- (i) “In England the conclusion and ratification of treaties are within the prerogative of the Crown, and if a transformation doctrine were not applied, the Crown could legislate for the subject without parliamentary consent, in violation of the basal notion of parliamentary sovereignty. The rule does not apply in the very rare cases where the Crown’s prerogative can directly extend or contract jurisdiction without the need for legislation”.¹²
- (ii) Thus, as a strongly dualist system, English law will not ordinarily permit *unimplemented* treaties to be given legal effect by the courts. A concise statement of this rule was provided by the Privy Council in *Thomas v Baptists*¹³:

“Their Lordships recognise the constitutional importance of the principle that international conventions do not alter domestic law except to the extent that they are incorporated into domestic law by legislation. The making of a treaty....is an act of the executive government, not of the legislature. It follows that the terms of a treaty cannot effect any alteration to domestic law or deprive the subject of existing legal rights unless and until enacted into domestic law by or under authority of the legislature. When so enacted, the courts give effect to the domestic legislation, not to the terms of the treaty.”¹⁴

- (iii) In *R v Lyons*,¹⁵ Lord Hoffmann noted that despite the fact that the judiciary is one of the three organs of state, it was not the responsibility of the courts to uphold the UK’s international obligations in such cases:¹⁶

“The argument that the courts are an organ of state and therefore obliged to give effect to the state’s international obligations is in my opinion a fallacy. If the proposition were true, it would completely undermine the principle that the courts apply domestic law and not international treaties....International law does not normally take account of the internal distribution of powers within a state. It is the duty of the state to comply with international law, whatever may be the organs which have the power to do so. And likewise, a treaty may be infringed by the actions of the Crown, Parliament or the courts. From the point of

12. Brownlie, *Public International Law* (12th ed.) p. 63

13. (2003) 1 AC 976

14. Brownlie, *Public International Law* (12th ed.) p. 63

15. [2003] 1 AC 976, 995

16. Brownlie, *Public International Law* (12th ed.) p. 64

view of international law, it ordinarily does not matter. In domestic law, however, the position is very different. The domestic constitution is based upon the separation of powers. In domestic law, the courts are obliged to give effect to the law as enacted by the Parliament. This obligation is entirely unaffected by international law.”¹⁷

(VI). There are better reasons to appreciate the doctrine of complete constitutional restraints on the Treaty-Making Power in India than in the USA

The reasons are shortly stated thus:

- (i) The Union of India does not possess, in the international field, powers without constitutional restraints, but under the US Constitution, as Justice Sutherland said in *United States v. Curtiss-Wright Export Corporation*, 299 U.S. 304 (1936), the U.S. President possesses this power in certain areas at the international plane in certain situations. It seems that Justice Black's observations in *Reid v. Covert* [ILR 24 (1957)] is getting diluted to the acts at the international plane by confining its ratio to those entitled only to the U.S. domestic law protection. *Curtiss-Wright* is yet not dead, and forgotten, as it has been cited in certain cases pertaining to the US Foreign Affairs (viz. *Pasquantino et al v. United States* (Decided April 26, 2005), and *Clinton, President of the United States v. City of New York* (Decided June 25, 1998)). Our Constitution grants no such 'blank check' to our Executive Government, grants no extra-constitutional powers to the President or the Cabinet.
- (ii) The dominant lights amongst the US Constitution-framers, like Washington, Hamilton, Madison and many others, had considered the Constitution a device to protect the interests of the 'propertied class', and considered ordinary people not worthy to participate in the high affairs of the State, believing that "the anarchy of the property-less would give way to despotism". The common 'people' had appeared to Alexander Hamilton, then, as the 'great beast', as they appear to the leaders of the Economic Globalization these days. When the French revolutionaries made their '*Declaration des droits de l'homme*,' Bentham called it 'a metaphysical work—the *ne plus ultra* of metaphysics'. Our Constitution posits an over-arching social vision for the Free India: see Chapter 21 of the Memoir.
- (iii) The USA has had a long history of the corporations vetoing people's laws and making their own. Michael Glennon considered international law just "hot air". John Dewey aptly described politics as the "shadow cast on society by big business". Condoleezza Rice explained the U.S. indifference to the International Court of Justice decision. It is worth realizing that a democratic and egalitarian's society's view of the constitutional limitation is bound to be different from the view of the global hegemony that wishes to alter the laws and constitutions of other lands through Treaties (as it had been done by the imperialists of the past).
- (iv) The US President can even become the Grand Mughal as President Regan had done by issuing the **Executive Order 12662** to shield the decisions of the binational panels and the Extraordinary Challenge Committees having the

17. [2003] 1AC 976 N995

effect of trumping the US Constitution. In considering the constitutionality of the CUSFTA's binational panels, strange efforts were made, through "an unprecedented cooperation between Congress and the President, to shield an international agreement from constitutional challenge"¹⁸. A thing so bizarre as this is inconceivable and impermissible under the Constitution of India, till its *élan vital* gets sapped and it becomes moribund, defaced, and defiled.

- (v) Justice Homes sustained the *Migratory Bird Treaty Act of 1918*, as he found that the "treaty in **question does not contravene any prohibitory words to be found in the Constitution.**" One finds that under the Constitution of India all powers are subject to constitutional control, whether exercised in the domestic realm, or at the international plane. Our Constitution-makers had pointed purpose, and well-articulated mission eloquent in Constitution's Preamble. "Subject to the Constitution" is a powerful and all-embracing limitation on the Executive's powers. Had the U. S Constitution subjected all powers under specific limitations, *Missouri v. Holland* would have surely gone the other way.

(VII). THE RIGHT PERSPECTIVE OF ARTICLE 51 OF OUR CONSTITUTION

Fisher aptly said that for many generations the public law of Europe was settled through the terms of the Peace of Westphalia (1648) 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". 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

18. "Indeed, the constitutionality of CUSFTA's binational panels was challenged in court, but the case was dismissed for lack of jurisdiction. Well before that suit, however, observers were familiar with the constitutional issues raised by CUSFTA. At the time of its implementation, the chair of the House Judiciary sub-committee posed three issues for consideration: (i) whether the bill violated Article III of the Constitution by failing to authorize judicial review; (ii) whether the bill violated the Appointments Clause; and (iii) whether the Due Process Clause of the Fifth Amendment required that some form of judicial review be available to claimants in these AD and CVD cases. In response to these concerns, Congress provided in the implementing legislation that if the binational panel review system were found unconstitutional, the President would have the authority to accept the decisions of the binational panels and the Extraordinary Challenge Committees on behalf of the United States. [FN74] President Reagan completed this "safety valve" by issuing Executive Order 12662, which stated that in the event of such a determination of constitutionality, he would accept in whole all the decisions of the binational panels. [FN75] These efforts represented an unprecedented cooperation between Congress and the President to shield an international agreement from constitutional challenge." [Yong K. Kim, 'The Beginning of the Rule of Law in the International Trade System despite U.S. Constitutional Restraints' 17 Mich. J. Int'l L. 967.]

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 Corporations), 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*'. The tsunami of economic globalization has subordinated the political realm to the economic realm established under the overweening majesty of Pax Mercatus. With the onset of the economic globalization, the economic organizations and institutions, like the IMF, World Bank, and the World Bank emerged as aggressive international persons. Because of their enormous power, they are in a position to condition the evolution of international law after their heart's desire.

Our executive may through its commitments at the international plane, give rise to international customary law on a particular point; or may make our country party to a treaty having domestic or extra-domestic impact. This situation is likely to be worse as the institutions of economic globalization are clearly in a position to call the shots. Under such circumstances we must uphold our Constitution. No norm of international law can be so forged, or evolved, as to enable the executive to defile or deface our Constitution. It is hoped that our Supreme Court would uphold our Constitution against the onslaughts by the lobbyists of international law of this neo-classical phase. Long before this situation, Georg Schwarzenberger had noticed this phenomena when he laconically said:

"The doctrine of the supremacy of international law over municipal law appeals to the *amour propre* of international lawyers and has its attractions *de lege ferenda*. In *lex lata*, it corresponds to reality on the – always consensual – level of international institutions, in particular international courts and tribunals."¹⁹

The new realities of this phase of Economic Globalization have been well described²⁰ by Prof. Sol Picciotto of the Lancaster University with whom this author had the privilege of discussing the subject at length:

"Significantly, the new wave of debate in the 1980s, as writers from various perspectives have sought to rethink the nature and role of law in international affairs, pre-dated the major changes in inter-state relations which occurred in the 1990s. Much of the writing on international law in the 1970s accepted a functionalist and even instrumentalist view of law, arguing for an adaptation of law to the changed 'realities' of international society, especially the creation of many new states by decolonization."

19. *A Manual of International Law* 5th ED p. 46-47

20. Sol Picciotto, *International Law: the Legitimation of Power in World Affairs*: Published in P. Ireland and Per Laleng (eds.), *The Critical Lawyers' Handbook 2* (Pluto Press 1997), pp. 13-29

Then Prof Picciotto mentions the crude realities of the present-day international geo-politics: he says –

“Thus, especially in the hands of the dominant Yale theorists of the Lasswell-McDougall school, it tends to result in apologia for the perspectives of authoritative decision-makers, and especially of US foreign policy-makers, cloaking their policies in value-justifications based on generalized concepts of the human good.”

It is appropriate to sound a note of caution in any reliance on Art. 51 of the Constitution which directs the State to “foster respect for international law and treaty obligations in the dealings of organized peoples with one another.” The norms of International Law in order to be recognized such norms, must receive judicial recognition by our Constitutional Courts. *No rule can be recognized as a rule of international law unless it is judicially so recognized.* This is the law in the U.K.: and this is the constitutional law and practice in India. It becomes the duty of our constitutional courts to preserve and maintain the supremacy of our Constitution and the law. Realities of the Economic Globalization require now, as never before, that while formulating our view as to International Law in the context of Art. 51 of our Constitution, we should take into account the realities which are quite often created and shaped through the acts of corruption and the Craft of Deception. After all, it is for our Superior Courts to ascertain which norms should be treated the norms of customary international law. Lord Alverstone CJ said, in *West Rand Central Gold Mining Co v R*²¹ that ‘the international law, sought to be applied must, like anything else, be proved by satisfactory evidence which must show either that the particular proposition put forward has been recognized and acted upon by our own country....’ And Lord Atkin said in *Chung Ch Cheung v. R*²² :

“....so far at any rate as the courts of this country are concerned, international law has no validity save in so far as its principles are accepted and adopted by our own domestic law”.

(VIII). Our courts possess the Jurisdiction to decide which rule, standard, or norms said to be the part of customary International Law deserve domestic recognition

India is following the ‘dualist’ approach in the matter of applying International obligations in the domestic sphere.²³ It is a cardinal principle of our jurisprudence that Hon’ble Court is the ultimate decision-maker in the matter of what sort of norms (their ambit and reach also) of International Law are expected

21. [1905] 2 KB 391

22. [1938] 4 All ER 786 at 790

23. “The relationship between international and national law is often presented as a clash at a level of high theory, usually between ‘dualism’ and ‘monism’. Dualism emphasizes the distinct and independent character of the international and national legal systems. International law is perceived as a law between states whereas national law applies within a state, regulating the relations of its citizens with each other and with that state. Neither legal order has the power to create or alter rules of the other. When international law applies in whole or in part within any national legal system, this is because of a rule of that system giving effect to international law. In case of a conflict between international law and national law, the dualist would assume that a national court would apply national law, or at least that it is for the national system to decide which rule is to prevail.”

Brownlie, *Public International Law* (12th ed.) pp. 48-49

to be given effect within the constraints and culture of polity as structured by our Constitution. Stephenson LJ quoted the illuminating comment of Lord Alverstone CJ, in *West Rand Central Gold Mining Co v R*²⁴ :

“...any doctrine, so invoked must be one really accepted as binding between nations, and the international law, sought to be applied must, like anything else, be proved by satisfactory evidence which must show either that the particular proposition put forward has been recognized and acted upon by our own country, or that it is of such a nature, any civilized state would repudiate it. But the expressions used by Lord Mansfield when dealing with the particular and recognized rule of international law on this subject, that the law of nations forms part of the law of England, ought not to be construed so as to include as part of the Law of England, opinions of text-writers upon a question as to which there is no evidence that Great Britain has ever assented, and a fortiori if they are contrary to the principles of her laws as declared by her Courts.”

