

Dialogue and Democracy

Reflections on Ideas, Issues and Policies

(2nd in the series)

Shri K. Natwar Singh

A Passage to Lahore

Shri Shyam Saran

Strategic Contours of India- China Relations

Opportunities & Challenges

Admiral (Retd) Arun Prakash

Strategic Contours of India - China Relations

Dealing with a hegemon

Vice Admiral (Retd) Anup Singh

The Eastern Seaboard : Opportunities and Challenges

Shri Shiv Shankar Menon

K.S. Memorial Lecture

Cmde (Retd) C. Uday Bhaskar

Review of India's Defence Policy

Dr. E.A.S. Sarma I.A.S (Retd)

Will The Sparrow Ever Return ?

Dr. R. Vaidyanatha Ayyar I.A.S (Retd)

Intellectual Property Rights and Their Study

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Ethics in Corporate Governance

Prof. K.C. Reddy

Governance for Inclusive Growth

Prof. Jandhyala B.G.Tilak

Policy Crisis in Higher Education: Reform or Deform?

Dr. Abid Hussain

Leadership for Implementing CSR Programmes

Shri K. Chakravarthi. I.A.S (Retd)

Great Expectations

Prof. R.V.R. Chandrasekhara Rao

Creation of New States under the Constitution:

A Clarificatory Essay

Shri P.S. Rammohan Rao, I.P.S.(Retd),

President of India : Titular Head of State or
Protector of the Constitution?

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The City Older Than Time

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The Role of Judges in Delivering Equitable and
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The Pleasures of Literature

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Jawaharlal Nehru's Literary Flair

A. Prasanna Kumar

Servant of Humanity

Foreword by Shri D.V. Subba Rao

Edited and compiled by A. Prasanna Kumar

Centre for Policy Studies

Gayatri Vidya Parishad

Visakhapatnam

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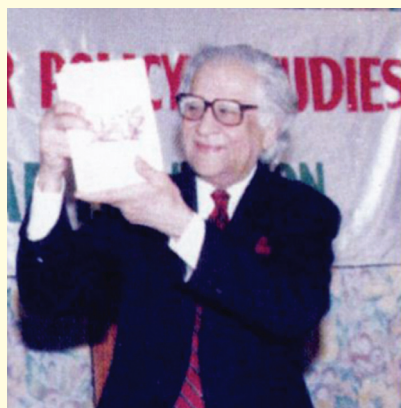
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to the memory of *Dr. Abid Hussain*
Patron, Centre for Policy Studies



releasing the first publication
of Centre for Policy Studies
on December 6, 1996



Dr. Mrs. Karki Hussain
speaking on Sino-Indian relations
on December 5, 1996



addressing Centre for Policy
Studies in 2009

Abid Hussain
Former Ambassador of India to USA

237, Sector 15-A
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August 18, 2009

My Dear Prasanna,

Karki and I were delighted to get your letter of August 8, 2009. It gives us a beautiful account of the days we spent together. Nostalgia always gives a wonderful feeling of the past. I know, visiting back places where one once lived some 20-30 years back cannot remain the same. We grow in age and so the cities also grow. Though we may look stranger to each other but there are bonds which hold the two together. Vizag as we saw and lived in, is now a great city and is still growing. Its elevation helps us to believe that we are also moving up with the same splendor with which the city sparkles. I left the city of Vizag and its people with some of its memories still green in my heart. Its memories are the images in the presence of which my heart opens up again with delight.

We are touched by your keen and affectionate desire for us to visit Vizag. We will certainly like to be with you. May the path to Vizag open up soon.

With Best Wishes

Yours sincerely,

(Abid Hussain)

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A word about this volume.....

India is neither 'shining' nor 'collapsing' as a democracy. There is, however, cause for concern for a variety of reasons. The decline of institutions, of professional autonomy and above all of values in public life has seriously affected public trust and faith in the democratic system. The 'School of Asia' for democracy, as India was hailed in the first decade of its independence, is now struggling to come to terms with itself, trying hard to regain the glory of 'the faded golden age' of the 1950s.

Debate and discussion which made India's Parliament a role model and which to a large extent influenced the making of public policy have given way to walk-outs and hurling of abusive epithets, even fist fights, in the hallowed precincts of our Parliament and State legislatures. Sober discussions in the press and on the platform have been replaced by high-voltage, high-pitched exchanges and trivialized confrontations between parties, leaders and even intellectuals on the small screen.

Dialogue that helps in generating consensus on crucial issues is today marginalized. The maturity of Indian democracy was extolled by scholars and experts all over the world when through 'consensus' two transitions were smoothly effected — in 1964 when Jawaharlal Nehru and in 1966 Lal Bahadur Shastri, suddenly died. Greater was the acclaim for India when the restoration of democracy took place after the imposition of national emergency in the mid-seventies.

Democracy may not be the best form of government created by man. But it is better than all other forms. Hence most countries of the world have adopted it and some claim to be even if they are not. India's strength lies in its resilience and its ability to overcome shocks, disasters and tragedies. As Rajni Kothari aptly said it is "the poor and the suffering classes that have kept the democratic process alive far more than the elite and affluent middle classes." The enfeeblement of Indian democracy over the years is a matter for concern. But there is no room for despair. Through constant dialogue at every level problems, big and small, can be resolved. Dialogue implies debate, discussion and also dissent. That is the need of the hour. India is a land of stunning paradoxes and also of incredible achievements. The aspirations of the youth of India who constitute more than fifty per cent of the population need not come into clash with the anxieties of the ageing population. Nor can the growing affluence of the over 300 million people of upper middle class be allowed to accentuate the misery of as many people living below the poverty line.

Study of policy process has remained 'a neglected dimension of Indian scholarship' according to experts. It is the responsibility of the educated and thinking classes to remedy the situation by drawing public attention to the widening chasm between public policy and people's awareness. At home, in school or college, efforts must be made to generate a climate of healthy debate and constructive action.

Founded on Gandhi Jayanti in 1995 with the object of providing a forum for the expert, the academic and the intellectual to interact, focusing on issues and policies of contemporary relevance, Centre for Policy Studies was merged in Gayatri Vidya Parishad in March 2002. The activities of CPS gained further momentum during the last ten years thanks to the guidance of the late Founder-President and eminent economist Prof B.Sarveswara Rao, his worthy successors Dr B.Swamy and Shri D.V.Subba Rao and the support and cooperation extended by Secretary Prof P.Soma Raju, Prof D.Dakshina Murthy and Prof P.V.Sarma and all the other members of Gayatri Vidya Parishad. To all of them CPS is deeply indebted. To the distinguished contributors of articles and essays published in the CPS Bulletin, since its inception on October 2, 1996, to the institutions and individuals who have

been supporting the work of CPS through advertisements in the Bulletin and to the large number of well wishers CPS conveys its profound gratitude. But for their and the readers' support the bimonthly Bulletin would not have come out on time, without a break, during the last fifteen years and six months. It is proposed to welcome the Bulletin's 100th issue, due next year, by releasing the 3rd volume in the series *Dialogue and Democracy*.

Commemorating the fifteenth anniversary of Centre for Policy Studies *Dialogue and Democracy*, a volume comprising all the editorials of CPS Bulletin from October 2,1996 to October 2,2010, 85 in all, was brought out, as per the suggestion of some of the regular readers of the Bulletin. The second in the *Dialogue and Democracy* series, now being presented, is an anthology of twenty two articles and lectures and two letters, most of them published in the recent issues of the Bulletin. It is hard to adequately thank the eminent authors of these articles and letters for their gracious gesture. CPS is indeed privileged to receive their constant support and encouragement in its humble endeavour to disseminate valuable ideas and information for generating useful and healthy public discourse. CPS offers again its most grateful thanks to them. To Cmde. Uday Bhaskar CPS is always beholden for his unfailing support right from the beginning. Be it is a request for a lecture at short notice during his visits, official or personal, to Vizag or for an article on a current topic Cmde. Bhasakar has always been generous and prompt in his response. Thanks are due to Shri V. Seetaramaiah, the respected chartered accountant and well known educationist, for his valuable suggestions and for patiently going through the proofs, a task also ably and cheerfully undertaken by Professors MS Rama Murthy and Mrs Vijayalakshmi. CPS conveys its thanks to Mr M.K.Kumar of Sathyam Offset Imprints who, assisted by his daughter Ms Arpitha and Mr Prakash, has completed the publication work in time with care and efficiency.

Just when we were getting ready for the release of the volume came the shocking news of the sad and sudden demise of Dr.Abid Hussain, a patron of Centre for Policy Studies right from its inception, a tower of strength and a source of inspiration to CPS, me in particular. This volume is dedicated to his memory with profound gratitude.

Visakhapatnam

June, 2012

A.Prasanna Kumar

FOREWORD

Centre for Policy Studies brings out publications and a bimonthly Bulletin, all distributed free of cost, with the object of contributing to healthy public discourse on ideas, issues and public policy. Beginning with a modest publication titled *Emancipation before Empowerment – a study of women’s problems in Visakhapatnam* published in 1996, CPS has been bringing out books on different themes and subjects of contemporary relevance. In 2010 the Bulletin’s editorials and other articles, numbering 110, were brought out in book form under the title *Dialogue and Democracy*. The second in the series bearing the same title is now being presented as an anthology of lectures and articles by eminent persons and experts in their chosen fields.

This book of twenty two articles is a diadem of priceless jewels covering issues of national, professional and constitutional importance. To put it otherwise the volume is “a house consisting of many mansions”. Articles and lectures by eminent persons and experts along with a few written by the Editor of the Bulletin, all published in the CPS bimonthly Bulletin in the recent past, have been compiled and brought out in a book form with the object of disseminating thought-provoking ideas and useful suggestions, for the benefit of the larger public interested or engaged in public discourse.

We are privileged that an article by one of India’s great civil servants, former Vizag Collector and former Indian Ambassador to USA Dr Abid Hussain, is also carried in the volume. His many-sided contribution to Vizag’s growth and development has been gratefully acknowledged by the people of the City of Destiny, by naming a huge residential colony as Abid Nagar when I had the honour to serve as Chairman of Visakhapatnam Urban Development Authority and later as Mayor of Visakhapatnam.

The lectures and articles of such eminent persons as Shri K.Natwar Singh, Shri Shyam Saran, Shri Shiv Shankar Menon, Admiral Arun Prakash, Vice Admiral Anup Singh, Shri. P.S.Rammohan Rao Shri K.Chakravarthi, Shri C. Anjaneya Reddy, Professors Manoj Das, R.Vaidyanatha Ayyar, JBG Tilak and Dr. Smt. Prema Nandakumar enhance the quality of the publication. It is a matter of pride to all of us, me in particular, that Vizagites who rose to occupy high positions at the national and state levels with their outstanding work in their professions—Prof R.V.R Chandrasekhara Rao, Prof.K.C.Reddy, Prof R.Venkata Rao, Shri D.V. Sitha Ram Murthy, Dr E.A.S Sarma and Cmde. Uday Bhaskar have also enriched the volume with their scholarly contributions. I am sure the book will be read with keen interest by the academia, policy makers and the reading public in general.

Visakhapatnam
June, 2012

D.V.Subba Rao
Chairman Centre for Policy Studies
President Gayatri Vidya Parishad

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LEADERSHIP FOR IMPLEMENTING CSR PROGRAMMES

Dr. Abid Hussain

Former Ambassador to the United States of America

We are living in a very interesting phase of a development era in which the task of transforming a people into a healthy educated modern society is no longer to be left to be done by the government alone. The corporate sector, a creator of wealth, has also to undertake responsibility in this regard. Hence one of the challenges to the modern corporation is to find a role for itself in implementing social responsibility. Business should no longer be just for making money (though that remains its premier task), it must also serve people.