(IX). Our Constitution differs from Constitutions of the U.K., USA, Canada, and Australia where claims for extra-constitutional powers are possible under certain circumstances

(a) The U.K. The Crown possesses the entire prerogative power except what it has lost in favour of Parliament, or the courts.²⁵

In the U.K., whilst the *formation* of a treaty is an executive act, the *implementation* of a treaty is a legislative act. Lord Atkin considered this British position operative in Canada too in view of the context and the text of the Canadian law [*Attorney General for Canada v. Attorney General for Ontario* (AIR 1937 PC 82)]. How a democratic government functions, even where there is no written constitution, is illustrated by what was done in the U.K. while entering into the EEC:

- (a) It was only with the approval of Parliament that the Treaty of Accession was signed in Brussels in 1972.
- (b) Effect was given inside the U.K. to the treaties establishing and regulating the European Communities by the European Communities Act, 1972.
- (c) “The passing of the Referendum Act, 1975, under the authority of which the referendum was held, implied that the Government and members of Parliament generally presumed that, if the result of referendum in the U.K. as a whole went against continued membership, this country would withdraw from the EEC and Parliament would pass legislation repealing the

24. [1905] 2 KB 391

25. “The departure from the traditional common law rule is largely because according to British constitutional law, the conclusion and ratification of treaties are within the prerogative of the Crown, which would otherwise be in a position to legislate for the subject without obtaining parliamentary assent. Since failure to give any necessary internal effect to obligations of a treaty would result in a breach of the treaty, for which breach the United Kingdom would be responsible in international law, the normal practice is for Parliament to be given an opportunity to approve treaties prior to their ratification and, if changes in the law are required, for the necessary legislation to be passed before the treaty is ratified.” Oppenheim’s *International Law* 9th Ed Vol I Peace p. 60-61 p. 60-61

European Communities Act and disentangling our domestic law from Community law.”²⁶

- (d) “The European Assembly Elections Act, 1978, per section 6, provided that no treaty which is intended to increase the powers of Assembly shall be ratified by the U.K. unless it has been approved by an Act of Parliament. Normally treaties are ratified by the Crown (or executive) although legislation is required subsequently if they are to have effect within the U.K. In this instance the Executive is precluded from even concluding an agreement without legislative approval.”²⁷

(b) The USA. In view of the provisions of the U.S. Constitution, and its history, the *United States v. Curtiss-Wright Export Corporation*, 299 U.S. 304 (1936) held that the federal powers in foreign affairs arose ‘extra-constitutionally’. The Bricker Amendment in 1950 sought to undo this view though Constitutional Amendment.²⁸ The Constitution could not be amended, but the Supreme Court departed from the conventional views in certain types of treaties. In the USA The Supreme Court held, in ***Reid v. Covert*** [ILR 24 (1957) p. 549]²⁹, ‘the provisions of certain treaties unconstitutional’. Justice Black observed said in *Reid*:

“There is nothing in this language which intimates that treaties do not have to comply with the provisions of the Constitution. Nor is there anything in the debates which accompanied the drafting and ratification of the Constitution which even suggests such a result. These debates as well as the history that surrounds the adoption of the treaty provision in Article VI make it clear that the reason treaties were not limited to those made in ‘pursuance’ of the Constitution was so that agreements made by the United States under the Articles of Confederation, including the important treaties which concluded the Revolutionary War, would remain in effect. It would be manifestly contrary to the objectives of those who created the Constitution, as well as those who were responsible for the Bill of Rights—let alone alien to our entire constitutional history and tradition—to construe Article VI as permitting the United States to exercise power under an international agreement without observing constitutional prohibitions. In effect, such construction would permit amendment of that document in a manner not sanctioned by Article V.”

26. Hood Phillips’ Const & Adm. Law p. 74

27. *ibid* 100, Section 1(3): says: “(3) If Her Majesty by Order in Council declares that a treaty specified in the Order is to be regarded as one of the Community Treaties as herein defined, the Order shall be conclusive that it is to be so regarded; but a treaty entered into by the United Kingdom after the 22nd January 1972, other than a pre-accession treaty to which the United Kingdom accedes on terms settled on or before that date, shall not be so regarded unless it is so specified, nor be so specified unless a draft of the Order in Council has been approved by resolution of each House of Parliament.” And European Parliamentary Elections Act 2002 states in Art 12.

28. Michael D. Ramsey, ‘Why Curtiss-Wright is wrong: The Myth of Extra-constitutional Foreign Affairs Powers’ William & Mary Law Review, Vol. 42, p.2, December 2000

29. ‘Although a Status of Forces Agreement may give the sending state a right to exercise jurisdiction the law of that state may not permit it to exercise that right. The conclusion was reached by the U S Supreme Court in relation to the scope of the jurisdiction of US courts martial, which were on constitutional grounds held not to have jurisdiction in peacetime over civilian dependents or employees accompanying members of US forces abroad. (vide *Oppenheim* p. 1160 fn. 24)

(c) **Canada:** Canada adopted the British Constitutional position in the matter of Treaty-making. This is the effect of the British North America Act, 1867, the Art 9 of which clearly says: "The Executive Government and Authority of and over Canada is hereby declared to continue and be vested in the Queen." Lord Atkin examined the Canadian position in *Attorney General for Canada v. Attorney General for Ontario*. Lord Atkin's distinction between (1) the *formation*, and (2) the *performance* of the obligations created under a treaty is correct and well understandable under the British Constitution. *In India the Executive possesses no extra-constitutional power. As a creature of the Constitution it is subject both in the matter of the formation of a treaty and the performance of obligation to the limitations placed by the Constitution and the law. Whether a member functions in Delhi, or Detroit, it must conform to the Rule of Law.*

(d) **Australia:** It can be said that whatever extra-constitutional power the British Government possessed as the yet untamed prerogative power, Australia could claim to have that much under the Commonwealth of Australia Constitution Act, 1900 as the people had "agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland..."

(X). Seminal differences between the Indian position and the OECD position illustrated, with reference to the tax treaties

The pronounced differentia can be summarized thus:

- (i) In the OECD countries a tax Agreement is a legislative act whereas in India it is an administrative act in exercise of the power delegated to the Executive under section 90(1) of the Income-tax Act, 1961.
- (ii) In the OECD countries a tax Agreement cannot be questioned in view of the relevant provisions under their constitutional law.
- (iii) The power to structure the terms of a tax Agreement in the OECD countries is wider as it is in tune with their legislative practice developed in the OECD countries during the interregnum between the Two World Wars, and thereafter.
- (iv) In India a tax Agreement is neither discussed in Parliament, nor it is tabled in the House.
- (v) In India the terms of the grant of power to the Executive is extremely precise, and constitute express limitations on the Executive power in consonance with the Indian legislative practice determining the meaning of the terms in section 90(1).

(XI). The Doctrine of the Constitutional Restraints recognized even in International Law; & is a UNIQUE feature of the Constitution of India. No provisions for limitations on national sovereign powers exist in the interests of international co-operation. No overriding to promote internationalism

Oppenheim points out that a "number of states in their constitutions have made express provision for limitations on national sovereign powers in the interests of international cooperation."³⁰ In the present context, it is worthwhile

30. Oppenheim, *International Law* p. 125

to notice that our Constitution has made no express provision for limitations on national sovereign powers in the interests of international cooperation.

As in all such situations wherein the Constitutional Restraints operate, the right course is to have a law in place before such treaties/agreements are entered into to avoid embarrassing consequences emanating from —

- (a) Parliament may decline to implement, and get exposed to humiliation externally inviting measures for the breach of International Responsibility;
- (b) Parliament may be driven, laughing or sobbing, to implement the obligations formed at the international plane as it stands facing a *fait accompli*; hence is driven to wall.

These important points can be well understood by perusing the following:

- ◆ “By the making of a treaty the Crown may morally bind Parliament to pass any legislation needed to give full effect to it. The negotiation of treaties, which must often be done in secret, is less under parliamentary controls than any other branch of the prerogative, and Parliament may be met with a *fait accompli*. But there is an increasing tendency to keep Parliament informed and to invite expressions of opinion before the Crown finally commits itself, as was done during the Common Market negotiations in 1962-1971. This is only expedient, as the government relies on the support of Parliament, and especially of the Commons. Where legislation will be required to supplement a treaty, there is probably a convention that Parliament should be consulted in principle before the treaty is concluded. Parliament will also be consulted in very important matters, such as the declaration of war or the conclusion of a peace treaty.”³¹
- ◆ “The departure from the traditional common law rule is largely because according to British constitutional law, the conclusion and ratification of treaties are within the prerogative of the Crown, which would otherwise be in a position to legislate for the subject without parliamentary assent. Since failure to give any necessary internal effect to the obligations of a treaty would result in a breach of the treaty, for which breach the United Kingdom would be responsible in international law, the normal practice is for Parliament to be given an opportunity to approve treaties prior to their ratification and, if changes in law are required, for the necessary legislation to be passed before the treaty is ratified.” [Oppenheim’s *International Law* 9th Ed Vol. I Peace p. 60-61]
- ◆ “This is only expedient, as the government relies on the support of Parliament, and especially of the Commons, Where legislation will be required to supplement a treaty, there is probably a convention that Parliament should be consulted in principle before the treaty is concluded. Parliament will also be consulted in very important matters, such as the declaration of war or the conclusion of a peace treaty..... If then the Crown acting alone should by treaty promise to make some alternation in the law, the treaty would theoretically be binding; if, however, some party to an action were to rely

31. Hood Phillips, *Constitutional Law*, P.287

upon it as having effected a change in the law, he would be disappointed, for the courts would take no account of it in the absence of an Act of Parliament. The Crown would have made a promise which it was unable to carry out, and the practical conclusion is that the Crown may not without the aid Parliament make a treaty which involves an alteration in the law. In all such treaties it is usual to insert a clause making the validity of the treaty dependent on its ratification by Parliament. The same reasoning applies to treaties which purport to tax the subject. Most modern treaties are of this kind; and of course every exercise of the treaty-making power of the Crown is subject to the political control of the House of Commons in the same way, though not perhaps in practice to the same degree, as any other exercise of the Prerogative." [Hood Phillips, *Constitutional Law* p. 287]

(XII). Democratic deficit: Parliament wholly ignored

The exercise of the treaty-making power suffers from gross 'democratic deficit' as in our country, treaties are done without Parliament's approval, even without letting our Parliament, or citizenry know the details of the treaty terms, and appreciate the implications of the treaty stipulations, and the extent and incidence of obligations accepted. Explaining the 'democratic deficit', *Peoples' Commission Report on GATT*³² tells us:

"While it is arguable that since treaties do not give rise to enforceable obligations within the Indian legal system, there is no room for judicial interference until legislation is passed; and, further-flowing from this argument——since Parliament will assess the situation when enacting implementing statutes, there is no scope for the judiciary to intervene. This argument proceeds on the fallacious assumption that treaties do not pose a danger to the constitutional system and fundamental rights until they are given shape in the form of legislation. Treaties are solemn obligations. Within their own legal contexts—and the domain of international law—they are legal and binding on the Union of India and States. They cannot be resiled from, even if legislation implementing them is not passed. The consequences of treaty violation are in the realm of international law. Particular treaties may contain vigorous forms of enforcement. They may prove to be self fulfilling (even though they are not self-executing and applicable in the domestic legal system). Treaty violations may bring reparations and trade distortions. In this day and age where the international order is increasingly regulated by multilateral treaties, there is little protection from the falsely comforting that that realities do not pose a threat since Parliament has to pass implementing legislation to make the treaty enforceable within the Indian legal system."

Two justifications have been often offered in support of the continuance of the current practice in India: these are: (i) Cabinet accountability to Parliament, and (ii) the mandatory requirement of parliamentary approval implicit in adoption of

32. by V R Krishna Iyer, O Chinappa Reddy, D A Desai, (all the former Hon'ble Judges of the Supreme Court); and Rajinder Sachar (the then Hon'ble Chief Justice of Delhi High Court).

legislation enabling implementation of a treaty. Both those justifications are theoretical, and become wholly irrelevant in most situations. It deserves to be realised. Both the reasons are weak. Prof Mani has answered how both the pleas are not effective:³³

- (i) "But Cabinet accountability comes into play only after the country has been bound by the treaty obligations.... a change of government does not *per se* terminate or alter the international obligations undertaken by the outgoing regime."
- (ii) "The justification based on enabling legislation equally begs the question. The issue of enabling legislation arises only after the government has committed the country to a treaty, and Parliament is faced with a fait accompli. Even if Parliament refuses to pass the enabling legislation, it will have no effect on India's international responsibility to comply with the obligations already undertaken. Indeed, failure to enact the enabling legislation could in appropriate cases amount to a violation of the treaty."

Joanna Harrington, in his article on "The Role of Parliaments in Treaty-Making",³⁴ has put sharp focus on many different ways through which the treaty powers are exercised even within the domestic jurisdiction, and affect our rights, even those constitutionally and legally guaranteed to us. These ways are (foot-notes omitted):

- (i) Law-making by treaty "does not always require the enactment of legislation, particularly if the treaty obligation can be implied within or carried out through a pre-existing law, and thus Parliament may not always have a role."
- (ii) "Moreover, once ratified, treaties are clearly binding under international law and their legal character puts pressure on a state's domestic institutions to ensure compliance, as evidenced by a long-standing rule of statutory interpretation that presume conformity with international law, at least where an ambiguity can be found."
- (iii) "Further evidence of the domestic effect of treaties can be seen in the courts in the form of judicial modification to the doctrine of legitimate expectation in Australia, new rules on statutory interpretation in New Zealand and new uses for the values of an unimplemented treaty in Canada."
- (iv) "Despite the fact that most treaties are in practice permanent law, made by one government with the ability to bind the next, the common law imposes no obligation on either the executive or the courts to secure or ensure the consent of the ultimate law-making authority in a Westminster style democracy. This lack of Parliamentary involvement supports complaints that a democratic deficit exists in the treaty-making process. It also motivates the reforms discussed in this evaluation of the role played by Parliament in the treaty-making practice of these comparable Commonwealth states: the UK, Australia and Canada."

33. 'Meeting treaty obligations' By V. S. Mani [<http://www.hinduonnet.com/2000/08/28/stories/05282524.htm>]

34. George Williams, Hillary Charlesworth, *The Fluid State* pp. 36

Besides, through treaty commitments, the Executive can coerce Parliament to fall in line with it. Such things, in the context of the Uruguay Round Final Act, have already taken place. The haplessness with which our Parliament enacted Amendments to the Patent Act is a case of point. We lost our case before the WTO's DSB, and it's Appellate Forum. Our Parliament had to bend. Virtually it ceased to be sovereign. Again, we removed the Quantitative Restrictions on agricultural products after having lost Case before the DSB and its Appellate Forum. These are the well-known instances. Many things, even much worse, might be happening under the opaque administrative system.

(XIII). Our Parliament must frame law under Article 245 of our Constitution

Our Constitution itself provides that our Parliament could frame a law to remove this 'democratic deficit' in the treaty-making process. Why has our Parliament forgotten the item 14 of the Union List of the Seventh Schedule to the Constitution which empowers it to frame law to regulate "entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries"? The National Commission to Review the Working of the Constitution had suggested that the first thing that should be done by Parliament is to make that sort of law.³⁵

(XIV) The Basic Assumptions in understanding Constitution

The collective consciousness of our Constituent Assembly

The Constituent Assembly was virtually a microcosm of India. All the leading lights of our Freedom Movement were assembled there. They had in their marrow the fire that burnt throughout our Struggle for Freedom. They possessed what the Art 51A of our Constitution wants every citizen of this Republic to acquire: the ideal to "(b) cherish and follow the noble ideals which inspired our national struggle for freedom." It was, as Granville Austin says a one-party body in essentially one-party country. "The Assembly was the Congress and the Congress was India."³⁶ That was the shape of things at the dawn of our Independence. "The membership of the Congress in the Constituent Assembly and outside held social, economic, and political views ranging from the reactionary to the revolutionary."³⁷ Austin comments: "...because the Congress and its candidates covered a broad spectrum, those elected to the assemblies did represent the diverse viewpoints of voters and non-voters alike."

The Bhagavad-Gita and our Constitution contemplate Rights and Duties for the development and happiness of all. The Utilitarians are satisfied with the happiness of a few, thereby facilitating the emergence of Capitalism, Fascism, and now neo-liberalism. Their arch-priest Bentham cared little for the liberty of all. He thought of the liberty only of a few. The rights of man, he said, are plain nonsense, nonsense on stilts. When the French revolutionaries made their '*Declaration des droits de l'homme*,' Bentham called it 'a meta-physical work—the *ne plus ultra* of metaphysics'. It was argued that the "articles could be divided into three classes: (1) Those that are unintelligible, (2) those that are false, (3) those that are both."

35. <http://ncrwc.nic.in/>

<http://lawmin.nic.in/ncrwc/finalreport/v2b2-3.htm> Accessed 11 July 2006

36. Granville Austin, *The Indian Constitution: Cornerstone of a Nation* p. 8 [Oxford University Press 1966]

37. *ibid* 9

We have, as is evidenced under our Constitution, rejected such foolish ideas. Our Constitution posits an over-arching social vision for the Free India. Our Constitution, right from its inception, is cast to promote the welfare of all sections of our political community. On this point it differs from all other celebrated Constitutions, be of the USA, France, Russia, or even the U.K. In all these Constitutions, polity had been constructed for the delight of the affluent and dominant sections of people, and the commoners of the societies had to wait and struggle for long to acquire the rights to universal suffrage. Our Constitution, like the *Bhagavad-Gita*, is universal and egalitarian: mandating a quest for universal weal. It is remarkable that even the members, elected to the Constituent Assembly to frame our Constitution on a narrow franchise, had an over-arching vision, which can best be called our 'Constitutional Socialism' (developed in Chapter 21 pp. 286-293).

**PS TO THE POSTSCRIPT VI "THE AMBIT OF CONSTITUTIONAL
RESTRAINTS IS YET TO BE SETTLED
BY OUR SUPREME COURT "**

The nature and the extent of **the constitutional restraints on our Government's Treaty-Making Power are yet to be decided and settled by our Supreme Court**. Most often our courts draw on *Berubari*³⁸ and *Maganbhai*³⁹, and *Azadi Bachao*⁴⁰. Hence I make some brief comments on these three decisions.

In *Berubari*, the Court held that the Agreement could not be implemented without the amendment of the Constitution as it had led to cession of a part of territory which is not permissible without an Amendment to the Constitution. The Court again assumed exploratory jurisdiction in *Maganbhai* but held that the determination of boundaries could be settled through an executive act. "The Petitioner did not dispute that the Union Government could enter into a covenant to be bound by the decision of an International Tribunal, and that its award could be binding on India, they merely contended that a constitutional amendment was necessary, since the award affected the territorial limits of India" (*Seervai* p. 310). The launching-pad of arguments in *Maganbhai* was *Berubari*. As the constitutional competence of the Union of India to set up an international arbitration had not been contested, there was no occasion for the Court to examine the competence of the Central Government to form, ratify, or implement a Treaty. So it is submitted, the entire observation of Justice Shah, in *Maganbhai*, on treaty-making power is a casual *obiter*. Both the judgments given in *Maganbhai*, one by Hidayatullah C.J., and the concurring one by Shah J., rely on the following three decisions well known in the British jurisprudence: (i) *In re Parlement of Belge* (1879) 4 p.d. 129; (ii) *Walker v. Baird* (1892) A.C. 491 (J.C.); (c) *Attorney General for Canada v. Attorney General of Ontario* [1937]. As the parties had no reasons to get interested in the problems of the Treaty-Making Power, the relevance of these Cases under the ethos of modern times and our Constitution

38. AIR 1960 SC 845 Reference by The President of India under Article 143 (1) at 846

39. AIR 1969 SC 783

40. 2003-(263)-ITR -0706 -SC

was not considered. H. M. **Seervai** rightly wondered (at pp. 311-312 of his *Const. Law*):

“It is difficult to state what exactly was laid down by Hidayatullah C.J. about the Treaty-Making power under our Constitution. The survey of the English practice, and the distinctions made in England between cession of territory in times of peace and in times of war, and between the cession of territory held in freehold by the Crown and cession of territory not so held, is unhelpful, because our Constitution makes no such distinctions.”

Besides, *Berubari Opinion* and *Maganbhai* belong to the pre-Keshvanand era: hence the Hon'ble Court had no occasion to consider the limitations ensuing from the Doctrine of the Basic Structure. What our Parliament cannot do even after deliberations under the public gaze, the Executive Government can certainly not do that through its Treaty-making power exercised under an opaque administrative system.

I had occasion to examine these issues in the Chapter 3 of my book *Judicial Role in Globalised Economy* (2005) now put on my website www.shivakantjha.org

Neither in *Maganbhai* nor in *Azadi Bachao* it was essential to decide the issues pertaining to Treaty-making power. In *Maganbhai* none disputed the Agreement *inter se* the two governments, nor it was a case of cession as was *Berubari*. In *Maganbhai* the border determination was upheld as it was an exercise of mere executive power. In *Azadi Bachao* no such constitutional issue was involved, and the parties had no reason to examine Justice Shah's *obiter* in *Maganbhai* made on the selective quotes from Lord Atkin. Both in *Maganbhai* and *Azadi Bachao* this high constitutional issue was decided forgetting the norm to which *Naresh Shridhar Mirajkar and Ors. vs. State of Maharashtra and Anr* AIR 1967 SC 1 refers:

“Often enough, in dealing with the very narrow point raised by a writ petition wider arguments are urged before the Court, but the Court should always be careful not to cover ground which is strictly not relevant for the purpose of deciding the petition before it”.

APPENDIX TO POSTSCRIPT VI

GLOBAL ECONOMY : A DEAL WITH THE DEVIL

*Was this the face that launched a thousand ships
And burnt the topless towers of Ilium?
Sweet Helen, make me immortal with a kiss!
Her lips suck forth my soul: see, where it flies!
Come, Helen, come give me my soul again.
Here will I dwell, for heaven be in these lips,
And all is dross that is not Helena.*

Christopher Marlowe, Doctor Faustus

A. The Conspirators at work

I think it worthwhile to draw attention to the 3 stages that are conspicuously present in the modern economic history: these are —

Stage I: The think-tanks of the imperialists learnt certain lessons from the realities which were obvious in mid-19th century. The *Encyclopaedia Britannica* notes: “In the middle years of the century (the 19th century) it had been widely held that colonies were burdens and those materials and markets were most effectively acquired through trade.”¹

Stage II: Till World War II, the era was of old imperialism, under which the wielders of imperial powers were directly present in the colonies and the subservient territories. In the post-World War II phase, the USA became most dominant, later hegemonial. ‘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 began yielding to ‘corporate imperium’ under the U.S. leadership.

Stage III. Whilst the formation of the UN was on the global political assumptions, the corporate interests, dominant in the Conference at Bretton Woods in 1944, gave birth to the IMF, and the World Bank, and later, in 1995, to the formation of the WTO bidden by Art. III (5) of its Charter to ‘cooperate, as appropriate, with the International Monetary Fund and with the International Bank for Reconstruction and Development and its affiliated agencies’.³ “Two of the Bretton Woods institutions—the IMF and the World Bank—were actually created at the Bretton Woods meeting. The GATT was created at a subsequent international meeting.”⁴ In pursuing their strategies the powers had their broad objectives no different from those of the East India Company. These objectives were —

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1. Asa Briggs in the *Encyclopaedia Britannica* Vol. 29 p. 85 (15th Ed.); This Memoir 373-374; This Memoir pp.373, 394
 2. Prof. Sol Picciotto: see this Memoir at p. 413
 3. “With a view to achieving greater coherence in global economic policy-making, the WTO shall cooperate, as appropriate, with the International Monetary Fund and with the International Bank for Reconstruction and Development and its affiliated agencies.”
 4. David Korten, *When Corporations Rule the World* (pp. 158-159)

- (a) how best and most to get access to the resources of the foreign markets, both to get access to trade and domestic resources on favourable terms.
- (b) how to devise ways to plough back the profits (and now the virtual money), as INVESTMENT, in the foreign lands on high return, and under sovereign guarantees through treaties, and a well-crafted regime to provide international protection (viz. under the umbrella of the WTO Treaty, the BITs, the Regional Trade Pacts, and many other international consensual instruments.

In 1990s, the IMF stressed the importance of trade agreements that would assure capital the freedom of movement as goods. It proposed three principles:

- ◆ Foreign companies should have complete freedom of choice as to whether they participate in a local market by importing goods or by establishing a local production facility.
- ◆ Foreign firms should be governed by the same laws and be accorded the same rights in a country as domestic firms.
- ◆ Foreign firms should be allowed to undertake any activity in a country that is legally permissible for domestic firms to undertake.”⁵

With the ‘roaring nineties’ began an aggressive phase of neoliberalism. My study and reflections never convinced me that in 1990s there were valid reasons for us to become a suppliant before the IMF, or to become unwisely WTO compliant. I have already mentioned that ‘ the maelstrom of the financial crisis in the early eighties was largely stage-managed to provide a free play for the corporate *imperium*’ (See. p. 347 of the Memoir). I had brought this fact to the notice of our before our Supreme Court in my PIL W.P.(C) No.445/2006. The roaring nineties could have been made to become a phase of great opportunities, but it became a period when we witnessed a melodrama of fraud and collusion that made GREED triumphant. What happened is best illustrated by the sordid saga of Enron. Joseph Stiglitz begins Chapter 10 of his *The Roaring Nineties* with the following portrait of a most illustrious corporation: Enron.

“Enron, the energy company that went from almost nothing to an enterprise with annual reported revenues of \$101 billion to collapse in bankruptcy, all within a few short years, has become emblematic of all that went wrong in the Roaring Nineties- corporate greed, accounting scandals, public influence mongering, banking scandals, deregulation, and the free market mantra, all wrapped together. Its overseas activities too are an example of the darker side of U.S. globalization, crony capitalism, and the misuse of U.S. corporate power abroad.”

In the years which succeeded, ethical degradation became an endemic feature of our public life creating the climate of gloom and doom. The quick succession in scandals and scams, frequent waves of corruptions at high places, the systemic non-responsiveness to public criticism and judicial censure have brought us at a crossover point where tragedy of waste is inevitable. Let us see how we

5. David Korten, *When Corporations Rule the World* p. 123

respond to the challenges of our times. Humanity seems driven to a point where it has no option but to decide whether to be a Schopenhauer who killed God and own self with same finish; or, to become a Arjuna ascendant the chariot of action in pursuit of his *dharma* for the weal of all. The choice is ours. This is the freedom that is most precious.