Business houses and corporations have a long ancestry of making charitable donations to support humanitarian causes. Now they are graduating from being “givers of funds” to performers and investors in socio-economic change. Socio-economic activism has become an integral part of corporate activity. Social responsibility is more than supporting charitable causes.

The fundamental idea embedded in CSR is that the business corporation can no longer act as an isolated economic entity detached from the broader issues facing society. A company should be a responsible member of the society in which it works. It is the enlightened leadership of the corporate world which provides organizations with the culture, responsibility, and business philosophy which makes social responsibility an integral part of an organization. Agents of this process are not hard to find. Corporate leaders have discovered that by helping people they can achieve a higher course of work and at the same time make good money by driving the bottom line. In this way, they can significantly contribute to the betterment of society. The 1990s saw the birth of many such companies ably shepherded by enlightened, ethically oriented management. Research in the United States shows that companies known for their corporate social responsibility experienced a 3 to 1 advantage in attracting investors and customers.

For corporation to act as agents of change, CEOs, in Gandhi’s words, will have “to become the change they want to see in the country.” No big change can be brought about without a visionary leader leading the change from the front. To become such a leader, the corporate chief has first of all to establish his credentials within the corporation itself.

CEOs have to be ambitious first and foremost for their company, not for themselves. Lead the company by backing the pack, driving and inspiring them to find solutions rather than ordering solutions from the top. These are leaders who have immense faith in the innate capacity of their team to spearhead business with a mission to serve the interest of the corporation as also of society. A CEO cannot abdicate his responsibility to guide. Without guidance people can make bad choices. “Being guided requires not simply the people to be willing to follow but that someone be willing to lead”. When Don Hewitt of CBS News asked his boss as to what the news network wanted out of its show, Leonard answered it should “make us proud”. Those few words triggered a passion to gain the appreciation of the common citizen. There can be nothing more noble and sustainable than a private firm performing public service.

To be effective, a CEO will have to first of all earn the goodwill and respect of its stakeholders (labour, stock owners, etc). CEOs also have duties and responsibilities to uphold the laws imposing

conditions asking them to abide by legal standards in respect of the environment, etc. Now, in some countries, especially in the developing world, these legal standards may be absent or even weak.

In such cases, CEOs must aspire to go well beyond the local legal standards. As the Mayor of Rome once told an American industrialist setting up a manufacturing unit in Rome, “When in Rome, do as you did in New York, not as Romans do in Rome”.

In most developing countries critical inadequacies exist due to the absence of effective physical and social infrastructure - like lack of drinking water, housing shortages, bad roads, absence of bridges, insufficient transport, frequent power failures, etc.

Rural areas in particular live with meager access to education or health care services. These are the areas which need to be transformed. Here, farsighted business leaders in the corporate sector find space to extend help to state and society. Adoption of villages for setting up schools, health dispensaries and organizing micro credit schemes, etc. have become a trend. Incidentally, it is also realized that good business opportunities exist at the base of the pyramid. Going to a village is not a race to the bottom but instead a race to the top, making a compelling case for unleashing entrepreneurial energy at the village level in order to improve life and help people to come out of the poverty trap. Hindustan Lever (India) has launched project SHAKTI in which villagers are trained to perform marketing functions. This has empowered women and enabled them to improve the lives of their families. Another firm in Tamil Nadu (India) has trained 400 rural women in manufacturing packing and selling. INFOSYS (Bangalore) has set up “library in every school” in more than 1,000 locations. Mahendra & Mahendra, Wipro (Azim Premji), The Oberoi Group, and the Tata Group have been demonstrating their commitments to SR by taking up projects to improve the quality of life in the communities in which they operate, especially of the underprivileged.

They have become front - runners to many more who intend to catch up with them by joining the race. Far more is needed to be done. Government should give mandate to corporate sector to work in these areas and facilitate their presence there - through grants of attractive incentives, price support, tax concessions, etc. At the same time the corporate sector should build up capabilities to undertake these tasks.

Since long there have been several good examples of corporations (in India and elsewhere), doing exemplary work to lift the lot of people. Carnegie and Rockefeller held that “Winners should use some of their wealth for public good.” It is to their contribution that we have “Dwarf wheat” and “Penicillin” which ensured that millions of people are fed better and restored to health. Tatas in India, while setting up a steel plant, transformed an unknown and neglected village to the status of a modern city. Birlas, another big business house, was moved by the concept of nation building. They introduced endowments for education, etc. These men behind their industrial ventures represent not nostalgic tales of old times; rather they have become inspiration for others.

Today we have chief executives like Narayan Murthy, Dr.Reddy, Azim Premji and several others in India who are spearheading enterprises “Maximizing the positive spillover efforts of corporate development”. Bill Gates and his like have become world business icons committed to social responsibility projects. They have established that “Doing well” and “Doing good” are not mutually exclusive.

However, the irony of the situation is that just when it was being thought that CEOs, global as well as local, one, in joint venture, would be the guiding angels of the social responsibility movement, there has come to light a burst of scandals, scams and fraudulent practices (in which they were involved).

This has obviously raised a question mark vis-à-vis their credibility. Public trust was shaken in corporations and their CEOs. The insatiable appetite for profits had made some of the CEOs of Enron indifferent to rules and practices of good and clean business. Their access to political power and the money they had accumulated made some of these CEOs act in an unrestrained manner. In connivance with corrupt officers, they set up polluting chemical plants and manufacturing hazardous items. The Bhopal Gas tragedy is one such instance among several that could be cited. Union Carbide did own up to pay compensation for the loss of lives and shattered health of helpless residents of localities directly affected. The tragic incident also raised a host of pertinent questions regarding the Madhya Pradesh Government's skewed decision to allow UC to operate in the midst of densely populated human habitation. The victims, rather the surveyors, have been unable to pressurize the government of the day to admit their short sightedness and serious inadequacy on the environmental front.

Of late however, media exposure, public protests and judicial proceedings have exposed several wrongdoers in the corporate sector in their anti SR activities and restrained them from further damaging the social fabric. For instance e-mails accusing Nike for allowing child labour to be used in its vendor factories woke up Nike to its social responsibility. Similarly, when Lonestar "a US firm" having unethically taken over banks in Korea wanted to win people's confidence by donating a large sum of money in charity was severely resisted by public at large with the comment that "it was like a thief donating money from the sale of stolen goods".

In the wake of such disclosures many respected public voices clamored for greater oversight and regulation. Website exposures changed the profile of the so-called watch dogs into lapdogs. Simultaneously, however, there exists a different class of clean CEOs who stood up to underpin all these trends into a rededication to socially responsible behavior. This was aimed at restoring belief in the benign side of corporate cultures to spread the latter's goodwill to abide by provisional and ethical rules of good business.

Today there exists a surfeit of good governance code as prescribed by the government and formulated by high power committees like Cadbury Committee but corporate governance cannot be ensured through a checklist of mere rules and regulations. Regulations can only succeed when a committed CEO is in charge - for how can an unsuitable be entrusted to act as an honest instrument for fulfilling social commitment? Further, governance at gunpoint will fail to yield satisfactory results. Tom Turvey has put it well that "corporate culture is what determines how people behave when they are not being watched." The responsibility to assure this lies with the CEOs who should extol the values of integrity and transparency. In short, "a clear conscience" as underlined by a practitioner of SR, Narayna Murthy of Infosys, is of central importance. Narayan Murthy is among several men who stands in contrast to others, who have failed in broadening their contextual horizon to include some compelling aspects of social responsibility.

There are instances where some well-intentioned corporations have been unable to make much headway in discharging their social responsibility due to administrative hurdles they face, specially a bureaucratic mindset which they encounter which is habitually suspicious of and biased against businessmen.

Red tape is another device which holds up their proposals. Misuse and abuse of responsibility entrusted in their hands has been exercised by an ingenious use of red tape. As information spreads with its enlightening and enabling effect on society at large, one may anticipate that the willful, obstructionist, expertise of the bureaucrats at odds with public interest will lose its hold. To an

extent, this may be attributed to their own insensitivity and failure to deliver positive results in the social field. Disgusted with red tape, Robert Schachberia had said that, “if we can ever make red tape nutritional we can feed the world to its full appetite.” A good corporate leader with his ingenuity should be able to formulate strategies to devise tools and frameworks for integrating its social responsibility with government’s proclaimed intentions to work towards the betterment of society, thereby maximising results of their joint efforts(to achieve the country’s socio-economic goals). Our optimism is premised on the fact that of late, public and private participation involving government, public sector, and civil society are increasingly being recognised as important to tackle socio-economic issues. There are increasing number of instances of corporate leaders working closely with government organisations. Difficulties would still exist but as Einstein said “ in the middle of difficulties is opportunity.”

I am confident that corporations which have enjoyed the fruits of growth hold the future, and will not fail to discharge their social responsibility. Their readiness for action is not in doubt. There is a growing evidence of the fact that many CEOs are determined to take a responsible action to overcome the difficulties that lie in achieving the desired results.

To these may also be added another positive factor of the influx of the bold and bright youngsters joining the ranks of the corporate managers. With the shrinking of job opportunities with the government, the young and the bright have joined the corporate sector(higher salary incentive is one of the reasons). They bring with them inclinations more oriented to serve the underprivileged sectors of the society. This new generation of CEOs under the guidance and spell of enlightenend leadership, could be trusted to spawn more and better social responsibility projects.

They are more willing to combine bussiness with public service. This would perhaps turn out to be an antidote to Marx’s contemptous description of German bussinessmen as “bourgeoise without historical purpose.” The new generation of CEOs may not achieve all the goals of social responsibility but they would put a firm foot towards ushering in a better tomorrow where the interests of bussiness and society are profitably harmonized. A good company gets elevated to the status of a great company when it discharges its SRs. In the words of William Ford, “A good company delivers excellent products, services. A great company does all that and strives to make the world a better place.”

(CPS Bulletin Feb 2, 2007)

Dr Abid Hussain became a living legend as Collector of Visakhapatnam district with his dynamism, concern for the poor and his innovative development programmes. He prepared a blueprint for the steel plant in Vizag even before the movement for a steel plant attracted the attention of the Government of India in the mid sixties. His wife Mrs Karki Hussain, an expert on Sino-Indian relations, gave lectures in Andhra University’s Department of Politics & Public Administration for a year on international relations. Their daughter born here was named Visakha. While it is believed that Dr C.R.Reddy, the Foundation-Vice Chancellor of Andhra University, who shifted the infant university from the better known town of Bezwada(now Vijayawada) in 1930 to the little known ‘fisherman’s village’ Waltair(Vizag) named it the City of Destiny, it was Collector Abid Hussain who popularized the term through his numerous public lectures. A patron of Centre for Policy Studies, Dr Abid Hussain released on December 5, 1996 CPS’s first publication *Street Children* a research study on Vizag’s street children. His last lecture at the Centre for Policy Studies was in November 2009. The grateful people of Vizag named a huge residential colony, Abid Nagar, in honour of the administrator they literally adored. Abid was a humanist and ambassador of goodwill who never lost a friend nor made an enemy despite holding high administrative and diplomatic positions in India and abroad.