THE DIMENSIONS OF THE CONSPIRACY

Erection of the new Theatres for Operations (viz. the WTO, the IMF, and the World Bank, etc.) was done with great skill to trap the nation states, and trump their constitutions. The MNCs, and all those who work for them, worked⁶ aggressively to achieve their objectives. We have seen several instances of the MNCs and their benefactors coming together to ensure the success of their agenda and strategy.⁷ On close reading of the history of the Western imperialism, they discovered the potentialities of treaties to promote the process of the market-driven globalisation. Stiglitz has very precisely put his ideas to show how easily the treaties can be made to trump the constitutions.

“Worse still, multinationals have learned that they can exert greater influence in designing international agreements than they can in designing domestic policies..... But the secrecy that surrounds trade negotiations provides a fertile medium for corporations wishing to circumvent the democratic process to get rules and regulations to their liking.”⁸

As these treaties require, in express terms, collaboration and cooperation with the IMF, and the World Bank, it is worthwhile to take note of the dominant features which make them key-players in the present-day trade and investment

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6. “The Roundtable took an especially active role in campaigning for the North American Free Trade Agreement (NAFTA). Recognizing that the public might see free trade as a special-interest issue if touted by an exclusive club of the country’s 200 largest transnationals, the Roundtable created a front organization, USA*NAFTA, that enrolled some 2,300 U.S. corporations and associations as members. Although USA*NAFTA claimed to represent a broader constituency, every one of its state captains was a corporate member of the Business Roundtable. All but four Roundtable members enjoyed privileged access to the NAFTA negotiation process through representation on advisory committees to the U.S. trade representative. Using the full range of communication resources available, Roundtable members bombarded Americans with assurances through editorials, op-ed pieces, news releases, and radio and television commentaries that NAFTA would provide them with high-paying jobs, stop immigration from Mexico, and raise environmental standards.” David C. Korten, *When Corporations Rule the World* p. 145
 7. “TRIPs Agreement during the Uruguay Round of Negotiation was pushed by developed countries at the behest of the Associations of Multinational Corporations viz. The Intellectual Property Committee (USA), Keidanren (Japan) and UNICE (Europe). In fact these Associations submitted a joint memorandum to the GATT Secretariat in June 1988 and this became the basis for TRIPs frame-work. On the other hand USA enacted special 301 and super 301 laws and started pressurizing many countries to accept the TRIPs frame-work. Thus this agreement became part of the Final Act virtually without any negotiations. TRIPs itself provided for review mechanism. Thus contentious issues remained in this Agreement. Government of India in a number of communications themselves and collectively with other countries raised certain important issues with WTO - Council on TRIPs for clarification and for review.” Report of the *People’s Commission on Patent Laws* under the Chairmanship of Shri I. K. Gujral (January, 2003)
 8. Stiglitz, *Making Globalization Work* p. 197

regime: their broad features are thus summarized by Joseph Stiglitz⁹ in his *Globalization and its Discontents*:

“The IMF was founded on the belief that there was a need for collective action at the global level for economic stability, just as the United Nations had been founded on the belief that there was a need for collective action at the global level for political stability. The IMF is a public institution, established with money provided by taxpayers around the world. This is important to remember because it does not report directly to either the citizens who finance it or those whose lives it affects. Rather, it reports to the ministries of finance and the central banks of the governments of the world. They assert their control through a complicated voting arrangement based largely on the economic power of the countries at the end of World War II. There have been some minor adjustments since, but the major developed countries run the show, with only one country, the United States, having effective veto. (In this sense, it is similar to the UN, where a historical anachronism determines who holds the veto—the victorious powers of World War II—but at least there the veto power is shared among five countries.” (at p. 12)

“If financial interests have dominated thinking at the International Monetary Fund, commercial interests have had an equally dominant role at the World Trade Organization. Just as the IMF give short shrift to the concerns of the poor—there are billions available to bail out bank, but not the paltry sums to provide food subsidies for those thrown out of work as a result of IMF programs, the WTO puts trade over all else. (at p. 216)

(II) STRATEGY DEVISED

The WTO Treaty, the BITs, and the Regional Trade Pacts are the Treaties the sort of which the history of the world had not known. This aspect needs to be considered to see whether it was proper for a constitutional democracy like ours to enter into such treaties (to be referred hereinafter as ‘the Questioned Treaties’). The impact of the WTO Treaty has been thus insightfully summarised, in its global perspective, by Prof. Stephen Clarkson of the University of Toronto¹⁰: to quote —

“When a country signs a treaty it partly *internationalizes* the state’s legal order to the extent that domestic laws are harmonized with the norms embodied in the accord. Before the advent of the new global trade order, even hundreds of international organizations (IOs) did not constitute a significant constitutional challenge to the conventional nation state, whose legal sovereignty was barely compromised. If a state strongly disagreed with an IO’s mandate, it could abrogate its commitment — as the United States and Britain did by withdraw-

9. **Stiglitz** is an American economist and a professor at Columbia University and a recipient of the (2001). He was the chief economist of the.

10. Stephen Clarkson *Canada’s Secret Constitution: NAFTA, WTO and the End of Sovereignty?* ISBN: 0-88627-281-5 October 2002

ing from UNESCO because they considered that its policies responded too much to Third World concerns. Nor was a government bound to comply with a ruling by an international body that it considered adverse to its interests or incompatible with its culture. Canada has occasionally been willing to flout international law that challenges a constitutional norm, but generally it has self-consciously played a model role: when it has been shown to be in violation of a multilateral convention that it has signed, it has mended its ways. In sharp contrast with most international organizations, the WTO creates a new mode of economic regulation with such broad scope and such unusual judicial authority that *it has transformed not just the nature of global governance, but the political order of each of the 144 states that had become members by 2002.*" (italics supplied)

The Executive Government of India transgressed its Constitutional and inherent limitations by accepting international obligations, at the international plane, in terms of the WTO Treaty (and the Agreements under its umbrella), the Bilateral Investment Treaties, and the CECAs. The Executive Government possesses no constitutional competence to enter into such treaties. Any claim to extra-constitutional powers is inconceivable in view of the text and the context of our Constitution. The point for the consideration by our citizenry is whether such treaties, as aforementioned, are domestically valid. After examining the WTO Treaty in the light of our Constitution, the *Peoples Commission Report on GATT*¹¹ observes in the concluding paragraph of the Chapter 7 of the *Report* :

"We have dwelled into these constitutional questions taking both a wider and narrower view of the constitutional enterprise. The issues are not narrow issues of law and legality but democracy, justice and constitutional governance. From both the narrow and wider perspectives, the Uruguay Round negotiations have been conducted by the Union of India in a way that has undermined democracy in ways inimical to fundamental rights and re-written India's Constitution in ways subversive of its basic structure. The people for whom the Constitution exists have been excluded from knowledge of what is in store for them. The States have been denied consultation even though the Uruguay Round affects the latter's rights and responsibilities in that most crucial of areas—agriculture. *The sovereignty of the nation has been bargained away. Such a treaty is not constitutionally binding within the Indian Constitutional system and, in the facts and circumstances, cannot be given effect to.*" (at p. 164) [italics supplied]

This Chapter 7 of the *Report* is devoted to the thorough examination of the constitutionality and the constitutional validity of India becoming a member of the WTO. The Hon'ble Delhi High Court has considered the said Chapter 7 in its judgement *Shiva Kant Jha v. the Union of India* (See Chap. 21 of the Memoir).

11. The Commission consisted of Justice V. R. Krishna Iyer, former Judge, Supreme Court of India; Justice O. Chinnappa Reddy, former Judge, Supreme Court of India; Justice D. A. Desai, former Judge, Supreme court of India; and Justice Rajinder Sachar, former Chief Justice of Delhi High court.

B. The Root of All Errors

It seems our Executive Government betrayed the trust reposed in it by our Constitution by considering that it operates under no **constitutional restraints** in the matters of Treaty-Making. It is evident from what it communicated¹² to the Secretary General of the UNO informing him, and the whole world also, that “*the President’s power to enter into treaties (which is after all an executive act) remains unfettered by any “internal constitutional restrictions.”*” Our Government seems to believe that it possesses a “hip-pocket” of unaccountable powers”, and enjoys some sort of *carte blanche* at the international plane. This clarification given by our Government to the UNO is incorrect as it does not accord well with our Constitution’s fundamental norms discussed in the Postscript VI.

I think it is high time for our Government to withdraw that Memorandum of April 19, 1951 sent to the Secretary General of the UNO. If that is not done, our superior courts can mandamus the Government to withdraw that Memorandum. The morbid effect of the Memorandum can be noticed on a number of judicial observations over years after 1951. This reminds me of what C.K. Allen said:

“And yet it is remarkable how sometimes a dictum which is really based on no authority, or perhaps on a fallacious interpretation of authority, acquires a spurious importance and becomes inveterate by sheer repetition in judgments and textbooks.....’ [Allen in his *Law in the Making* (at p. 262)]

C. Short Reflections on the WTO. the BITs, and the DTAAAs

The Prelude

The Postscript VI is a synoptic presentation on our constitutional fundamentals. It is high time for us to reflect on some of the major treaties with an enormous intrusive effect on our sovereign domestic space. The constraints of space do not permit their elaborate treatment here, but some seminal points deserve to be touched to stimulate my readers to measure our acts, and weigh our deeds in terms of our commitments under the Constitution which we had given to ourselves.

(a) THE WTO

The Final Act, establishing the WTO, was agreed on December 15, 1993, and it was formally signed at the Ministerial level in Marrakesh on April 15, 1994. Whilst the USA implemented it through a legislation duly passed by the Congress, India agreed to it through a mere executive act by keeping our country and Parliament all in dark. The Final Act ran into several hundred pages which our Government, in all probability signed and ratified, even without reading, and in any case, without understanding the terms. It is difficult to understand why our Executive succumbed to the corporate pressure, under the US hegemony, to become a party to the Final Act. Article II says, the WTO “ shall pro-

12 U.N. Doc. ST/LEG/SER.B/3, at63-64 (Dec. 1952) (Memorandum of April 19, 1951) quoted in *National Treaty Law and Practice* ed. Duncan B Hollis, Merritt R. Blakeslee & L. Benjamin Ederington p. 356-357 (2005 Boston)

vide the common institutional framework for the conduct of trade relations among its Members in matters related to the agreements and associated legal instruments included in the Annexes to this Agreement". By mandating that for "greater coherence in global economic policy-making, the WTO shall cooperate, as appropriate, with the International Monetary Fund and with the International Bank for Reconstruction and Development and its affiliated agencies", the WTO members are required bidden to become 'the IMF- the World Bank- compliant' : [Art III (5) of the WTO Charter]. The WTO would "administer the Understanding on Rules and Procedures Governing the Settlement of Disputes" which has a wide reach & binding effect, retaliatory character, features of being a global court capable of developing its own jurisprudence to seep through other deliberations, and capable of intruding into the domestic jurisdiction through Art. XVI (4), the deliberations of the WTO's DSB, and the corpus of the international arbitral decisions. Art XVI (4) commands the nation states to a mandatory duty: "Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements." If they fail to do so, be they Parliaments or the Supreme Courts, they can be held internationally responsible, for which the States would invite on themselves humiliating sanctions. We are required to remain the WTO-compliant; and there may come moments when we may find our courts and legislature constrained to uphold the WTO agenda at the cost of the values treasured in the Preamble to our Constitution. [Also see Chapters 21 & 29 of this Memoir]

(b) THE BITs

We understand that the Bilateral Investment Protection Treaties number more than 2500 (or 3000?) .in the world, and about 80, or more, to which India is a party. I further understand that many other BITs are in the pipeline.

One can rightly wonder how the Axis of Evil worked to implement the Trade-Related Investment Measures (TRIMs) of the WTO by adopting the fraudulent device of getting the core terms of the TRIMs domestically implemented by dexterous transposition and adroit transformation through the terms of the BITs, themselves lacking credentials for domestic operation because the BITs are not implemented by our Parliament. Besides, what belonged to the commercial realm became the subject-matter of BITs by getting ensconced on the high pedestal of international relationship traditionally kept apart as the subject-matter to be dealt with by the high contracting parties of a given treaty. An ordinary commercial contract is stage-managed to become a treaty *inter se* sovereign states

Many of the fundamental principles of the WTO Trade Regime, are again to become the seminal and characteristic principles in the BITs. It is worthwhile to consider the very *raison de tre* for the BITs. The type of the present-day trade demanded opportunities for INVESTMENT across the world. The corporate colonialism ousted the need of any domestic 'implementing' legislation for a treaty to have domestic effect. They innovated this with the full unethical and unconstitutional complicity of the Executive Governments. These provisions were incarnated into the BITs and the Regional Trade Pacts (mainly in their 'Investment Chapters'). These could be bilateral, or multilateral. Through such Agreements efforts were made to nestle private domestic contracts belonging to the realm of 'commercial transactions' (*jure gestionis*), into the Sovereign Treaties

(*jure imperii*) in order to elevate the private commercial obligations to the level of sovereign commitments to be enforced, not only by the domestic courts, but even by the international *binding* arbitrations at the option of the investors of other lands. The whole pursuit to nestle private contract in the interstices of the 'sovereign act' is, it is submitted, wholly fraudulent, and clearly contrary to the civilized norms of fair behaviour. It is a privatization of 'sovereignty' unfairly brought about. .