A PASSAGE TO LAHORE

Shri K. Natwar Singh

Former Minister for External Affairs

The wings of Angels do not flutter over India-Pakistan deliberations. This applies not only to inter-governmental exercises but also to non-state players. It is well known that Indo-Pak relations are accident prone. Just when optimism seems in order the Indo-Pak diplomatic train goes off the rails. Cynics in India sometimes say, "Plague on both your houses. Let's get on with life." That is not a route sensible people take.

I have recently returned after a two day stay in the simmering city of Lahore, to an equally simmering New Delhi. I was last in Lahore in 2005 as foreign minister. It was an enticing and seductive place, particularly for us north Indians, for whom nostalgia is a way of life. Today this great city appears under siege. The brio, the élan, gaiety, music, even cricket appear to be on a downward slope. Mullahdom has not triumphed but its progenies, the Taliban and the Jihades, cast their dark shadows right across the city, which both conceals and reveals its tortured soul. Yet, even more than Karachi & Islamabad it is the epicenter of Pakistan.

Why did I go to Lahore? To participate in a meeting of former foreign ministers of India and Pakistan, to deliberate informally but cordially on the current impasse in our bilateral relations. The initiative for this exercise was taken by former Pakistan foreign minister, Khurshid Kasuri, a politician of immense grit and stamina with an engaging personality. M/s Sartaz Aziz, Gohar Ayub and A Sattar, Jaswant Singh, myself and Mani Shankar Aiyer met at the ducal residence of Khurshid Kasuri. Our deliberations were marked by candour and courtesy. Inevitably, on certain issues, e.g water-strong views were expressed by both sides. Not in anger but in an effort to calmly try and understand different perceptions. The atmosphere was relaxed and free of acerbity. We knew each other well. No scoring of points. No finger pointing. No aspect of our devilishly complex relationship was avoided. Should the future of Indo-Pak relations be for ever hostage to the past after 63 years? All were of the view that new ground rules were needed. Diplomacy does not ensure salvation. It shows the way. That road does not go to a destination called conflict. Even modest progress is worthy of respect. Besides, what is the alternative? Each one of us was in favour of resuming the composite India-Pak dialogue. 26/11, we said to our Pakistani colleagues, was a terrible event. It justifiably aroused very strong feelings in India. However, the dastardly event should not for all time to come prevent re-starting of the composite dialogue.

We were acutely aware that our ages naturally did not go un-noticed. "What solution could these exhausted volcanoes come up with?" Age was no bar, provided we did not suffer from Parkinson's disease. We were not lacking in experience. We may or may not possess the wisdom of our critics, but we certainly had vast knowledge of foreign affairs. We had been antagonists, now were meeting as friends. We were not a pressure group. But we all did have a vested interest in good neighbourly and cordial relations between the two countries.

This venture could have ended up in a fiasco. It did not. Our meeting attracted extraordinary media attention. The turn out of the press conference held at Khurshid Kasuri's house was astonishingly large. Kasuri, as spokesman, did not dodge a single awkward or trap question. One could discern a change in media attitude during the press meet for the better. The next meeting of the group will be held in Delhi before the end of the year. I have several close friends in Lahore. All were worried

about the growth of Islamic fundamentalism and the real threat of the Taliban taking Pakistan in the wrong direction. Till I went to Lahore, I was not conscious that Pakistanis were in many parts of the country faced a threat to its existence and stability. Each day dozens of innocent people are being killed- children, women, the old and destitute. Hospitals, schools, mosques, universities were at the mercy of the suicide bombers. The number of madarsas was increasing. These were funded from outside Pakistan. 99% of the people of Pakistan were against these terrorists. There were, however some in the establishment who had a different orientation. The economic situation is far from good- less than 4% growth, I was told. Lahore is without electricity for many hours each day. Price rise is as serious as in India.

An unstable Pakistan is not in India's interest, is not a cliché. It is an absolute necessity. Make no mistake. Did our meet do any good. Yes. In a very modest way it contributed to the reduction of the trust deficit.

(Former Minister for External Affairs, distinguished author, diplomat and parliamentarian Shri Natwar Singh has kindly sent this article for publication in CPS Bulletin after his recent visit to Pakistan. Centre for Policy Studies offers its most grateful thanks to Shri Natwar Singh, one of India's most brilliant writers for his generous gesture.)

(CPS Bulletin June 2, 2010)

STRATEGIC CONTOURS OF INDIA - CHINA RELATIONS *OPPORTUNITIES & CHALLENGES*

Shri Shyam Saran

Chairman, RIS & and Former Foreign Secretary

Admiral Anup Singh, FOC-IN-C (East), Admiral Arun Prakash, Chairman NMF, Cmde Uday Bhaskar, General Bikram Singh, GOC-IN-C(EC), General Marwah CINCAN, Mr Shakti Sinha, Chief Secretary Andaman and Professor Prasanna Kumar, Regional Director NMF, distinguished guests ladies and gentlemen,

It is a great privilege for me, to visit the wonderful city of Vizag and also to deliver the keynote address, for what promises to be a wonderful and very lively discussion on 'Strategic Challenges on India and China relations'. I will not go into the details of India's China policy but I will try and give you a sense of key elements of it, while articulating one of the key challenges that India faces in years to come.

I pointed out that the great challenge for India is not just to cope with the rise of China but also to cope with simultaneous rise of India's capabilities, both economic and military capabilities. This gives rise to a complicated backdrop, offering us great challenges and equally important, numerous opportunities. When we talk about foreign policy or security strategy, what is it we are trying to achieve? What we are trying to achieve through foreign policy is, 'enable India to expand its strategic autonomy, which in very simple terms means that for the last several decades, the world has been governed by a small group of countries, those who sit on the side of table where rules are written, and rest of us sit on the other side where we have to follow the rules'. The destiny of India is to sit on the side of the table where rules are written.

It also means that, on critical issues which are of tremendous importance to India, issues which are of vital interest to India, there is an opportunity for India to take decisions which are essentially aligned to our interests and not having to adjust to the pressures and influences that come to bear on us. This is what an autonomous great power looks like. Sometimes we have the tendency to think as to who our friends are and who our enemies are. As a democratic power, our objective should be to get to a point where for every issue we have a set of alternatives available to us, because friends as well as enemies need to know that we have alternatives. When friends think that we do not have alternatives then we are taken for granted. When enemies know that we have alternatives, they immediately exercise restraint. Therefore in a broader sense we want to get to a point where we have a large number of alternatives available to us. Therefore, in dealing with China also, it is very important for us to project, that we also have a large number of alternatives.

When we look at the history of events leading to 1962, and the decision taken by China to launch 1962, what we find is that, there are a combination of both internal and external drivers, which led to 1962. Before the attacks were launched China made certain key foreign policy decisions, it first neutralized USA, through Warsaw pact, where they got an assurance that there are no intentions from USA to enter into any kind of conflict with China on Taiwan issue. Secondly due to Cuban crisis, Soviet Union assured China of assistance if there are any conflicts between India and China. Having ensured both these important flanks, China took a decision to launch 1962. Therefore it is very important in now dealing with China that we must make certain, that kind of international isolation does not occur.

In recent times we have seen that in 2005, during the visit of China's premier to India, we were able to achieve; China agreeing on the first ever document on settlement of boundary issues. This was possible for us because of India's own emergence economic, democratic and expanding military capability and the impact that these had on China and other countries. Therefore, it is very important for us to construct a set of relationships that give us alternatives and options in our relationships with China. Therefore, our linkages with East Asian countries, Naval relationship with countries like Indonesia, Japan, Australia play an important role in dealing with the emerging security situation in South East Asia and particularly with respect to India's relation with China.

China is very sensitive to its global growth and the changes that are taking place in international landscape. In that context, it sees that there are several international issues like climate change, international trade, G-20, and, in all these tactical alliances, it sees commonality with India. Therefore, while we are pursuing our agenda of competition with China, we should not forget that we have a certain amount of collaboration with China, on numerous issues. China certainly looks at India as an ally in numerous international forums, cognizant of the fact that India is an emerging economic power. Therefore, in areas where we have convergence of ideas, we should not deny ourselves working with China.

Hence in our relationship with China, there are numerous facets, most noticeable being the facet of competition, concern of rising China's naval power and proxy support to Pakistan to keep India tethered in Indian Sub-Continent, as also on border issues.

In dealing with our perceptions regarding Chinese threats, we must do whatever it needs to be done to build our capabilities, as also look at all the opportunities in building a balanced relationship with China. One must not forget to look at the economic relationship that we have with China, amounting to 60 billion dollars of bilateral trade. The manufacturing community in China would definitely look at India as a lucrative economic partner. The challenge for us therefore is how to leverage that economic interest so as to impact favorably on a number of Indo-China issues.

I would conclude by saying that the more we are able to appreciate, the varied facets to the India – China relationship, the more we will be able to get away from the negative legacy. We need to look at 'India China relations' with a degree of confidence and assurance since India has the wherewithal to be a strong economic front ranking power in the next coming decade. If this seminar can look at these different dimensions and come up with a more comprehensive picture of our relationship with China, I think it would have done a great service. I wish all of you a great success in your discussions and once again thank the National Maritime Foundation and also Eastern Naval Command for organising this seminar.

(Keynote Address at Seminar on *Strategic Contours of India-China Relations* on July 14, 2011)

(NMF Newsletter, July 2011)

STRATEGIC CONTOURS OF INDIA - CHINA RELATIONS - *DEALING WITH A HEGEMON*

Admiral (Retd) Arun Prakash

Former Chairman, National Maritime Foundation

Ex Chief of Naval Staff

I take this opportunity to convey my appreciation and gratitude to FOCINC East, V Adm Anup Singh, for having supported this very worthy endeavour. It couldn't have been done in better style than it has. Vizag is the Headquarters of Eastern Naval Command and is the sentinel of India's eastern littoral. Therefore it is a natural choice for becoming a centre of knowledge, expertise, data bank, for anything lying East of India, especially China. I hope this will be the beginning of an endeavour.

We have very poor institutional memory, we never make enough data, we know very little about China, who is bearing down on us, looming large on all our horizons. There are hardly any Mandarin speaking people in India, we don't study their history, we don't know their motivation and what makes them do whatever they are doing. On the other hand in China, there are thousands of scholars who speak our languages, know our history, geography, culture, and analyse what we do and predict, very often quite accurately what we are going to do. The same is not true of us, it is a cultural shortcoming, but we can try and make our foray.

I hope this will trigger a process by which if young people can absorb even 50% of what is said here, if it triggers the slightest interest in you, if it makes you read on the net, and google something or other that you have heard today, I think we have done well.

Also, I hope this will be an ongoing process. I must also make mention of the Regional Director of NMF, Professor Prasanna Kumar, and the sterling services that he has rendered to this organization, and to the maritime cause. Self propelled, self motivated person that he is, he has rendered yeoman service and I am fully grateful to him and I would like to express my appreciation for it.

It is also heartening to see that we had in our midst, the GOG-IN-C Eastern Army Command and also the CINC Andaman and Nicobar Command. It's a good sign of joint-manship. It would have been really nice to have a proffering of light blue but I'm told that the Eastern Air Force Command had other preoccupations. Hopefully this will not be the last such event, there will be others, and hopefully they will be scheduled in Kolkata or Shillong.

According to the programme I am supposed to forecast the future prospects of Sino-Indian relations. I am not going to do any such thing because it is a very foolhardy endeavour to do crystal gazing and try and make future predictions, especially after so many experts have stood here and given us insight from where we should be able to draw our own conclusions.

But the question that hangs over us is that why do nations do what they do? And that question has remained unanswered for centuries. It is the aspirations of the long term motive of the nation that makes strategic assessments so difficult and risky. Motivations are generally derived, provided we have the assessment of the capabilities and their stated intentions. Intentions are what people say what they are going to do but stated intentions are invariably unreliable. Therefore analysts have to read between the lines and decision makers have to base their decisions on capabilities. We heard this being said more than once yesterday. Nowhere is this more true than in the case of China because China lacks transparency, it's a totally opaque system. Rather than get into the philosophy of

international relations which is way above me, let me address a few issues which either came out here, in this auditorium or were brought out by officers whom I met during the tea break.

First of all, it was an officer in Olive Green who yesterday raised the question of what is the role of the Army if the Navy is going to do everything out at sea. Let me state a fundamental truth - the Navy used to have grand visions, and those of us who have read Mahan, will talk of sea control and power projection etc. But slowly it came to us, mainly due to Adm Raja Menon's writings and persuasions that the Indian Navy must come down to earth and realise the fact that wars are not won at sea. Wars are won on land. It is the armies of every nation who will win wars with boots on the ground. So whether it is sea control or command of the air or whatever you talk about, eventually it is the boots on the ground.

The Navy's doctrine and the strategy state that every operation that the Navy undertakes will have something or other to do with the Army. Supposing there is a confrontation with China - they are on the higher ground, they occupy the Tibetan Plateau, they have got tremendous communication within Tibet, TAR as they call it. What can the Indian Army possibly do even with the full support of the Indian Air Force. The Army will never be full strength there, because if there is something happening on the Eastern Front there will definitely be something happening on the Western Front, and vice-versa.

So we will have two fronts. So what is likely to be achievable in the North East? Stalemate at the best. And therefore the Navy should come to the support and rescue of the army at that juncture.

A mention was made of 1962 yesterday. Ambassador Shyam Saran said rightly to the civilian audience that let's not get hung up on what happened in 62, let's move on, we're a different India today. But also, it's a different China today. As far as the Armed Forces are concerned, I don't think we should ever forget 1962 because it has sparked many lessons for us and we should remember the lessons even if we get over the humiliation of that episode. There was a huge intelligence failure, the intelligence community let us down very badly, they misled our politicians. The other issue of concern is that intelligence has repeatedly been letting us down. In Sri Lanka we were let down, in 1965 we were surprised, in 1999 we were surprised. The Kargil Review Committee pointed out that intelligence needed to be fixed. Then we had 26/11 and day before yesterday again we were surprised, somebody said it was not an intelligence failure, it's because the terrorists operate in a very secretive manner. Obviously they will operate in a secret manner, they are not going to be overt about their intentions. So intelligence is one lesson we must take. Government had apathy towards national security prior to 62, then there was a little phase when they woke up and did something but this apathy is again recurrent. We meet a crisis and then go back to sleep again, but that's another lesson to be taken that we need to keep bringing home to our statesmen, to our bureaucracy, to our diplomats that national security is not an on-again-off-again kind of thing. We have to pursue national security as a continuum.

The Armed Forces do not participate in strategic decision making today, that has continued from 1947. Compromises are made now and then but it is still a big hole that needs to be fixed and that's one of the reasons why there are flaws in our national security. There are 17 commands in the Armed Forces, Army, Air Force and Navy, no two Commands are located in the same place. So if the Eastern theatre is to mount a joint operation, then somebody has to fly from Visakhapatnam to Kolkatta, somebody has to come from Shillong to Kolkatta or whatever, Chiefs of Staff or whatever. There are also many ways to plan a joint operation, if you don't plan jointly, you are heading for disaster, that is the crux of the matter today.

Somebody came on TV yesterday and said we are spending 5% of the budget, why is it that I and my children cannot walk on the streets of Mumbai without getting blown up. He is a common citizen on the street – he is right. We spent Rs 167,000 crores on the defence budget last year.

Very soon, in five or six years it will be Rs 300,000 crores, but are we getting the security worth that much? We are not, because of the slack in our system. We are very proud that we are buying 126 British or German or French aircraft, we are proud that Gorshkov is coming to us from Russia, an Akula is sailing down on lease, its nothing to be proud of.

64 years after independence we do not produce a single major weapon system. The audience pointed out that we don't make an internal combustion engine, why? Sheer slackness, intellectual lethargy. We have a huge Research and Development Organisation. Why have they not delivered any major weapon system? In 1952, when the Soviets were about to pull out from China, there was a directive from the leadership to say that before the Soviets go home, make sure you steal every bit of technological information you can get, and did. In the next 35 years, China reverse engineered every single item that the Armed Forces needed, from an AK-47 rifle to a tank, a ballistic missile to a diesel submarine, a nuclear submarine to the whole series of MIG fighter and the bomber. We have produced 4000 tanks in our ordnance factories in the last 30 years but when it comes to making our own tank we are still struggling. We have produced MIG 21s, thousands of aero engines, MIG 23 & MIG 27s but have not been able to master the technology.

I was in Beijing a month ago. It was a bilateral talk at a Track 2 event. When we tried to raise the issue of nuclear confidence building measures, short of laughing at us they said why are you talking of nuclear weapons? We do not think of India as the nuclear threat. 'Our nuclear weapons deterrent' are meant for somebody else. They said, we have nothing to do with Pakistan. It took me by surprise that here we were a nuclear weapon state and they do not believe they need to talk to us. The fact is that china has handed over plans, drawings and material for nuclear weapons, tested these, given missiles and set up the entire nuclear arsenal of Pakistan. This has never happened before ever, even the USA did not do this for the UK, making it a unique transaction in history. By setting up Pakistan as a nuclear weapon state China pushed us to become a nuclear power also. They have destabilised the sub-continent for many decades to come, and have disregarded India's vital interest. We need to think why China has done this in the sub-continent. They continue to supply conventional weapons to Pakistan. We need to ponder on this – why does China talk of Arunachal Pradesh, why do they protest when the Indian Prime Minister visits Arunachal Pradesh. There is a huge Chinese presence in Pakistan occupied Kashmir, there are Chinese soldiers who have changed the contours of the Sino – Indian border. I am not scare mongering or trying to create panic. We should look at China with our eyes open.

In the maritime sector, there are three or four factors that I wish to remind you. Professor A Prasanna Kumar brought out the decline of US power. US naval power will decline because ships are expensive while their economy is going down, they are not able to shoulder the responsibility that they were doing till now. In fact in 2005 Admiral Mike Mullen had mooted the proposal of a thousand ship Navy and he was looking for help from allies. The maritime space which is slowly being vacated by the US has to be filled up by the others. Definitely China is going to be there, India is going to be there, non state actors will be there, but we have to keep in mind that as the space is vacated by the US Navy, China is going to become a big player. It is not illegal or illegitimate, Chinese presence is to be expected.

One of the reasons is that China has huge economic disparities. When I was in Beijing for a few days, I saw only Mercedes vans, Lexus etc. The taxi I drove in was new Mercedes. When I tried to find out how a taxi driver could buy a car that costs Rs 30 laks in my country, I could not get an answer out of him, as his English was not good enough.

They have created a prosperous middle class, but from what I hear, there are other classes and sections of society that are deprived. So the Chinese Government is now obliged to bring everybody up to a certain level, to avoid social problems. This requires a sustained double digit GDP growth, supported by uninterrupted energy flow. This is the key reason why their maritime power must grow. Their shipbuilding industry is growing by leaps and bounds, shipping is growing, Chinese flagged merchant ships have increased in large numbers. There are reasons why the Chinese Navy must grow. It will come out into the IOR when they have sorted out the first island chain. Then, the Chinese Navy will be free to forge into the high seas and I think we will see the PLA Navy in the Indian Ocean. I'm not predicting that China will be a threat. Is a conflict inevitable? I don't think so. It doesn't make any sense for China to go to war. However, it could happen due to miscalculation, overconfidence, or just if somebody thinks he can get away with it. So you could have conflict and our job is to be prepared, if there is conflict.

Finally, I think I must put to you two theories of international relations, which I found quite fascinating. First is called the Hegemonic Stability theory which says that the international system will remain more stable if there is a hegemon. A hegemon is somebody who dominates everything around him. When there is a single hegemon the system remains more stable than when there are three or four hegemons. The other theory is called the Long Cycle theory propounded by George Modelski. By looking back about five hundred years he cites the example of Portugal, the Netherlands, Britain and postulates that hegemonic bubbles occur in a series of cycles. Countries come up and then they go down with each cycle being approximately a hundred years. According to his analysis, the US was the present hegemon and past hegemon, USA has now peaked, and therefore it is logical that some other hegemon will come up. I think it is also inevitable that China will become the hegemon. This is a fact that we have to accept and prepare for. What options do we have, how can we accelerate our growth, get our act together, generate more money, build up our Armed Forces so that we can match China.

Another alternative is we find allies either bigger or smaller than us so that we have a lot of friends who can collectively stand up to China. If that is not acceptable to our diplomatic postures then what I can suggest is to hold water, make sure there is no conflict, and give ourselves some breathing space. Our economy will in about 30 or 40 years put us in a position where we can assert ourselves.

Thank you, Jai Hind.

(Concluding Address at Seminar on *Strategic Contours of India-China Relations* on July 14, 2011)
(NMF Newsletter , July 2011)

THE EASTERN SEABOARD

OPPORTUNITIES AND CHALLENGES

Vice-Admiral **Anup Singh AVSM**, NM
FOC-in-Chief, Eastern Naval Command (Retd)

Ladies and Gentlemen, I have been asked to present a preamble to this seminar, titled “THE EASTERN SEABOARD — OPPORTUNITIES AND CHALLENGES”. To weigh each of these positives and negatives in the maritime domain off the East coast, one needs to first align oneself to the true perspective of this coast and not the picture that is being accepted as a “given” today. We are passing through a time that comes but rarely in the life of a nation and this country would be remiss if it did not capitalise on the opportunities that lie in wait at this watershed of economic resurgence in our history. Ours is a very consumption driven economy and that translates to more than the meaning of the term consumption for a country with a liberated, indeed an excited population—1.15 billion in all, with a fast demanding middle class that is about to match the total population of the United States. We seem to be taking all the growth in our stride, as if we were destined to reach here since 1947! But we seem to forget that India missed the industrial revolution, was under colonial rule for well over two centuries and was terribly short of food and money till as recently as 1991. Even now, what needs to be posited in our minds is the fact that there is a long way before the term “BPL” is decimated unless we accelerate the process of maximising the opportunities and pre-empting the challenges. How can this be achieved? By understanding the properties of our environment first.

To all intents and purposes, India is an island nation. This is because contemporary history and geography of this country’s North have dictated that a major part of the 15000 kms of our land borders are as good as non-existent — most being non negotiable, due to terrain or relationships, for any form of commerce. If you therefore apply the definition of an island nation to India, our opportunities and challenges would be best illustrated by reversing the map of the sub-continent. What do you see? You find a conspicuous asymmetry in an otherwise uniform and aesthetic landscape of a ‘goblet’ that the East and West walls of the Indian Ocean would have presented. This asymmetry is created by peninsular India driving a wedge right in the middle of the ocean. This asymmetry has mandated that all ships traversing East or West, must round the peninsular cape. Whilst this is an advantage in terms of “visibility” and “control” in times of crisis, it carries with itself the need to constantly monitor the seas hugging India which means surveillance and a check on activities, to maintain good order around India’s shores, and, in particular to ward off those hovering around these waters with mal-intent. One might ask the question: why this importance to the East? Is it only because the seminar is being held on the East coast? Or is it because the sun rises first in the East!! The answer lies in the neglected history of this coast. East is where our ancestral mariners first practiced the art of expedition — the Kalingas, Satavahanas, Cholas, Cheras, Pandyas, Pallavas, all went further East from this shore, for spreading culture, trade, goodwill and barter. This was eons before Eleanor Farjeon scripted her famous carol: “People Look East”, in 1928. And our ancestors were all the time looking and engaging East – from 300 BC ! Yet, we had to remind ourselves to “Look East” in the year 1991 ! This is because of the inexcusable neglect, starting with the 12th century, of the rich linkages we had established with the East. We are finally on track to revive the bonds and trade linkages but speed and magnitude need upliftment.