After analysing the various Phases, through which the provisions of the TRIMs evolved, Mr. M. Dubey, who had access to the WTO deliberations, observes in his *An Unequal Treaty*:

“Besides, there is considerable force in the argument that investment measures have broader macro-economic and strategic objectives. They are not adopted only with the trade purpose in view. In fact, they serve such broader purposes as exercise of sovereignty over natural resources, creating employment, etc. The provisions of the TRIMs Agreement, when applied to developing countries, will most likely have the effect of undermining any plan or strategy of self-reliant growth, based on the technology, capital goods and raw materials available locally. It can also prove to be a drain on the limited foreign exchange reserves of developing countries, adversely affecting their balance-of-payments position and their capacity to repay their debts. Thus the Agreement on the whole seriously restricts policy autonomy in an area that has traditionally been viewed as being primarily of domestic concern.”

(c) TAX TREATIES (DTAAs)

In *Azadi Bachao, Vodafone*, and in the recent Andhra Pradesh High Court *M/s. Sanofi Pasteur Holding SA*, our courts have, it is humbly felt, erred in not realizing that it was not proper for them to rely on *John N. Gladden v. Her Majesty the Queen* 85 D.T.C. 5188, *John N. Gladden v. Her Majesty the Queen* 85 D.T.C. 5188, *Chong v. Commissioner of Taxation* [2000] FCA 635, *The Estate of Michel Hausmann v. Her Majesty The Queen* [1998] Can. Tax Ct. LEXIS 1140; *Barber-Greene Americas, Inc. v. Commissioner of Internal Revenue* [1960] 35 TC 365, because in Australia, Canada, the USA, and also in the U.K, the Tax Treaties are done *through enactments* by their legislature whereas in our country they are only executive acts done through an opaque administrative process. In their Tax Treaties any terms could be prescribed as those had legislative mandate in their support.

The Hon'ble Courts should have considered the 'tax treaties' rather than 'fiscal treaties' that form a larger set of which 'tax treaties' is a sub-set. Tax treaties come within the conjoint constitutional discipline of Art. 265 of our Constitution, and Sec. 90 of the Income-tax Act, 1961, whereas all other treaties can be done in exercise of the executive powers *simpliciter*. .

A tax treaty is a self-executing treaty. “**Tax treaty rules** assume that both contracting States tax according to their own law; unlike the rules of private international law, therefore, treaty rules do not lead to the application of foreign

law.”¹³ “The binding force of the treaty under international law is to be distinguished for its internal applicability. Internal applicability is a consequence only of treaties which-like tax treaties – are designed to be applied by domestic authorities in addition to obligating the States themselves, in other words, self-executing treaties.”¹⁴ Tax treaty rules assume that both contracting State tax according to their own law, unlike the rules of Private International law ; therefore, treaty rules do not lead to the application of the foreign law.

The notion that a tax treaty can override the law of the land is incorrect. The law of the land permits certain benefits to those who come within the scope of a tax treaty on compliance with certain statutory pre-conditions; whereas a tax treaty (DTAA) prescribes the specific entitlements in favour of those who come within the scope of a tax treaty. Both the things must go together. The words of the statute should be so interpreted as to promote the objective for which the contracting parties had reached their *consensus ad idem* (meeting of minds to do, or not to do, certain things). The terms of a tax treaty should not be widened as to transgress the frontiers of the grant of the statutory powers. The law of the land always prevails. Every effort is to be made to honour treaty obligations without transgressing law. The unwise passion of the so-called globalists must be restrained.

(d) Types of Treaties

It is possible to classify treaties into 4 broad groups with their differential features helpful in the interpretation of the treaty provisions:

(1) Where priority to a treaty is specifically granted by a statute. “In the U.K. it was a constitutional innovation to enable treaty provisions to take direct effect as law in the U.K., but that result was achieved, consistently with constitutional principle, by statute: European Communities Act 1972, s. 2(1).” [Oppenheim, *International Law* p. 72, (9th ed.)

(2) Where the Orders in Council under the Extradition Act 1870 [now replaced by the Extradition Act 1989 allowing for equivalent Orders in Council under ss. 3 and 4] provide that the Acts shall apply ‘under and in accordance with’ the relevant Extradition Treaty, the terms of which are directly before the courts’¹⁵ But Oppenheim comments: “But even in such circumstances a court may still ignore the treaty: *R. v. Davidson* (1976) 64 Cr. App R. 209.”¹⁶

(3) Where the provisions of a Treaty are set out in a Schedule to an Act (e.g. The Diplomatic Privilege Act 1964, *Oppenheim* comments: at p. 59 fn. 25:

“since it is not wholly clear in that case whether the court would be applying a treaty, or a Schedule to an Act (which happens to be in identical terms with the provisions of a treaty): the latter is probably the correct view.....”¹⁷

13 Klaus Vogel on Double Taxation Conventions p.20; Philip Baker pp.34-35; Art.23(1) of the Indo - Mauritius DTAC.

14 Klaus Vogel on Double Taxation Conventions, p 20

15 Oppenheim p. 59

16 Oppenheim p. 59 fn. 25

17 Oppenheim p. 60

(4) Where treaties belong to the category in which come the Double Taxation Avoidance Agreements. These Treaties are done in exercise of the statutory power (Section 90 of the Income-tax Act, 1961) within the frontiers and under the discipline of Art. 265 of our Constitution (which imports in our Constitution analogous provisions from the Bill of Rights 1688). The terms of a Tax Treaty can operate in the domestic jurisdiction only to the extent of their conformity with Section 90 of the Income-tax Act, 1961 framed to give effect to the Art. 265 of our Constitution. Tax Treaties *in our country* do not come under the types (1) to (3) *supra*.

[Also see Chapt. 23 of this Memoir]

D. Denouement : My Yaksha-prashna To My Readers

The precise purpose of this Appendix to the Postscript VI is not to hold an inquest on the WTO or the BITs on the constitutional grounds. For that the right place would be the High Courts, or the Supreme Court. Its purpose is neither to weigh their institutions, nor to examine their agenda as such things can be done at the political level, or through high pressure global or regional protests. Its purpose is just to pose a constitutional question in the Biblical language to be answered in the light of the Postscript VI:

By What Authority Do you Do These Things?

— Matthew 21:23; Mark 11:28: & Luke 20:2



As we are now'

[reading leaves and counting waves at the deserted Ross Island (Andman)]

Two birds, fast bound companions,
Clasp closes the self-same tree.
Of these two, the one eats sweet fruit;
The other looks on without eating.

Mundaka Upanishad (मुण्डक उपनिषद्) [translated from Sanskrit by
Robert R. Hume, The Thirteen Principal Upanishads]



Veenapani Bhawan, Laxmipur, Laheriasarai, Darbhanga
(where I conceptualized, and wrote major part of this Memoir:
where we danced with joy, and sobbed with my heart broken;
where we laughed to weep, and where we wept to sink into silence.)

INDEX

- Adoration of the Magi* 269
- Aiyar Commission of Inquiry 133-139
- Akbar's *Din-e-Ilahi* 34, 36, 108, 192
- Alexander Hamilton 305, 316, 400, 486
- Alipore Bomb Case* 45
- Allen, C. K. 169, 177, 202, 210, 222, 255, 366, 477
- Alvin Toffler 501
- Ambedkar, B.R. 9, 111, 170, 189-191
- Ancestors 31-41
- Angell, Norman 375
- Anti-corruption Movement 337, 479-481, see 'Postscript-1' *passim*
- Arc of crisis 277, 381-385
- Armstrong, Karen 241, 276
- Art of cross-examination 132
- Atkin, Lord 348, 365
- Auden, W. H. 12, 206, 394
- Augustine St. 369
- Aurobindo 45, 46, 48, 100, 101, 113, 188, 311, 447
- Austin, Glanville 289, 332, 359
- Azadi Bachao Andolan v. UoI* 293, 344/355 Chap. 23 *passim*
- Bachchan, Harivansh Rai 76, 77, 112, 451
- Bad Times* 54, 266
- Bahamas, The 411, 415, 437
- Bangladesh, emergence of 140
- Barbadhu* 199, 200, 313
- Beattie, Alan 57, 309
- Bede's *Ecclesiastical History* 33
- Bell's *The Cultural Contradictions* 288
- Benedict, Ruth 436
- Bentham 289, 317, 340
- Bentham 289, 318, 340
- Berubari Opinion* 173, 286, 473
- Bhagavad-Gita, The* 2, 5, 6, 7, 10, 20, 23, 28, 33, 39, 46, 47, 51, 53, 59, 62, 75, 76, 77, 78, 86, 92, 115, 126, 128, 176, 177, 192, 240, 250-251, Chap. 19 *passim*, Chap. 20 *passim*, 284, 289, 290, 337, 386, 387, 391-393, 419
- Bhagavad Mahapurana 256, 258, 262, 264, 270, 271, 282, 455-456, 471
- Bhartrihari 143, 256, 258, 404, 497, 550
- Bhopal Gas leak tragedy 155, 328, 371
- Bible, The* 32, 112, 115, 272, 273, 276, 322, 379, 501, 509, 529
- Bilateral Investment Treaties (BITs) :
- Birrell, Augustine 368
- Bismarck 222, 319, 320, 594
- Black money 8, 129, 130, 302, 309, 310, 335, 428-438, Chap. 28 *passim*
- Black Money Case (*Ram Jethmalani Case*) 461-477, Chap. 28 *passim*
- Blake 81, 153, 399, 407
- Bloch 375
- Blood-sports 90-91
- Blunden, Edmund 31
- Botticelli's *Adoration of Magi* 269
- Botticelli 269
- Briggs, Asha 373, 394
- Bronowski, J. 62, 71, 80, 314, 324, 339, 340, 341, 442, 461, 524, 526, 531, 533, 536
- Brothers Karamazov, The* 78, 90, 175, 322, 433, 458
- Buddha 59, 81, 117, 175, 238, Chaps. 19, 20 *passim* 312, 380
- Burke, Edmund 125, 211, 228, 268, 539
- 'Cambridge English' 111-112
- Cardozo, Justice 253
- Carlyle 340
- Caribbean 415 see Chap. 26 *passim*
- Cassandra 220, 547

INDEX

- Cayman Islands 496, 498, 508, 546
- CBDT *see* Central Board of Direct Taxes
- Central Board of Direct Taxes 185, 186, 196, 228, 229, Ch.23 *passim* 416, 468
- Central Revenue Building at Patna *see* Chapt.10 *passim*
- Cerny, Philip G. 413, 441
- Chanakya on 'taxation' 238
- Character 427, 438, 530, Chapt. 30
- Chattopadhyay, Bankimchandra 48
- Chaucer, G. 111, 113, 247, 251
- Chesterton, G.K. 154, 329, 366, 396, 489, 490, 491, 492, 501, 503
- Chinese aggression on India
- China attacks India 117
 - Chinese attitudes to the use of nuclear weapons 119
 - People's massive patriotic response 117-118
 - Russell - Nehru correspondence 119
- Chomsky, Noam 122, 287, 288, 302, 309, 317, 322, 327, 335, 336, 340, 366, 383, 384, 386, 391, 396, 404, 406, 427, 442, 489, 490, 491, 494, 496, 498
- Citizenry 155, 232, 269, 312, 331-332, 338, 343, 383, 427, 467, 482 PS-III *passim*
- Clash of Civilizations 277, 385-387
- Classics 28, 60, 63, 94, 95, 212
- Aurobindo on 113
 - Lord Hailsham on its role and the value of its study 94-95
- Colten, Charles Caleb 311
- Comptroller & Auditor-General of India 155, 171-172
- Conrad, Joseph 100, 113, 343, 409-410
- Constitution at work
- attitudes towards 'PROPERTY' Chaps. 20, 21, 22 *passim*
 - collective consciousness of the Constituent Assembly 289
 - Constitution creates the state organs 285-286
 - 'Constitutional Socialism' 286-288
 - Criticism of our Constitution's 'socialist mission' 293-294
 - 'Democratic deficit' in the exercise of our Government's Treaty-making 294-297; *See* PS II *passim*
 - dimensions of our 'constitutional socialism' 290-293
 - great constitutional questions answered 284-297
 - our Republic in crisis, comparison with Milo's Rome 299-306
 - Reductio ad absurdum* 297
 - Treaty-Making Procedure, suggestions on 298
 - 'Socialism' under our philosophy 290-294
- Constitutional Restraints, *see* PS VI 571
- Constitutional Socialism
- Constitution's 'socialist mission', criticism of 286-288
 - dimensions of our constitutional socialism 290-294
 - socialism 290
 - economic Dimension 291
 - philosophical dimension 290
 - political Dimension 291
 - social Dimension 291
- Corporate *imperium* 237, 274, 309, 315, 317, 347, 373, 399, 413, 417, 427, 434 Chap. 26 *passim*, 483, Chap. 29 *passim*, strategies of 525
- Corporate veil, lifting of 355, 359, 365, 420, 421
- Corporatocracy 162, 237, 288, 340, 461, 476, 478, 484, 486, 488, 495-499
- Chap. 26 *passim*, *see also* 'Darkness, the realm of'; Also Chap. 29 *passim*
- Corrupt Legislation 330
- Corruption Practices Act of 1854 319
- Corruption 53, 107, 149, 154, 172, 212, 231, 235-236, 273, 299-306, 308, 319, 326-331, 335, 337-338, 408, 417, 423-424, 436, 466, 477-479, 493 *post script-I*, *passim*
- Corruption, Capitalism, & Corporatocracy: Chapt. 29 *passim*
- An Overview of the Western political Thought 486
 - Black Magic of Capitalism 492-496
 - 'Capitalism' and 'Corruption' go together 501-504
 - 'Corporatocracy' rules the world 497-501
 - Corruptions' in our country 504-505