Let us now look at the opportunities that lie in wait for a maritime country, in whole. Firstly, we must remind ourselves of the fact that maritime countries are naturally blessed — endowed as they

are, not just by an EEZ, exploitation rights, a treasure trove of minerals on the sea bed, benefit of beaches, but most importantly, because they have access to the seas — the great common that connects Sweden to the Falkands just as it does for India and far away Canada. “So what?” you would say! But the contrast lies in those 44 land-locked countries that do not have access to the seas. There are no examples of landlocked countries with promise of development and growth except Austria and Switzerland — both in Europe. And yes, a strange example of a doubly landlocked country, Liechtenstein which lies sandwiched between those two countries! In all three cases, benefits of the industrial revolution, an abundance of natural resources and an inviting landscape for tourists have ensured unprecedented gains for these countries. Other than these three, every land locked country is a relative “have not” amidst its surrounding, only because it does not possess free access to the seas. So, the point to remember is that we are fortunate to possess a huge peninsula that provides -- not just access to the ‘great common’, but to all that the medium of water and the sea bed in the vast EEZ has on offer. In this backdrop, let us then see what riches lie on the Eastern Seaboard of India. One look at India’s relief map will show how good the East coast is, compared to the West. A sharp topographic gradient, a steeply shelving continental shelf, untapped riches of mineral resources, gas reserves, natural deep harbours, un-spoilt beaches..... Is there anything else one could ask for, except perhaps for cooler summers!

But with all these natural assets on the platter, just compare our ports with any other country’s —except those on Africa’s East coast. We still seem to be living in the early twentieth century in so far as the handling mechanisms, logistics and evacuation infrastructure in our ports are concerned. Just compare any of our major ports with those at Shanghai, Singapore or Hong Kong. The turnover ratio is a mind boggling 1:10 in a one to one comparison. Shanghai superseded Singapore as the highest turnover port in the world two years ago and claims a cargo handling capacity of nearly 700 million tons. Our largest capacity port that year, Kandla, managed only 70 million tons and all the 12 major and 187 intermediate and minor ports totaled a turnover of 710 million tons. Now, it is very easy to say that theirs’ is a manufacturing based economy and so obviously they need enormous handling capacity, etc. etc. Does that mean we can do with stagnated low capacities and archaic handling systems? Why do large container carriers and very large bulkers refuse to touch Indian ports? Because “time is money and patience is not”. Ports are the lifeblood of a maritime nation’s economy. They must remain contemporary in mechanization and logistics and evacuation efficiencies. Only then will India receive attention of the big ticket carrier companies to lift or land bulk cargo and containerized cargo with efficiency, without waiting periods and wasteful halts. We certainly need competition. For that to happen, aggressive modernization of major ports, licences to private sector landlord ports and leased ports will be the only answer to conspicuously raise the growth pattern of the economy and improve the employment base of the country.

Next is infrastructure and general real estate development. Compared to the West coast where real estate development has literally shot through the sky with little escape from the concrete jungle, the East has a great opportunity to do mega infrastructure planning and cater for the all important logistics network for offshore as well as onshore industry. This is possible while thousands of hectares of non arable land are available from Haldia to Tuticorin.

The steep gradient of the East coast that I spoke about earlier, is responsible for offering not only natural deep water ports, but also deep sea gas and oil wells so close to the shore. This property of the Eastern seaboard has helped, in no small measure, in exploration of huge gas reserves that are being tapped and easily transmitted in huge volumes. The distance is just about 30-40 nautical miles between the shore and the KG Basin deep water wells.

Gas find by Reliance holds promise of multiplication and competition as recent surveys have forecast. Recently this deep water shoreline has indeed attracted private players who are building a few ports, most of them being in Andhra Pradesh. The downstream effects will include easy accessibility of coal as 60% of our power plants; all of the steel plants and most core sector industry need coal as feed stock. But there is concurrent need for upgrading communication and logistic infrastructure for efficient connectivity with the hinterland. The need of the hour is for all the East coast states to urgently develop private ports, shipyards, rail and road connectivity of enhanced capacity and quality infrastructure to enable establishment of large mineral export nodes. In some cases the private port builders or owners should be made responsible for laying the evacuation infrastructure. In fact, Krishnapatnam port is already tying up deals with the state government and with a number of power producers for delivering coal through its own conveyor manifold fanning out tens of kms outwards from the port. Another downstream spin off is bulk export nodes for finished products like automobiles, mechanized systems, industrial mother machines etc. Development of contemporary ports will invite interest and capital for establishment of SEZs. To ensure railway carriage of goods for import/export including coal, iron ore, fertilizer, crude oil, etc. ports will have to create a rail network inside and link it with the nearest rail head outside port limits. This will ultimately add to the communication network that badly needs augmentation today. What better way to develop the country's infrastructure and connectivity layout!

Look at new shipyards. Located in deeper waters, they will be able to build huge ships – VLCCs and above. The only shipyard on the West coast, capable of building ships in the 100,000 ton range Cochin Shipyard Ltd, has so far been able to build only one ship in its maximum tonnage. Generally, it has been receiving orders for vessels of only 50-60,000 ton category. The first deep water shipyard in India is finally coming up, in the private sector, at Ennore and claims an ultimate capacity of 2,50,000 ton VLCCs. That should put India, in a very small measure, in the catalogue of the big league ship builders, for the very first time.

Having spoken about ports and shipyards let me touch upon coastal and inland water transport. Once again we are a maritime nation blessed by nature – both on the peninsular periphery as well as through the many rivers in the mainland. But realization of their invaluable potential has yet to dawn. The economic benefit of conveying cargo through coastal vessels is so contrasting to the road or rail mode that if exploited it can change the nature of commerce in India. A simple example would be the carrying capacity of a small coal carrier, say of 10,000 ton capacity that were to carry imported coal from Vizag port to Mangalore. The same cargo would need three freight trains and generally take more time than the ship. But most importantly, the cost of transporting by ship will be less than half that by rail and about a third of the mode of road transport. Similarly, if our inland waterways were to be seriously developed and utilized, they will prove a boon for economics of transportation, provide enormous opportunity for employment and multiply efficiencies in business.

Next, let us look at the most well known resource from the sea: fishing. One would say, who needs education on fishing! After all, it is a given, in any water body anywhere in the world! True. But few countries with such a long coastline as ours would leave this opportunity for the unorganized sector. The East coast of 2600 km has about 1500 coastal villages and an estimated 85-90,000 of the 215,000 fishing boats in Indian waters. Don't get impressed by these figures. Of these 85,000 boats on the East coast, only about 12-15,000 are mechanised and another 10,000 are "motorised" with inbuilt engines, or just slap-on motors. The rest, nearly 60,000 are traditional craft, manned by a little more than subsistence farmers. If this does not surprise you, then imagine that the no: of proper sea going

fishing trawlers, truly capable of deep sea fishing in the whole of peninsular India, is a paltry 192. And the share of the East coast is a princely figure of 80! Of the total potential of 2 to 2.5 million tons of marine fish on the East, we harvest only one million tons! But what is ironical is that most fishermen in trawling craft are engaged in only subsistence farming. What is harvested is mostly shallow water, near surface product.

In contrast, look at a country like Peru in South America. Till the sixties, nearly 60% of its GDP was contributed by fish, fishmeal, live species and sea food exports. Even now, Peru exports 2.5 million tons – mostly to North America and Europe, earning nearly 3 billion dollars annually. While Indian waters may not have exotic fish varieties like Scissortail Sergeant Major and Sturgeon Fish but our deep water tuna, deep water shrimp, deep water lobsters and crabs are exclusive varieties for America, Europe and East Asia.

Sadly, in the Indian EEZ, more fish die of old age, than of being harvested. What is needed to tap this opportunity is a fleet of deep sea fishing trawlers of long endurance with contemporary infrastructure and sufficient refrigerated space. This is an initiative that the private sector can be encouraged to seize with incentives of concessions and tax holidays in the initial years.

Let me now talk of tourism. Of the 5 million footfalls that India receives, less than a million come to the East coast. This is a pittance, given the potential and opportunity to promote and produce money for the economy and employment for the poor. The longest chain of Buddhist sites is along the East coast – far away from Bodh Gaya; the best nourished and least spoilt beaches are on the East coast; a rich reserve of heritage sites exists from Kolkata to Tuticorin; some of the best wildlife reserves and nature parks are in the Sunderbans; many of India's oldest temples too are in this region. What is needed is a plan to consolidate itineraries, loudly publicize our assets to the world, diversify management – perhaps even to the private sector to improve quality, ambience and infrastructure in the hospitality sector around these sites. It is then that India will also start receiving tourists in the tens of millions rather than just 4 or 5 million annually.

Last amongst opportunities, let me talk about the most obvious resource that we take for granted and whose available potential is never appreciated: nature. Present in bountiful, wind and solar energy are available 24 x 7 with zero investment. The East Coast of India gets more of everything from nature than the West. It receives more sunny days and greater constancy of wind round the year, presenting invaluable avenues for capturing energy and generating power through solar panels and wind mill units.

Challenges :

And now, the challenges that the East faces. The foremost is security and this audience needs no reminding that the world has changed, not since the Berlin wall; not since the Gulf war; nor since Osama Bin Laden, but since the advent of Guerilla warfare. Che Guevara's idea was revolution; however the asymmetric challenge today is not posed by revolutionaries but by vested states and misguided entities. Unfortunately, the Indian Ocean is fast assuming the title: "cradle of terrorism". From Afghanistan and West Asia in the West, to affiliates of Al Qaida in the East, the asymmetric threat from the sea has become the greatest challenge since 26/11 – a wakeup call for us, just as 9/11 was for America. The cliché "the sea is cruel" had a different significance when it was coined. It referred to the nature of the medium apart from the nuances of maritime warfare. Today however, practitioners of asymmetric warfare are turning this notion on its head. This has led to the need to keep our sea frontiers under constant surveillance which is not easy as, apart from the big ocean-going

vessels, it is the small boats, numbering close to 85,000 on the East coast, that need policing both from the air and through patrols on surface. But unlike on land or in the air, where paths and corridors are generally defined and well known, the sea medium has no “roads” that can be policed.

The task for a country like ours is unfathomable as fishing boats are free to traverse in unregulated fashion, anywhere and everywhere; they can also land anywhere on the coast, not just at earmarked harbours. An even more serious issue is the fact that due to low income levels in coastal villages, we have all along lived with unregistered vessels. This compounds the task of surveillance and examination of bonafides. To enable proper policing, we need to enforce registration, issue of identity cards and fitment of auto-identification systems on all vessels. To tide over the main challenge of asymmetric warfare, this task of enabling surveillance is, in itself, very challenging.

The threat is not merely limited to or from the maritime domain alone. The entire coastline which is studded with onshore and many offshore assets, remains at risk of terrorist attack putting national morale and the country’s economy at stake. To overcome this challenge requires alertness and pre-emption on all fronts. This means much more investment in security infrastructure as well as security forces at all levels.