INDEX

- Karna's dream 506
- the Wheel of Fire/bound upon 503
- Towards Corporatocracy 497
- When crooks shake hands 491
- When Greed is considered Good 492
- When Mammon Reigns 496
- When the Republic comes on the edge 490
- Corruption
 - Aiyar Commission on Bihar's 'political corruption' 133-139
 - Anna Hazare Movement 337-338, *see* Postscript *passim*
 - Black Wealth stashed in Foreign Jurisdictions facing the problem 428-439
 - 'corruption' and 'Capitalism' go together Chap. 29 *passim*
 - 'corruption' and corporations Chap. 29 *passim*
 - 'corruption' and the problem of black money Chapt 28 *passim*
 - corruption in India 502
 - corruption in Milo's Rome Chapt. 21 *passim*
 - Corruption in the 'private sector' *see* Postscript-I *passim*
 - corruption in the Republican Rome and the Republic of India 299-306
 - corruption in the Roman Republic 299-306
 - corruption ridiculed by Samuel Butler 273
 - 'corruptions', when crooks shake hands 491
 - lack of Transparency 231
 - Lokpal and Lokayukta Act, 2013 *see* Postscript-I *passim*
 - Remedies to get over 'political corruption' 338-339
 - 'secrecy' and 'corruption' 408
 - Shah Commission on 'political corruption' 151-152, Chapt. 13 *passim*
 - The Fodder Scam 154-174
 - the Loot 231
 - the Problem of Vigilance 235-236
 - the unholy alliance noticed by the Commissions of Inquiry 173-174
 - United Nations Convention against Corruption *see* Postscript *passim*
- Cosgrove 443
- Cultural crisis 383, 387-391
- Cyprus 360
- D.S. Nakara v. Union of India* 288
- Darbhangra Raj 107-109
- Darkness, the realm of
 - advice to the corporate *imperium* 437-438
 - black wealth in foreign jurisdictions, problems of 428-431
 - classical state system yields to the 'neoliberal' state system 412-416
 - conclusion 439-440
 - Conrad's *Heart of Darkness* and the world we see 409-410
 - emergence of Corporatocracy & plight of Democracy 424-427
 - emergence of the corporate *imperium* *see* Chap. 26 *passim*
 - global states system 412-416
 - Indian Position 416
 - Instruments of darkness 417-421
 - Kurtz and Comus of this neoliberal global economic architecture 410-411
 - Maharaja Parikshit's plight 411-412
 - Ray of Hope 431-438
 - Realm of Darkness 407-410
 - structure of deception 422
- David, Rene 206
- Davies H. A. 299, 300, 309, 310, 332, 404
- Deguit 267
- Democracy
 - collective consciousness of our Constituent Assembly, reflections on 289, 315
 - Democracy and corporatocracy 424-427
 - conspiracy against 'Democracy' 299-306, 431-478
 - euphoria when India became Republic 311
 - ideas from the classical India 237-238
 - our Democratic Institutions' Chap. 23 *Passim*

INDEX

- Ray of Hope 431-438
 Western Democracy, its assumptions 320-322, 423-424
 Western view of 'Democracy', reflections on 316
 Women beware of Women 313
- Demonic persons
 our Supreme Court on the injustice done to the tribal people of India 176
- Denning, Lord 139, 217, 218, 240, 242, 253, 254, 256, 336, 343, 410, 419
- Devi, Draupadi
 art of suffering with patience 61-62
 attitudes towards food and eating 68-69
 craze for a son & her distress 64-65
 death 70
 economic management 66-67
 education 62-64
 interest in the *Ramcharitamanasa* 63-64
 Mahabharata in her family 65
 married life 66
 name 60-61
 spiritual pursuits 68
- Dickens, Charles 197, 256, 372
- Dinkar, Ramdhari Singh 149, 256, 268, 274, 275, 278, 281, 282, 289, 375, 387, 403, 419, 438, 442, 504
- Director-General of International Taxation 176, 226
- Domestic space 233, 298, 479, 489, 542, 546-547
- Dostoyevsky 7, 67, 78, 90, 175, 322, 333, 433, 458
- Droit administratif* 206, 235, 420, 545
- Durant, Will 284
- Durga Pooja in Kolkata 207-208
- Education (its plight at present), views on 119-122
- Education, the plight of 119-122
- Elihu Vedder 330
- Eliot, T.S. 26, 76, 105, 106, 158, 200, 240, 243, 248, 313, 344, 368, 385, 396, 398, 410, 476, 485, 489, 509, 530
- Elton, G. R. 324, 340, 341
- Emergency
 circumstances leading to 144-145
 critique 146-147
 an assessment 147-148
 imposed 144
 JP Movement, against 149
 Shah Commission of Inquiry 151-153
- Encyclopaedia Britannica, The* 219, 277, 366, 367, 373, 385, 394, 406, 426, 441, 442, 460, 463, 491, 495, 502, 527
- Ezcel Wear v. Union of India* 288
- FDI
 all for the Holy Grail, FDI 518
 FDI for whom ? for what ? 519
- Faiz Ahmed Faiz 149, 175, 279
- Family tree 40-41
- Father (see Jha, Gopi Kant)
- Ferguson, Niall 283, 441, 442
- First War of Indian Independence 109, 372
 centenary celebration 109
- Fisher, H. A. L. 273, 283, 300, 310, 376, 412, 441, 486
- Flood at Patna 140-141
- Fodder Scam
 buffalos travelled on the bike 157
 CAG, its role 170-172
 continuing mandamus, nature of 165-166
 fraud on our Constitution 157-158
 judicial monitoring: a critique 161-170
 lessons to be learnt from the Fodder Scam 174-175
 monitoring of the cases by the Patna High Court 158-161
 need for a law to prevent the nation's loot 174-175
 overview 155-157
 Mandamus 165-167
 PIL against 155-156
 Separation of Powers, the doctrine 167-169
- Foreign investments, Chapt. 23 *passim*, 360, 364, 469, 555
- Fowler, H. W. 53, 99, 216, 218

INDEX

- Francis Fukuyama 370, 385, 502, 504, 514, 525, 527
- Franks Committee Report 202-203
- Fraud 52, 85, Chaps. 12, 23, 26, 29 *passim*
Fraus legis 420, 421
- Freud, Sigmund 101, 266, 283, 312, 339, 381, 382
- Friedman, Milton 177, 315, 331, 360, 503, 517
- Further Reflections on our Anti-corruption Movement, *see* PS I 539
- Galaxy of The Great 262-281
 - Buddha 272
 - Gandhi, Mahatma 280-281
 - Jesus 272-274
 - Krishna 263-273
 - Marx 277 - 279
 - Muhammad 274-277
- Galbraith, J.K. 27, 87, 211, 227, 360, 402, 426, 492
- Galileo 76
Starry Messenger, The 74
- Gandhi, Indira 6, 7, 43, 56, 104-105, 140, 144-153, 169, 178, Chap.13 *Passim*, 294, 345, 346, 450-452, 478, 480, 522
- Gandhi, The Mahatma 11, 27
 Ahimsa 280
 bust at the Sup. Ct. 259
 edict of Seven Social Sins 9, 192
 Gandhi and Krishna 280-281
 talisman 55, 56, 260, 261, 292, 333, 362, 365
- Geza Feketekuty 426, 493
- Ghalib, Mirza 47, 457
- Gilbert, W. S. 31, 213, 237
Ruddigore 213
- Globalisation 122, 162, 220, 222, 226, 237, 315, 316, 318, 326, 330-331, Chap. 24 *passim*, Chaps. 28 and 29 *passim*, 524
- Good and Evil 32-33, 112
- Gordimer, Nadine 81
- Gould, Stephen J. 33, 266, 392, 393, 436, 460
- Grammar of life 268
- Grammar of Revolution *see* 'Revolution, grammar of' 20, 281
- Greed 52, 120, 122, 127, 129, 173, 176, 212, Chaps. 20, 24 and 26 *passim*, 400, 402-403, 409, 419, 424, 436, 439, 445-449, 457, 462, 482-484, Chap. 29 *passim*
- Hailsham, Lord 94, 95, 459, 520, 532
- Hayek, Friedrich von 227, 315, 330, 339, 360, 388
- Hazare, Anna 479-481 *see postscript 1, passim*
- Hegel, G. W. 161, 271, 289, 290, 339, 340, 368, 414
- Herod 481, 491-492
- Hobbes 127, 314, 360, 414, 487-490
- Holdsworth 205
- Hood Philip's *Constitutional and Administrative Law* 258
- Hope 61, 79, 97, 276, 302, 307, 316, 365, 372, 392, 393, 406, 407, 409, 437, 481, 505, 507, 523, 524, 536, 545
- Hubert Monroe 221, 237, 238, 241, 255
- Hughes, Chief Justice 250
- Hume, David 3, 18, 250, 344
- Imageries
 Caroline Spurgeon's study of Shakespearean imageries 248
 imageries and the doctrine of the *sphota* 248
 imageries as are metaphors 248
- Imageries at the Supreme Court
 architecture of Sup. Ct. 248-250
 bust of Mahatma Gandhi 259
Chakra 258
Dharma 258
 emblem of the Court 256
 Goddess of Justice 252
 image of balances 254
 Kaliugi administration of justice 255-256
 murals at the entrance of the Chief Justice's Court from the Judges' wing 250-252
 national flag 259
- Income-tax Administration, reflections on *droit administratif*, views on 234-235
 Hubert Monroe on the British tax administration 236-237
 loot of the Nation 231

INDEX

- Public interest litigation in revenue matters, views on 234
- statutory Civil Service, the essential features of 228-230
- 'Taxation', classical Indian ideas 237-238
- Union Administrative Services Commission, suggestions for 236
- vigilance, the problem of 235-236
- WTO casts its shadow 232-233
- Income-tax Appellate Tribunal 201-202
- Income-tax Law, reflections on
 - changing judicial perceptions of tax-evasion 221-222
 - Finance Act, purpose of 222
 - International Tax Authority, idea of 223-224
 - certain reforms suggested 216-219, 223-227
 - popular ideas portrayed 213
 - role of Parliament, the justification of 219-221
 - taxation and the British courts 314-315
 - Taxation reflects values of a society 212-213
- Incorporation 298, 348, 351, 413-421
- Indo-Mauritius DTAC Chap. 23 *passim*
- Indo-US Nuclear Deal 297, 321, 327, 329, 335, 379, 380, 518
- Ingersoll, R. G. 330
- Inscriptions in the Parliament House Chap. 30 *passim*
- International law 30, 139, 140, 193, 204, 223-227, 348, 358, 367, 383-384, 416, 421, 429-430, 435, 442, 471, 472, 473, 480, 481, 486, 487, 488, 490, 496, Chap. 29 *passim*; PS II *passim*
- International Seabed Authority 139-140
- International taxation 10, 140, 224, 226, 357, 360, 424, 544
- Iqbal, Sir Muhammad 6, 48, 453
- ISKCON 209
- JP Movement, Chap. 11 *passim*
- Jagriti* (1954) 97
- James, M. Barrie 72
- Janaka Chap.1 *passim*
- Janaki Chap.1 *passim*
- a revolutionary role-model 19-23
- Jeans, Sir James 265
- Jesus 238, 253, Chap.20 *passim* 369
- Jha, Gopi Kant
 - Bertrand Russell, views on 54, 55
 - Bhagavad-Gita*, importance of 50-51
 - Declaration of Emergency, his views on 56
 - educationist 52-55
 - force that sustained him 50-51
 - freedom-fighter 43-50
 - his assessment by Dr. Bishwanath Prasad 56-57
 - Tamrapatra* received from government 43
 - V. D. Savarkar, his views on 47
 - was an *astik* 55
- JHA, SHIVA KANT**
- THE FRAGRANT Years (1937-1964)
 - adolescence 93-102
 - advanced education 104-116
 - Ancestry 31-41
 - birth 72-80
 - bood-sports witnessed 90
 - childhood 81-92
 - family tree 40-41
 - gotra 32-33
 - lecturer 116-117
 - plight of education, views on 119-122
- A COG IN THE MACHINE (1964-1998)
- Patna: his First Innings:
 - Aiyar Commission, association with 133-139
 - assessing the Maharaja and the Raja to income-tax 132-133
 - Black Money 130-131
 - conducting an income-tax prosecution 131-132
 - emergence of Bangladesh 140
 - Emergency, views on 144-153
 - first day in the office 129
 - Flood at Patna 140-141
 - International Law Moot Court of the Law of Sea, participation in 139-140
 - lecture on the Art of Cross Examination by Nageshwar Prasad 131-132

INDEX

Patna: his Second Innings

CAG, his views on 170-172
 doctrine of the Separation of Powers,
 his views on 367-369
 Fodder Scam 155-157
 God's Kalki *avataar* at 'Sambhala'
 175
 legislature's role, views on 172-173
 Mandamus, his views on its reach
 165-167
 objections to the judicial monitoring,
 his views on 161-170
 Orissa, his visits to 175-177
 posted to supervise the Fodder Scam
 154
 role in the Fodder Scam investigation
 Chapt. 12 *passim*
 tribal Orissa, views on the people's
 plight 175-177

Nagpur: his years at (1986-1992)

allegations against, and his response
 195-197
 Amba Devi darshan 188-189
 Commissioner of Income-tax 194-
 195
 Dr. Ambedkar, views on 189-191
 heart attack 197
 Lecture at the Judicial Officers Train-
 ing Institute 194
 Nagpur phase, my assessment 197
 Shivaji, reflections on 192
 Tagore day celebration 193
 Wardha Ashrama, a visit to 191-192

Calcutta, now Kolkata his years at (1992- 1996)

assignments in Calcutta 200
 Bernard Schwartz, interactions with
 205
 Calcutta, reflections on 206-209
 Department's Senior Representative
 before ITAT 201-203
 Examiner for the LL M. Examination
 203-204
 Rene David, interactions with 206
 T.B. Smith, interactions with 204
 witnessing Barbadhu 199-200

ILLUSION & REALITY (1998-2013)

A Member of the Supreme Court Bar 247

'Democracy' reflections on, *see under*
 'Democracy at work';
 Constitution of India, reflections on,
see 'Constitution at work';
 his life, views on 463
 Imageries at the Supreme Court, *see*
 'Imageries at the Supreme Court';

Reflections on

Krishna, Buddha, Jesus,
 Muhammad, Marx, and Gandhi, re-
 flections on, *see under* 'Krishna': *see*
 Chapt. 20 *passim*

Life's sonnet, views on 528-536

PIL conducted at the Delhi High Court and the Supreme Court, *see* 'Public Inter- est litigation'

Reflections on 'Parliament', *see under* 'Par- liament, a critique';

Veenapani, his wife, *see* Jha Veenapani;

Western and Eastern worldviews analysed, and reflected upon, *see* 'Worldview and the trends of time, reflections on';

His reflections on the Income-tax Admin- istration: *see* Reflections on the In- come-tax Administration 228-239

His reflections on the Income-tax Law: *see* Reflections on the Income-tax Law 211-227

His Retirement

debt to the profession expressed 240
 farewell given 240-243
 way ahead 243

Jha, Veenapani

marriage 444-445, 449-450
 Savitri 446-448
 decides *A Rickshaw Puller vs. A Rick-
 shaw Puller* 454-455
 festivals 452
 her life: a many coloured dome 458-
 459
 her song that moved Sri Krishna
 Singh 456-457
 Indira Gandhi, meeting with 452-
 454
 musings on her *Chhat* photograph
 444
Rudravisheka, performance of 448-
 449

INDEX

- Srimad Bhagavad Mahapurana, The, devotion to* 455-456
with in-laws 450-452
- Johnson, Dr. 237
- Johnson, Dr. Samuel
define 'excise' 238
- Judicial restraints, doctrine of 468
- Judicial role 222, 316, 356-357, 358, 468
Judicial monitoring 159, 161-170, 239, 468 Chaps. 12 & 28
- Judicial Role in Globalised Economy* 11, 239, 309, 354, 367, 374, 385, 468, 479, 480, 482, 493, 498, 511
- Jure gestionis* 330
- Jure imperii* 330
- Karna's dream 506
- Karnen, Alvin 388, 395
- Keats 3, 5, 70, 410, 441, 483, 524, 532, 536
- Keer, Dhananjaya 100, 190, 191
- Kennedy, Paul 241, 373, 377, 405
- Keynes, J.M. 87, 112, 120, 390, 402
- Khayyam, Omar 2, 80
- Kirtans 38, 66, 75, 80, 207, 263, 455, 456
- Korten, David 296, 384, 394, 400, 439, 440, 441, 442, 476, 497, 500
- Krishannagar and Mayapuri, visit to 209
- Krishna: My Reflections on
Bhagavad-Gita in brief 265-268
grammar of Life 268
historicity of Krishna 263
Krishna and Buddha 272
Krishna and Gandhi 280-281
Krishna and Jesus 272-274
Krishna and Marx 277-279
Krishna and Muhammad 274-277
Krishna's attitudes towards 'Property' 270
Krishna's ideas of the Welfare State 271
Krishna : My Light & Delight 535
on Greed 269
our Guide to Duties 267-268
'Wallace Syndrome' 266
- Kumar, Prof. Arun 97, 120, 130, 309, 341, 358, 359, 431, 504, 552, 553
- Kurson 33, 36, 37, 49, 50, 58
- Lachs, Manfred 193
- Lack of Transparency: its lethal effect 213, 222, 231, 225, 301, 332, 408, 418, 420
- Lamb, Charles 81
- Laski, Harold J. 106
- Legislation Corruption 330
- Legouis & Cazamian 100, 283, 367
- Lehman, H. Jane 157
- Lehrman, Dan 40
- Less principes generaux du droit* 235, 420
- Levi-Strauss, Claude 392
- Liechtenstein 46, 478, 479, 546
- Lincoln, Abraham 488, 489, 491, 496, 498, 502, 504, 514, 516
- Line of Fire 338, 539, see the Postscript-I
- Lipson 340, 377, 383, 412, 441
- Locke, John 290, 323, 324, 376, 486-489
- Lokpal 337, 478, 480, 505, 540
- Lokpal and Lokayukta Act, 2013 see Postscript-I *passim*
- Loot of the Nation 174, 230, 231
- Lovelace 47
- Mackay, Charles 346, 402-403
- Madeira 360, 436, 437, 497
- Maganbhai v. Union 473, 499
- Maitland, F. W. 325, 341, 439
- Mammon 127, 274, 287, 293, 400, 424, 454
- Mammon's Power 287
- Mankind : reflection on Future 391-393
- Mann, Thomas 143, 231, 329
- Manning, C.A.W. 201
- Marbury v. Madison* 17, 234, 284, 325
- Marinus 122
- Marshall, Freda Brilliant 260
- Marx, Karl 101, 238, 256, 270, 271, 275, 277-279, 289, 290, 317, 369-370, 432, 437, 487, 514, 516, 554
- Maugham, W. Somerset 77, 93, 255, 385, 412, 532
- Mauritius 213, 335, Chap. 23 *passim*, 411, Chap. 26 *passim*, Chap. 28 *passim*
- Mauritius xv, 469, 496, 511, 517
- May, Erskine 172, 219
- McDonald, Hamish 346, 354
- Medhatithi 267, 510

INDEX

- Michelangelo 53
 Micronesia 411
 Middleton, Thomas
 Game at Chess 312-313
 Women beware Women 312-313
 Migratory Bird Treaty Act 285
 Mill, John Stuart Mills 106, 265, 340
 Milo 52, 284, 313, 329, 464
 Milo's Rome 299-306
 Milton, John 7, 12, 32, 112, 113, 349, 360, 383, 407, 484
 Mithila
 agricultural way of life 26-27
 defining my observation-post 17-18
 glory of Mithila's culture 23-28
 Maithil worldview 25-26
 Mithila of my *manasloka* 18-19
 present-day Mithila, reflections on 28-30
 religious syncretism 27-28
 Sita (Janki) 19-23
 Sita the greatest Krantiveeja 19-20
 Tradition and Individual talent 25
Missouri v. Holland 286, 472
 Mandamus, the reach of 159, 165-167
 Modi Narendra 562-570, *See Postscript V*
 Monroe, Hubert 212, 214, 218, 221, 227, 236, 237
 'Moral deficit' 52, 237, 266-267, 335, 342, 371, 461, 491, 493, 521, 523, 549
 Morality 2, 52, 53, 54, 93, 231, 235, 288, 337, Chaps. 24 and 26, *passim*
 'Wallace syndrome' 266-267
 Moral sense and ethical values
 Alfred Russel Wallace 53, 54, 266, 497, 517
 Bertrand Russell 390, 524
 Dostoyevsky 433-434
 Gandhi *Chapt 20*
 Joseph Stiglitz 267, 408
 Krishna, the Buddha, Jesus, Chap. 20 *passim*
 Livy and Tacitus 300
 Muhammad, Marx and
 Tulsidas 63-64
 Mother (*see* 'Draupadi Devi')
 Modi Government *see* PS V 552
 Modi, Narendra *see* PS IV
 Muhammad 6, 238, Chap. 20 *passim*, 386
 His idea of God compared with Shankaracharya's idea 275-276
 Muhammad and compassion 276
 Muhammad and the neoliberal paradigm 277
 Muhammad's attitudes towards imperialism and capitalism 276
 Muhammad's catholicity 276
 The Quran and the *Bhagavad-Gita* 276-277
 Mukherjee, Pranab Kumar 152, 231, 321, 330, 346, 364, 365
Mundaka Upanishad 66, 252, 257, 444, 535
 Mystci Corporis 499
 Narayan, Jayaprakash 149, 150, 151, 334, 436-437, 479, 481
 Nariman, Fali 148
 Nehru, Jawaharlal 117-119, 135, 237, 265, 268, 273, 285, 300, 318, 321, 322, 326, 331, 339, 340, 341, 362, 381, 386, 405, 417, 496, 516, 518, 521, 523, 525, 528
 Nelson, Lord 128, 354
 Neoliberalism 211, 212, 222, 267, 277, 288, 280-293, 320, 357, 360, 421, 515, Chap. 29 *passim*
 states system 412-416
 'Taj Mahal Economy' 331, 398
 "Nero fiddled while Rome burnt" 157
 Nuclear power/weapons 94, 96, 107, 119, 379, 382, 385, 389, 431, 438, 499
 Objective correlative 396 *see* under 'stories' 534, 535, 536, Chap. 25 *passim*, Postscript II
 Oppenheim 167, 177, 309, 358, 367, 441, 442, 443, 484
 Oppenheimer, Robert 7, 107, 531
 Orissa, his visits to: 175-177
 God's Kalki *avataar* at 'Sambhala', musings on 176
 tribal Orissa, views on the people's plight 176-177
 Osho 60, 241, 242
 Our Civilization: it's tragic trait
 Chapt. 29 passim
 Palkhivala, N. A. 108, 143, 201, 202, 210, 312

INDEX

- Panchtantra* 9, 22, 39, 86, 94, 345, 513
- Parliament
- duties of the citizens 331-333
 - Executive Government's widened role 320-323
 - expectations and achievements 318-319
 - gross 'democratic deficit' 320-321
 - if our Parliament goes on Shivashana 516
 - Parliament at work 321-323, 521, 522
 - Parliament at work 521
 - parliament's decline both in England and India 517
 - plight of Parliament 323-326
 - Prime Minister, the Sun or the Cipher 518
- Personal Journal, a miscellany of comments
- A Note on *Charitra* (Character) 528
 - All for the Holy Grail, FDI 518
 - FDI for whom ? for what? 519
 - Grammar of Existence: DHARMA 510
 - Idea of Secularism and Dharma 514
 - If our Parliament goes on Shavashana 516
 - Invocation to act 528
 - Learning from the Treaty of Allahabad 520
 - Parliament at work 521
 - Parliament's decline both in England and India 517
 - Political Parties and Democracy 527
 - Political Parties revisited 523
 - Polity, Politics and people's Duty 516
 - Prime Minister, the Sun or the Cipher 518
 - 'Reforms': the Mohan Raag that deceives 524
 - Restructuring our polity 526
 - Setting up political trajectory in our villages 524
 - Strategies of the corporate imperium 523
 - The Rocks speak : Inscriptions in the Parliament House 511
- The role of parliament: topic revisited 522
- Time debateth with Decay 509
- Whether to be spiders, bees, or artists 515
- Picciotto, Sol 343, 349, 413, 414, 416
- Pinter, Harold 305, 381, 394, 470
- Playfair, John 393
- Political Parties & restructuring of our polity
- panchayati* Raj 338-339, *Chapt. 30 passim*
 - Partyless Democracy 338, *Chap. 30 passim*
 - Political Parties 333-339, 438-439, *see Chap. 30 passim*
 - Political Parties and Democracy 525
 - Political Parties revisited 524
 - restructuring of 338-339, 522-526
- Polynesia 411
- Pope Innocent III and IV 424, 498, 499, 502, 503
- Pope Innocent's ideas on 'corporate structuring' *see Chap. 29 passim*
- Pound, Ezra 248
- Prasad, Dr. Rajendra 65, 136
- Pant, Sumitranandan 398
- Premchand 397
- Prof Kaldor 236
- 'Property' 25, 139, 204, 211, 212-213, 214, 216, 221, 227, 233, 237, 238, 265, 270, 274, 288, *Chapt. 20 passim*, 290, 292-293, 316-318, 329 *see* Chaps. 20, 21, 24 and 29.
- Constitutional socialism and property 292-294
 - Gandhi on 'property' 280
 - Jesus on 'property' 272-273
 - Krishna on 'property' *Chapt. 20 passim*
 - Marx on 'property' 277-278
 - Neoliberal view on 'property rights' 228; *see under 'property'*, and *Chap. 29 Passim*
- Proudhon, Pierre Joseph 270
- Public Interest litigation (Indo-Mauritius taxtreaty)