The Maoist menace has been rearing its ugly head in recent times. Though witnessed in the hinterland so far, the coastal belt needs to be guarded against any ill conceived designs of this group of people whose main aim has been publicity of their actions.

To sum up, the list of opportunities on the East Coast is huge, much of it — recyclable and renewable. Time continues to fly and tide continues to run its course. If we want to grow at an impressive pace – designed to alleviate poverty and be counted amongst the economic power houses of the world, these opportunities are there for the asking.

But nothing in the world comes free of attendant burden even if the investment or inputs are freely available from nature. The challenges I just listed are real and must be guarded against. That requires investment, reorganization, allround alertness and synergy of effort amongst all stake holders.

If all the opportunities are tapped and all challenges pre-empted, India will never ever have to look back.

(Lecture delivered at the Seminar organized by the Visakhapatnam Regional Chapter of National Maritime Foundation on April 28, 2010) (CPS Bulletin Aug 2, 2010)

Joining the Indian Navy in 1973, Anup Singh held several key positions with distinction for thirty eight years and four months before his superannuation in October 2011. The author of the fabulous coffee-table book *‘A Salute To The Sword Arm - A Photo Essay on Western Fleet’* Vice Admiral Anup Singh took charge of the Eastern Naval Command, described as the *Eastern Shield*. The Vice Admiral nurtured the Visakhapatnam Regional Chapter of NMF just then established, with care and vision and organized a spectacular inaugural function and a high level seminar on April 27 and 28, 2010. In January 2011 he hosted a seminar on the history of Visakhapatnam and maritime tradition of Andhra Pradesh, India’s largest maritime state. Later he organized the prestigious two day national seminar on July 14 and 15, 2011, on *Strategic Contours of India-China Relations* with former foreign secretary Shyam Saran as the chief guest and leading analysts and experts taking part in it. Vice Admiral Anup Singh’s gesture of prefacing the intellectual exercise with a public lecture by Shri Shyam Saran on *Transition from Look East to Engaging East* for the benefit of the people of the city carved a niche in the hearts of the people for the Eastern Naval Command in particular and the navy in general.

K.S.MEMORIAL LECTURE

Shri Shiv Shankar Menon

National Security Advisor to the Prime Minister and Former Foreign Secretary

Dr. Sanjay Baru, Mrs Subrahmanyam, (whose birthday it is today) Cmde. Uday Bhaskar,
Ladies, Gentlemen and Friends,

I thank the Subbu Forum and the IIC for doing me the honour of asking me to deliver the first memorial lecture in memory of the late K. Subrahmanyam, (KS), a towering figure, a teacher to many of us, and someone who was central to debates on India's national security for over half a century.

This lecture is also a responsibility because of the very high standards of intellectual rigour and analysis that KS set in his lectures and writings. Many of you present here knew KS well. His intellectual sharpness was awe inspiring until you understood that it was an expression of his dedication to his craft and to the power of reason, and hid a sensitive appreciation of others beneath that forbidding exterior. Today every think tank in India which concerns itself with strategic affairs has people who worked with KS and whom he mentored. He combined those qualities of mind with personal courage, which became evident when he was on an Indian Airlines aircraft which was hijacked.

But I am not here to recount KS' life or his intellectual struggles with orthodoxy and political correctness in matters of national security.

Instead I would like to consider what K Subrahmanyam stood for in his professional life and the areas where he enriched our strategic culture. Let us first look at Indian strategic culture itself. Thereafter we might look at how KS changed the way that we in India look at some major security issues. And finally I will speculate on what would concern KS if he were looking at the world today

1) India's Strategic Culture

We often hear statements alleging that India lacks a strategic culture. Sadly this is more often heard from Indians than foreigners. One sometimes wonders whether the idea that India lacks a strategic culture was not useful in the past to those who did not wish to see India's weight translate into the effective exercise of power on the international stage. While one can understand foreigners spreading this idea, it is incomprehensible to me that some Indians should also believe this and still propagate this idea.

The most cogent expression of this idea was by George Tanham, a senior defence analyst at Rand Corporation in the early nineties. Frankly speaking, for a civilisation and state like India not to have a strategic culture is impossible. It is like someone claiming to be apolitical, which itself is a political choice. Many others see in India a strategic culture that is "more distinct and coherent than that of most contemporary nation states", according to Rodney W. Jones.

What is strategic culture and how can foreigners and Indians draw such diametrically opposite conclusions about India's strategic culture? As I have said before, the most comprehensive (but incomprehensible) definition I have seen is that: strategic culture is that set of shared beliefs, assumptions and modes of behaviour, derived from common experience and accepted narratives (both oral and written) that shape collective identity and relationships to other groups, and which determine appropriate ends and means for achieving security objectives. Or, to put it more intelligibly without the academic jargon, strategic culture is an identifiable set of basic assumptions about the nature of

international and military issues. This would involve both a central strategic paradigm (about the role of war in human affairs, the efficacy of force, the nature of the adversary, and so on), and a grand strategy or secondary assumptions about operational policy that flow from the assumptions. By this definition of course we in India have a strategic culture. It is an indigenous construct over millennia, modified considerably by our experience in the last two centuries. For instance, war and peace are continuing themes in Indian strategic culture. While not celebrating war the culture treats it as acceptable when good fights evil. Indian strategic culture has been comfortable with this contradiction. Both major Indian epics deal with wars, and treat rivalries as natural and normal Kautilya addressed the use of force in detail. While Gandhiji shunned the use of force and opposed violence in politics he was politically steely and unyielding, and accepted appropriate violence as unavoidable in certain circumstances. As a result of this acceptance of contradictions, Indian strategic culture supports ethical views that dovetail easily with international norms of conduct whether legal or on human rights, so long as they respect India's status. The traditional culture also has a strong pedagogical bias which is reflected in the way India chooses to negotiate, and in the attendant risk that any external compromise is seen domestically as surrender. One of the best descriptions of India's contemporary strategic culture is by Kanti Bajpai who pointed out differences between 'Nehruvians', neo-liberals and hyper-realists, stressed what is common to all three streams of Indian strategic thought, and described how they might differ on the best means but not on India's external goals. To summarise Bajpai, all three streams agree on the centrality of the sovereign state in international relations and recognise no higher authority; see interests, power and violence as the staples of international relations that states cannot ignore; and think that power comprises both military and economic capabilities at a minimum. Beyond this they differ on the best strategy and means to be adopted.

For 'Nehruvians' the natural state of anarchy can be mitigated by understandings between states, and to make preparations for war and a balance of power central to security and foreign policy is both ruinous and futile. For neoliberals mutual gain is a conditioning factor for the natural state of anarchy between states, particularly as they become interdependent. They therefore see economic power as a vital goal for states, to be achieved by free markets at home and free trade abroad. The hyperrealists are however pessimistic and do not believe in transformation, only endless cycles of inter-state threat, counter-threat, rivalry and conflict, where the risk of war is only managed by the threat and use of violence. For them the surest way to peace and stability is the accumulation of military power and the willingness to use force.

For Bajpai, relations with the USA provide an example of how this works in practice. All three streams recognise the USA as the only superpower and of real significance to India, and agree that it is no military threat to India but that it is a diplomatic threat at times with US policies affecting India collaterally, particularly in the region. Nehruvians see the USA as an imperial power that must be contained and cannot countenance any rivals, and they therefore seek multilateral answers to the preponderance of US power. On the other hand neoliberals take the opposite view, stressing how essential the USA is for India's own development, and believing that the US can be supportive of India's views and aspirations. Hyperrealists differ from both, arguing that the only way to build India into a military power of the first rank is to work with all those who might help, like the USA, but to realise the limits of that cooperation and its limited utility for India's security.

The elements of Indian strategic culture are evident in what is common to all three streams, Nehruvians, neoliberals and hyperrealists. The same elements are also evident in earlier Indian writings on statecraft, whether in Kautilya, the Mahabharata's Bhishmaparva, or even in Ashoka's edicts.

All regard the international system as anarchic, and see international relations as fundamentally power relations. In the practical application of that culture therefore, all three of today's Indian schools believe that nuclear weapons are essential for India's security in a world that shows no signs of moving to their abolition and elimination, and which is inhabited by threats to India's security.

It is this common strategic culture that we inherited, first clearly expressed and adapted for modern times by Prime Minister Jawaharlal Nehru, which explains the substantial agreement on values, on goals and even on means in our foreign policy, despite marked and rapid changes in the external environment in which we have operated. That is why the core traits of our foreign policies have persisted since independence, irrespective of the parties in power. Our goals have stayed constant even as the means available to us have increased and as the world around us has become more complex and more linked to our own development.

For instance, our actions in 1971 should have been no surprise to anyone who had bothered to study our strategic culture. Both our major epics, the Mahabharata and the Ramayana, are about wars and treat them as natural and normal, not celebrating them but as necessary instruments of statecraft, justified when good fights evil. This says something about war and peace as themes in our strategic culture.

We are sometimes asked how the non-violent land of Gandhi could do what we did in 1971. As Gandhiji himself said in "The Gita and Satyagraha",

"I do believe that when there is only a choice between cowardice and violence, I would advise violence. Thus when my eldest son asked what he should have done, had he been present when I was almost fatally assaulted in 1908, whether he should have run away and seen me killed or whether he should have used his physical force which he could have wanted to use, and defend me, I told him that it was his duty to defend me even by using violence..... I would rather have India resort to arms in order to defend her honour than that she should, in a cowardly manner, become or remain a helpless witness to her dishonour."

In saying so Gandhiji was expressing ideas and a political rationalism whose roots one can trace back to India's ancient history, to Kautilya or Ashoka, whichever you prefer.

KS' Contributions

It would be clear from this brief description of Indian strategic culture that KS stood squarely in a long tradition of thought and attitudes, but applied it creatively to the vastly changed circumstances of the second half of the twentieth century and the last decade. That his ideas faced resistance because they were new was natural. But so was their ultimate acceptance as orthodoxy, since they implicitly were a development of a long tradition of Indian strategic thought.

Let me try to list some of the more significant contributions that he made to Indian strategic thinking and culture. Five aspects in particular struck me as significant and relevant today.

"Bomb-mama" and our Nuclear Doctrine:

When KS began speaking of the need for India to build a nuclear weapon as the most cost effective solution to our unique situation, his was a lonely voice in India. It took years of steady and unrelenting argument and persuasion, (and, quite frankly, the actions of the NWS') for his ideas to be widely accepted. He persuaded us of the idea of nuclear weapons as political rather than war-fighting weapons.

And when we did conduct nuclear weapon tests in 1998, it was natural that it was to KS as Chairperson of the NSAB that we turned to articulate the doctrine that governs the use and control of India's nuclear weapons. (Pakistan, who tested soon thereafter, has yet to articulate its doctrine, which says something about the different strategic cultures at play in the sub-continent.)

It is easy to underestimate the significance of what KS did to teach us how to think about nuclear weapons in a democracy. The ideas that Indian nuclear weapons would only be used in retaliation, that they would remain firmly under civilian control, that deterrence required massive retaliation and therefore assured survivability creating a second strike capability, were all first articulated by KS. Today we take them for granted.

He also maintained the link with our traditional emphasis on disarmament, making it clear that it was because our security was threatened and the other NWS had not responded to our calls for general and complete nuclear disarmament that we were compelled to weaponise, and that we remained willing to disarm under legally binding commitments and timeframes accepted by all the NWS along with matching commitments from the NNWS.