INDEX

- A critique of the Supreme Court's decision 355-363
- a touch of Comus (fraudster) 349-353
- Abuse of a Tax Treaty Case before the Delhi High Court 354-355
- context of the *csus belli* 352
- Court's *cri de Coeur* 363
- Historical Perspective 345-347
- Indo-Mauritius Tax Treaty, material points 347-349
- Mauritius makes hay while the sun shines 353
- PIL in the Revenue Matters 343-345
- "*Quis custodiet ipsos custodies*" 364-366
- role of the lobbyists 363-364
- Supreme Court reveres the High Court 355-359
- Public Interest Litigation (General)
 - against Government's view on its treaty-making power see Chap. 21 pp. 294-297
 - against of the 'Indo-Mauritius tax treaty abuse' See chapter 23
 - against the Bihar's Fodder Scam see chapter 12
 - PIL petitioner, plight of 345
- Quran*, The Holy 507
- R. Shivpuri* 359
- R.C. Church* 94, 95, 237, 273, 274, 339, 340, 369, 371, 385, 414, 425, 432, 485, 497, 500, see Chaps. 26 and 29.
- Ram Jethmalani & Ors. V. UoI* 461 see Chapt. 28 *passim*
- Rao, Justice Jagannadha Rao 250
- Reflections on the Constitution of India:
 - Ambit of the Constitutional Re-straints on the Treaty-Making Power, see PS VI 571
- Reid v. Covert 286, 462, 468, 472
- Revolution, and the role models:
 - Gandhi, Mahatma 280-281
 - Jesus 272-274
 - Krishna 263-271
 - Marx 277-279
 - Muhammad 274-277
 - Sita as the *Krantiveej* 19-22
 - Revolution, grammar of 20, 106, 281-282 337
 - Rickshaw Puller (A) vs. Rickshaw Puller (A)* 354, 454-455
 - Right to re-call 339, Chapt. 30 *passim*
 - Right to Revolt 282
 - Rigveda 32, 510
 - Riseman, David 220
 - Robert L. Heilbroner 361, 367, 493
 - Rosenfeld, L. 531
 - Reductio ad absurdum* 220, 296, 297
 - Russell, Bertrand 55, 101, 112, 118-119, 167, 213, 247, 277, 280, 284, 290, 314, 317, 323, 342, 369, 375, 376, 379, 390, 406, 414, 419, 485, 517, 523, 529, 535, 547
 - SIT on black money 552
 - Savarkar, Vinayak Damodar 47, 109, 345
 - History of the First War of Indian Independence 47
 - Savarkar's cell in the Cellular Jail 47
 - Schwarzenberger, Georg 30, 348, 384
 - Schwartz, Dr. Bernard 205
 - Scott, Walter 47
 - Sen, Dr. Amartya 280, 527, 551
 - Seneca 247
 - Separation of Powers, the doctrine Chap. 12 *passim*; 323, 324, Chap. 28 *passim*
 - Setalvad, M. C. 219, 225
 - Shah Commission of Inquiry Report
 - extracts from
 - abuse of powers by persons nearer the seats of power 187
 - degradation in civic culture 186
 - derelictions of the civil servants 183
 - functioning of the Government departments : the CBDT & CBI 185-186
 - jails, conditions of 184-185
 - judiciary, idia to clip its wings 179
 - MISA, the administration of 180-181
 - moral component in public administration 182-183
 - nation's expectations from public servants 183
 - Plight of the Press 179
 - story of demolitions 183
 - subversion of public service 179-180
 - when RUMOURS ruled 179

INDEX

- Shah Commission of Inquiry, The
fate of the Shah Commission's Report
152-153
- Shah, Wajid Ali 140, 207-397
- Shakespeare, William 30, 53, 76, 110, 113,
116, 117, 120, 146, 153, 163, 197, 212,
231, 248, 253, 258, 312, 321, 344, 356,
368, 377, 381, 417, 422, 476, 482, 489,
491, 507, 509, 522, 524, 526, 528, 534,
536
- Shankaracharya 13, 24, 386, 407, 435
- Shaw, G. B. 116, 195, 368, 491, 501
- Shiva Kant Jha v. UoI 294-297
- Shiva Kant Jha v. UoI Chap. 23 *passim*
- Shelley 42, 307, 368
- Shernia 60, 66, 78
- Shivaji 192-193
- Singapore 348, 360
- Singh, Dr. Manmohan 330, 346, 347, 379,
380, 391, 417, 441, 470, 519, 521, 524
'Reforms' the Mohan Raag that de-
ceives 522
- Sinha, Sachchidanand 307
- SIT on black money: the first decision of the
Modi Government, *see* PS IV 552-
561
- Smith, Adam 228, 253, 289, 361, 402, 427,
437, 443
- Smith, Dr. T.B. 204-205, 284-285
- Socialism *see* constitutional look; consti-
tutional socialism
- Some of my Recommendatory comments
for our Government and Citizenry to
consider *see* PS II 544
- Sovereignty 167, 225, 295, 299, 320, 324,
334, 338, 343, 356, 412, Chapt. 26
passim; Chap. 29 *passim*
- Spurgeon, Caroline 248
- Srimad Bhagavat Mahapurana 18, 28, 32, 63,
143, 161, 175, 188, 195, 209, 255, 256,
258, 262, 264, 270, 282, 371, 455-456
- Sri Harivamsa Purana 495
- State of Punjab v. Devans Modern Breweries
Ltd., [(2004) 11 SCC 26 at SCC p. 148,
para 307] 293
- St. Kitts 411, 441
- Stiglitz, Joseph 132, 211, 222, 232, 239, 267,
317, 322, 408, 438, 490, 519, 542, 555,
556, 596, 600, 606, 607, 618
- Storey, Joseph 307
- Stories as metaphors : the 'objective correla-
tives'
- 'Bali questions Rama' 405
- 'Bindumati' 405
- 'Dance on the hood of the most ven-
omous snake' 403
- 'Extraordinary Popular Delusions
and Madness' 402-403
- 'HOPE : Penelope's story' 406
- 'Kalaye tasme namah' 403-405
- Our 'Taj Mahal Economy' 398-399
- 'Satranj Ke Khiladi' 397-398
- 'Sone ki Lanka' 399
- 'Sparrow's Delight' 401
- 'Story of Two Frogs' 396
- 'The three Indias' 400
- Stories at stray places:
- A Rickshaw Puller v. A Rickshaw Puller*
454-455
- Game at Chess* 313
- Heart of Daknesh* 404-405
- Maharaja Parikshit 411
- Manai's stories 84-86
- Tuladhar of Varanasi 24, 253, 254
- The Sadhu and the Vaishya (a whore)
114-115
- Women beware Women* 312
- Suman, Shiv Mangal Singh 538
- Switzerland 348, 351, 421, 428, 429, 477,
478, 481, 546
- Tagore, Rabindranath 75, 117, 193, 264,
530, 535
- Taj Mahal Economy 212, 231, 251, 398-399,
496
- Tax Court 203
- idea of the national tax tribunal 203
- the National Tax Tribunal Act held
ultra vires 203
- Tax havens 223, 231, 234, 271, 342, 346,
349, Chapt. 23 *passim*; Chapt. 26
passim; Chap. 28 *passim*
- Tax treaties 213, 220, 223, 225, 227, 348,
349, 416; Chap. 28 *passim*
- 'democratic deficit' 225, 237, 284,
294, 320, 322, 327, 334, 342, 343, 419,
424

INDEX

- The Destiny of our Nation: the advent of Shri Narendra Modi, *see* PS V 562
- Towards the vanishing point of our Constitution 593
- Treaty-Making Power
- court's jurisdiction on treaties 294-297
- Treaty-making power
- court's Jurisdiction on Treaties 470-473
 - 'Democratic deficit' in India signing the WTO Treaty 294-295
 - 'democratic deficit' in Treaty-making 294
 - emergence of the syndrome of the 'Sponsored State' 374-375
 - exercise of Treaty-Making power 467-470
 - Government of India tells the UN that its powers in making treaties had no constitutional restraints 225-227
 - learning from the Treaty of Allahabad 520
 - my suggestions on valid Treaty-Making Procedure 298-299
 - our Government has no extra-constitutional powers 285-286
 - our Parliament must make law to control the-
 - Reductio ad absurdum 296-297
 - subordination of the 'nation states' 491-492
 - Supreme Court interprets Article 26(1) the Indo-German Tax Treaty 470-472
 - the Delhi High Court decides the ambit of the constitutional restraints 296-298
 - the fundamental constitutional assumptions 294-296
 - The classical state system yielded to the 'neoliberal' State system 412-416
 - the Indo-Mauritius Tax Treaty *see* Chap. 23 *passim. also p. 411, 422-424*
 - the judicial review even of treaties 472-473
 - the neoliberal attitudes to Treaties 484-488
 - the WTO Treaty transgresses our Constitutional limitations 295
 - treaty making power under our Constitution's restraints 223, 225, 226, 285-286, 294-297, 320, 321-323, 327, 328, 418, *Chap. 28 passim*
- Treaty-Making Power, moving towards its vanishing point *see* PS VI
- Treaty transgressed constitutional limitations 295
- Taxation
- attitudes towards 194, 211, 212, 213, 214, 215, 221
 - Chanakya on Tax Reforms 238
 - Dr. Johnson on the 'tax-gatherers' 238
 - Marinus paints 'Two Tax Gatherers' 122
 - role of Parliament on taxation 219-220
- Taylor, A. J. P. 153, 294, 309, 377, 394, 406
- The concept of Judicial Monitoring: a critique of the concept 161-169, 170, Chap. 12 *passim*, 239, 467-495; Also Chap. 28 *passim*
- The Declaration of the Rights of Man and Citizen 317
- The Lokpal and Lokayuktas Act, 2013 *see* 'Postscript-II' *passim*
- The Parlement of Belge* 499
- Theo Mathew 242
- Transparency 212, 222, 223, 225, 232, 408, 418, 420, 525, 541
- Tilak B. G. 3, 46, 47, 48, 51, 267, 281, 283, 549
- Trends of Our Times, *see* Worldview and the Trends of our Times
- United Nations Convention against Corruption *see* Postscript-I *passim*
- United Nations 223, 225, 294, 297, 335, 384, 423, 424, 430, 431, 439, 441, 544
- Vedder, Elihu 330, 504
- Vodafone Case *see* Chap. 29 *passim*
- 'Corrupt Legislation' 330
- Verma, Mahadevi 72, 76
- Vidyapati 17, 28, 35, 38, 114, 209, 242, 451
- Vyasa 61, 77, 258, 259, 260, 262, 264, 313, 372, 378, 382, 387, 455

INDEX

- Wallace Syndrome 266-267
 Wallace, Alfred Russel 52, 54, 266, 435
 Watson, Peter 122, 227, 288, 339, 380, 394, 438, 443, 482, 503, 514, 529
 Webster, John 85, 342, 356
 Wells, H. G. 273, 290
 Western and Eastern intellectual tradition
 Chaps. 24 and 29 passim
 Western Political Thought *see Chaps. 24 and 29 passim*
 What I BELIEVE, *see* PS III 548
 Whittier 282
 World Trade Organisation 121, 224, 225, 232-234, 295, 408, 425, 429, 431-437, 486, 488; *see* Chaps. 26 and 29 *passim*
 shadow on the Direct Taxes 232-234
 World Wars I & II 374-379
 towards World War III 379-384
 Worldview & the Trends of Our Times
 clash of civilizations 385-387
 cultural Crisis 387-391
 dominant Western Worldview, its grammar 369-372 *also see* Chap. 29
 Great Wars as the metaphors 376-377
 Hall of Mirrors to World War I 374-376
 India's First War of Independence: the lessons learnt 372-373
 Judgment on *Homo sapiens* 391-393
 Conclusion 393
 lessons learnt from modern history 373-374
 syndrome of the 'Sponsored State' 374
 trends of our times 371
 World at the tinderbox : towards World War III 379-383
 World War II, the road to 377-379
 Yeats, W. B. 77, 112, 389, 532
 Yutang, Lin 52
 Zeno 264

NOTES

NOTES

NOTES

NOTES