We also owe to KS the very vocabulary that we now use in discussing India's nuclear weapons programme. When KS began writing in public on the subject, the vocabulary of nuclear weapons policy was that created and developed in the context of the nuclear arms race between the US and the Soviet Union. Its relevance to the Indian, or for that matter the Chinese, situation has always been limited. (In 2006 Chinese and US arms control experts realised after decades of talks that they needed a mutually agreed bilingual glossary to minimise misunderstanding. It took eighteen months to reach agreement on 1,000 terms relating to nuclear security. But there was still no consensus on key concepts like "limited deterrence" and "minimal deterrence" or "deterrence" itself!!) In our case, we are still in the process of developing our own vocabulary and concepts, building on the work of the pioneers.

Defence and Development:

When KS first began to write on defence issues in the sixties, the conventional wisdom was that every rupee spent on defence was a rupee snatched from development or feeding our people. The 'guns vs. butter' argument was natural in a country where government and individuals were poor and hunger was rampant. KS was one of the few after Sardar Patel to argue that economic development needed a sound defence as a prerequisite. He also went on to argue that the economic spin-offs from defence spending were not inconsiderable in terms of growth and technological independence. He had a vision which was rare for that time of what defence as a sector could mean to the national economy, driving technological modernisation and growth by providing non-inflationary consumption. That we have not yet realised that vision in practice, despite exponential growth in resources available for defence, is not because his ideas were faulty but because they were never implemented. This debate on defence and development is one that still continues and is unsettled to this day.

National Security Structures – The Kargil Review Committee and the GOM:

If India was the first parliamentary democracy to attempt to harness the advantages of a National Security Council system, and has constructed structures for this purpose in the last ten years, many of the initial conceptions and ideas can be traced back to KS' writings and those of his generation. A lifetime worth of thought was compressed into the Kargil Review Committee's report and many of those recommendations were later adopted by the GOM.

Strategic Autonomy in thought and deed:

The one thread that ran through all of KS' writings was the need to increase India's real strategic autonomy. By this he never meant cutting ourselves off from the world. He realised that this would doom us to eternal technological mediocrity and leave us vulnerable to even minor threats. Instead he envisaged India working with other countries as equal partners, as an active participant in the shaping of international outcomes and, ultimately, the international system itself. For him non-alignment was a strategy, not an ideology. As a flexible realist he responded to changes in the international situation facing India: In the sixties he advocated India reaching out to the US; post-1971 he was a strong advocate of the Indo-Soviet relationship; after 1991, and particularly after 2005, he was impatient with our tardiness in grasping the strategic opportunities that he thought had opened up for India.

This was not mere opportunism. He was a strong nationalist, rejecting US conditionalities for military assistance after 1962; driving hard bargains with the USSR as Secretary Defence Production in 1979; and, resisting policy choices that would have constrained our nuclear options in the seventies.

Values in National Security Strategy; Realism-plus:

What made KS' realism different from the common or garden variety of Western realism was his ability to combine a strong commitment to the basic values of the Indian Republic, (of secularism, democracy and pluralism), with his realist pursuit of national interest. I suppose one could call this the "realist-plus" approach. He was an advocate of value based relationships: with the US and others on democracy, with Russia on secularism, and with Europe on liberalism. He often argued that there was no real contradiction between the promotion of democracy and the pursuit of India's interests in our neighbourhood. I remember heated discussions in the JIC when KS was chair in 1977-78. The example used by both sides of the argument was Pakistan, where democratic governments had been well-meaning but ineffective while military regimes had promised delivery but presided over a basically unsatisfactory relationship with India. It is an argument that still resonates in India today. But there was no question where KS stood on this defining issue.

KS argued that the values in the Indian Constitution – secularism, pluralism, democracy and quasi-federalism — were imperative to hold India together in the 20th century. India is alone, along with the USA in an earlier age, in seeking to industrialise and accumulate power as a democracy. All the other major nations of the world industrialised and gathered power before they became democratic. KS felt that this was why the rise of India, like the 19th century rise of the US, would not arouse the concerns, conflicts and reactions that the rise of other powers throughout history have provoked. For him it was and remains a matter of India's self interest to help to build a democratic, pluralistic and secular world order.

To my mind, perhaps the greatest contribution that KS made to intellectual discourse in India was to bring us back to the Indian realist tradition, one of the few realist traditions in the world that has a place of pride for values. KS' writings and work re-taught us how to think strategically. He taught us that strategy is not just about outdoing an adversary who is trying to do the same to you. It is also about finding cooperative solutions and creating outcomes in non-zero-sum situations, (which are most of our lives), even when others are motivated by self-interest and not benevolence. Strategy is the art of creating outcomes that further your national interest and values, and includes putting yourself in others' shoes so as to predict and influence what they do.

The measure of his success is the extent to which these ideas are now commonly accepted and no longer strike us as extreme. Not very long ago, in the living memory of my generation, this was not so.

KS' Concerns Today

What would have concerned KS today?

Shortly before he died KS sent me four papers that he was working on. One was unfinished and the others were unpolished. The papers were nothing if not ambitious and magisterial, as one would expect from him.

They were on an Indian Grand Strategy for the first half of the 21st Century, Indian Defence Policy, Nuclear Deterrent in the Indian Context, and India in the 21st Century. I do hope the KS Forum and the Subrahmanyam family will see their way to publishing these papers.

Reading these papers today, when uncertainty in the international system is at unprecedented levels and as we seem to be entering a new phase of the world economy, one is struck by how his “realist-plus” perspective seems best suited to describe what we see around us, and to chart a course forward. We are in a world where there are few certainties, where coalitions form around issues and alliances are permeable, where power is increasingly shared but unevenly among several major powers, and where conflicts are asymmetric. This is a world with which the Indian state system was familiar for most of our pre-modern history, a world where Krishna, Bhishma and Kautilya would all feel equally at home. So it seems logical that we should return to our strategic culture as made modern by thinkers like KS to seek answers to the questions we face.

Conclusion

If India is to deal with the issues of the new twenty-first century world, it is essential that we further elaborate our own culture and tradition of strategic thought. So long as India's situation and needs are unique, we must encourage our own ways of looking at developments, and develop our own strategic culture, vocabulary and doctrine. To do so would be appropriate tribute to KS. Fortunately for us, there is no isolationist streak in our strategic thought so far, and we have a rich tradition to draw on. Ironically, the greater our capabilities, the more we need the world and are integrated into it. So, if anything, the need for and the rewards of studying our strategic culture will grow with time.

(K. Subrahmanyam who passed away last year was an outstanding strategic thinker, prolific writer and institution builder whose advice was sought and received with respect and admiration by policy-makers think-tanks, academia and public intellectuals. On sensitive subjects like security, nuclear power, defence and strategic affairs he spoke and wrote with the wisdom of an oracle and vision of a statesman. The renowned civil servant and scholar-intellectual was also admired for the qualities of his head and heart and simple living. He was affectionately known as ‘Subbu’ ‘or K.Subs’. The first K.S. Memorial lecture delivered recently by Shri Shiv Shankar Menon, National Security Adviser and former Foreign Secretary, is being published here thanks to Cmde. Uday Bhaskar, former Director ISDA and NMF.)

(CPS Bulletin April 2, 2012)

REVIEW OF INDIA'S DEFENCE POLICY

Cmde. C. Uday Bhaskar

Former Director, National Maritime Foundation & Ex Director IDSA

November 2011 is an opportune moment to review the appropriateness of the defence policy that India has been pursuing to manage the complex national security (NS) challenges it has been dealing with since August 1947. The short assessment is that the existing higher defence management policies are far from adequate and mired in institutional stasis and occasionally animated by individual brilliance. If indeed India has 'managed' its diverse national security challenges - and also come up with some extraordinary military successes such as the Bangladesh war of 1971 - it has been more due to that distinctive Indian characteristic - 'jugaad' - or innovative improvisation - and the resilience of the Indian jawan/citizen.

Macro defence and security policy formulation in India is a bleak domain that has bedevilled successive governments, going back to PM Jawaharlal Nehru and right up to the NDA-UPA continuum. Extrapolating from the Churchill observation of 1936, it may be averred that, apropos national security, the Indian political apex has chosen to remain "in strange paradox, decided only to be undecided, resolved to be irresolute, adamant for drift, solid for fluidity, all-powerful to be impotent."

Recent events over the last year plus, drawn from the wide spectrum national security challenge illustrate this tenacious Indian penchant to retain the status quo and allow the policy drift to continue. The collective Indian public memory has little recall of the 1962 war with China - and the current focus is on terrorism and its many tentacles.

The third anniversary of the Mumbai terrorist attack was observed on Nov 26, pointing to one end of the NS spectrum, against a backdrop of the Pakistani right wing party - the Jamat ud Dawa (JUD) spewing venom against India on the streets of Lahore.

Coincidentally, just a day earlier (Nov 25), a cryptic announcement was made by the Indian MEA that the 15th Round of the India-China border talks between the two Special Representatives scheduled for November 28 had been postponed. Deemed to be 'unusual', the last minute postponement was attributed to scheduling problems. However, this may be the preferred public posture by both Asian giants - who are also geographically contiguous - but politically distant. Reliable sources attribute this unusual step to Indian discomfiture over the Chinese position on the status of Jammu and Kashmir. The centrality of the Kashmir issue in the bi-lateral India-Pakistan relationship and the fact that Pakistan had unilaterally ceded part of the disputed J&K territory to China in 1963 have only compounded an already tangled issue.

India's national security challenges may be interrogated at three discrete levels - the upper-end being the prevailing WMD / cyber-space environment wherein India has joined a select few by declaring itself as a de-facto state with nuclear weapons (SNW) and a satellite capable entity; the lower end is the Mumbai syndrome - the terrorism challenge that has been stoked assiduously by the Pakistani establishment; and the middle-ground is occupied by the traditional challenges including defence of territorial integrity and national sovereignty.

The challenges that have been mounted against Indian security interests are almost co-terminus with the attainment of independence in August 1947. In October of that year, a nascent free India was called upon to 'defend' the state of Jammu and Kashmir which was being threatened by Pakistani

troops and a horde of tribal irregulars - a pattern that was to be repeated in Kargil in 1999. The challenge was resolutely met - the Indian military improvising with heroic professionalism - but the political handling of a pernicious challenge to the idea of India was far from astute and Mumbai of 2008 is a manifestation of a wound that festers.

Did India learn the appropriate lessons and formulate the right national security policies? The answer, alas, is in the negative and consequently the 1962 war with China over contested territoriality turned into a national humiliation - and PM Nehru never recovered from this trauma. China is the scar that abides and notwithstanding the rapprochement that began in 1988 under PM Rajiv Gandhi, the last two decades have seen the asymmetry between the two neighbours grow in Beijing's favour.

In the last two decades since the end of the Cold War, there has been a gradual re-appraisal of India's holistic military security capabilities and the need to bolster this strand of national power - but the progress has been halting due to inadequate macro-policy co-ordination. Thus India exercised its long held nuclear option and acquired nuclear weapons in May 1998 - but a decade plus later, the texture of the Indian deterrent is uneven. Two examples are self-explanatory. A nuclear weapon state must acquire and exude both credibility and transparency in its command and control of this apocalyptic capability in the pursuit of deterrence and stability. Although it is understood that the designation of an alternate nuclear command authority is mandated by the 2003 Nuclear Doctrine, the Indian political apex has demurred from publicly making this known. Consequently, to the detriment of its credibility, the chain of control over the nuclear deterrent, should we come lose the PM in a first strike, remains unknown to Indians and adversaries alike. The Indian doctrine of a no-first-use would call for very high levels of operational readiness - and an anomalous situation prevails.

Currently the Indian nuclear deterrent is operationally nurtured by the C-in-C, SFC - a three star officer and the apex is the Chairman of the Chiefs of Staff Committee (COSC) - a rotational post held by the senior-most service Chief. However this is a very unsatisfactory macro-policy arrangement as Admiral Arun Prakash - a former naval Chief and Chairman COSC points out: "The Chairman COSC happens to be a key functionary in the nuclear command chain, and his role will assume further criticality with the induction of weapon systems like the nuclear submarine INS Arihant (which will go on patrol with nuclear-tipped missiles) and the Agni-V ICBM."

Yet in its wisdom, since May 1998, the Indian political apex has neither found the time nor the inclination to rectify the anomalous situation that prevails, as regards a nuclear capable nation that is wedded to NFU. As Prakash further adds: "A look at the tenures of eleven Chairmen of the COSC, who held office between 2000 and 2011, shows some startling statistics. Four of them served for less than six months (one of them, for only 30 days), six served between 6 and 12 months, and only three served for over one year. No Chairman got to serve for two years. This clearly demonstrates how little importance the GoI accords to this office(and) even more incongruous, for a nuclear weapon state, is to allocate this onerous responsibility to a part-time incumbent on rotational basis!" (interview with author).

The poverty of effective policy review and re-formulation is even more starkly evidenced in the continuing Indian grapple with terrorism that has a state sponsored, nuclear element embedded in it. For India this malignancy began in the summer of 1990 in J&K, flared up in Mumbai in 1993 and recurred episodically with the Kargil war of May 1999, followed by the terrorist attack on the Indian parliament in December 2001 and peaked in the carnage of Mumbai in November 2008.

Regrettably the long-term policy response has been stubbornly reactive and short-lived. To its credit, the NDA government led by PM Vajpayee instituted the Subrahmanyam Commission which

rendered the most comprehensive report on the Kargil failure in particular and the larger issue of higher defence management in general in early 2000. Valuable non acrimonious recommendations were made seeking a radical review of the existing higher defence lattice - and in an unprecedented initiative, part of this KRC report was placed in the public domain thanks to the perseverance of the late K Subrahmanyam.

The NDA government swiftly constituted a Group of Ministers to take forward the recommendations into the policy domain as derived from four different Task Forces comprising very eminent professionals. But in typical Indian tradition, the truly radical decisions that need political determination and sagacity were postponed. The re-structuring of existing stove-pipes between the main Ministries and the intelligence agencies and the troubled civil-military interface was tinkered with, but not boldly re-cast as was recommended. Consequently the military remained outside the policy loop, internal security remained the turf of the Home Ministry and the appointment of an empowered Chief of Defence Staff kept on perpetual hold. The Indian political apex proved yet again that they could cross a difficult chasm not in two leaps (as in the nuclear decision) but even three - and remain suspended in mid-air!

What have been the deleterious effects of such an inadequate national security policy approach - and who has paid the price for this fidelity to the status quo? The martyrs and injured veterans of the various wars since October 1947 and the growing number of the victims of terrorism have paid in blood. At the national level, much needed tangible military capability has been mortgaged to short-term institutional interests and both ineptitude and turpitude have combined to denude comprehensive national strength.

Consequently, for all the rhetoric about India's imposing military profile, (India is ranked 4th in the Global Fire Power hierarchy after the USA, Russia and China) the objective truth is far more modest. India is a highly vulnerable military power with little indigenous inventory capability. The Indian achievements in the missile, nuclear and space realms are indeed a case of commendable stoicism and perseverance in the face of very adverse circumstances - but the inability to design and cost-effectively produce major platforms for the military is cause for embarrassment. For example, the much hyped Indian main battle tank, the Arjun was conceived in 1972 and finally entered service only in March 2011 - and that too in a hesitant manner.

The trajectory of the IJT and the LCA for the Air Force are similarly depressing and the onus for such dismal performance in the field of indigenous defence production is not with the scientists and their support base - but the apex that is charged with macro-policy formulation. Techno-strategic and industrial audits are rarely done in a constructive manner and India's most expensive policy blunder must be the hasty closing down of the HDW submarine construction in the late 1980's line due to political considerations. Similarly the baby went out with the bathwater when M/s Bofors of Sweden were blacklisted in a knee-jerk reaction in 1986, and the Indian Army has not been able to induct a new artillery piece since.

Is the government of the day aware of the need for a policy review? Yes - but in an effete manner. The Rama Rao Committee set up by UPA I to review the Indian DRDO and the indigenous defence sector did a stellar job but the report remains shrouded in secrecy and has not received the attention it deserves in the public domain or the appropriate parliamentary forum.

Is there a long-term policy for military acquisitions that will contribute to the goal of reasonable indigenous production in the future? Sagacious national security management would recommend such a course of action - but whether it happens is moot. In 2011, the much awaited decision on the

Indian fighter aircraft reached laborious closure, with two European options being short-listed. Given the cross of the Bofors-HDW scandals, the political apex opted to go for what is being termed as a decision based on 'technical' considerations alone. However this may be a politically 'safe' decision - but its long-term sagacity and strategic rationale is elusive.

The institutional dissonance between the civilian spectrum (represented by the political class and the permanent bureaucracy) and the Indian military, in the absence of confident and reasonably clear policy under-pinning is only serving to further exacerbate an inadequate national security ethos. The unseemly fracas over the date of birth and tenure of the Army Chief, General VK Singh and the controversy generated over the AFSPA in J&K are case in point. Were these omissions due to a policy void - or worse - deliberate policy choices?

Many of India's capabilities - both economic and military are more notional and perceived, than tangible and tested. At a time when India's national security challenges are becoming more complex and contested - the policy contours remain inadequate. As an analyst, one would identify political pusillanimity and domain diffidence as the two areas that need immediate and objective redress. Absent this determination, the Churchill prognosis may have to be qualified - independent India can neither govern itself equitably nor defend itself effectively. *Mera Bharat mahan.*

(Courtesy : *SALUTE* Feb-March 2012)

Chitrapu Uday Bhaskar was born in Visakhapatnam and educated in local schools. He studied at the Sainik School at nearby Korukonda before gravitating to Delhi for higher studies. He joined the Indian Navy and served it for 37 years. He was associated with Institute for Defence Studies and Analyses (IDSA) from 1990, served as Deputy director from 1996 to 2004, and as a Officiating director of IDSA from 2004 to 2005. Later, he was appointed as secretary to the Government of India's task force on Global Strategic Developments. He became Director of National Maritime Foundation in 2007. During his tenure NMF established regional chapters at Chennai and Visakhapatnam. He worked as Editor of Maritime Affairs and Strategic Analysis - currently, serving on the editorial board of Contemporary Security Policy. He edited books on nuclear, maritime, and international security related issues; and contributed over sixty research-articles to reputed journals, both in India and abroad—US Naval Institute Proceedings, Studies in Conflict and Terrorism, and the Bulletin of Atomic Scientists - and in books published by the US Naval War College and Royal Navy Defence studies. He is one of India's leading experts on security and strategic affairs.

THE CITY OLDER THAN TIME

Prof. Manoj Das

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Wrote Mark Twain in the last decade of the 19th Century, tongue-in-cheek, 'Varanasi is older than history, older than tradition, older even than legend, and looks twice as old as all of them put together.' And yet another traveller, Rev.M.A.Sherring, wrote, 'Twenty-six centuries ago at least it was famous, when Babylon was struggling with Nineveh for supremacy; when Tyne was planting her colonies, when Athens was growing in strength, before Rome had become known or Greece had contended with Persia, she (Varanasi) had already risen to greatness.'

The city lay dazed under a pouring rain when I made my way into it. I enjoyed it, for in that atmosphere impenetrable and opaque throbbed the spirit of Varanasi – primeval and irresistible. Many are the cities boasting of great antiquity, but their origin can be traced either in history or legends. So far as Varanasi was concerned, to ask who founded the city would be as good as asking who founded the Himalayas, as Edwin Greaves observed.

According to a legend the three wise men of the East who went to greet the infant Jesus included the King of Varanasi. (Some other legends identify them as three Brahmins from India or Persian disciples of a Brahmin). King Solomon is believed to have imported to Israel a troop of monkeys and a muster of peacocks from Varanasi. That was a thousand years before the birth of Christ.

And who can say how many times the Bodhisattvas, the Buddha's earlier incarnations, had traversed the narrow zigzag roads of Varanasi – as a prince, as a mendicant, as a merchant or Shresthi (the original word for the current Seth), as a student and even as an animal, for most of the Jataka stories begin with 'It happened when King Brahmadatta ruled Varanasi'!

The sattva or essence (we cannot call it soul because Buddhism does not entertain the idea of soul) which, saturated with experiences gained over numerous lives, was at last born as Siddhartha and, through further asceticism, became the Enlightened One, chose to launch his mission of preaching Nirvana from the outskirts of Varanasi.

The road through which I was driving had also been trod by great souls like Mahavira Jina and Shankaracharya in a remote past, and by Kabir, Tulsidas and Tailanga Swami of later times, among countless other spiritual figures. Indeed, countless is the word.

The pouring rain proved a blessing for me, even in a practical way. It had barred crowds from thronging the shrine of the presiding deity of the city, Viswanath. For a minute or two, there was hardly anybody else at the shrine excepting my young friend and guide, Dr.Saroj and I. Even the monkeys had taken a day off. However, one of them, obviously a 'dada' of sorts, came leaping towards us, sported what I interpreted as a meaningful smile, and then retreated. It seemed to tell us, 'Don't believe all that the feringhees have written about us – that we slap the pilgrims or snatch away their bags and sticks or even kidnap an infant from a mother's lap and detain it as hostage until appeased with gifts! These things may not be utterly false, but are exaggerated. No doubt we shake our brains to evolve ways to earn a living and you can brand our actions naughty, but you need not envy us, for I assure you that we can never excel you, our human brethren, on such counts.'

An unusually large bull quietly stood blocking a lane and ruminating, eyes shut. It enjoyed the rain, but a devotee, despite being harassed by the downpour, was bent on feeding it with a banana. He

held the fruit close to its mouth and coaxed it to take it in, but the bull remained unobliging. The devotee must have viewed the holy one's rejection of his offering as inauspicious.

No wonder, looking back after two minutes, I should find him still suffering the rain and trying to win the creature's favour. I wished him success. Like hundreds of other temples in Varanasi the Viswanath temple was damaged or destroyed more than once between the 12th and the 17th centuries. Its last scourge had been Aurangzeb. The ruling queen of Indore, Ahalyabai, reconstructed it and Maharaja Ranjit Singh of Punjab covered its crown with gold. Sightless though in his left eye, this farsighted monarch knew that times were changing and no plunderer would dare to tear away his valuable offering.

Alas, the wealth plundered from the temples of Varanasi, time and again, was incalculable. Muhammad Ghuri's general, Kudbuddin Aibak, alone, had to engage 400 camels to carry his booty, according to records left by the chroniclers travelling with the invaders.

The early shrine of Viswanath was probably elsewhere. Its builder, according to tradition, was King Divodas – a character belonging to the dusky dawn of history. Shiva and Varanasi were of course always inseparable. But for some reason, annoyed with Divodas, the great God deserted the city. He returned when Divodas invoked His Grace, after building an impressive abode for Him. Some historians interpret the legend as the temporary dominance of Buddhism, at the cost of Saivism, over Varanasi, and the subsequent reassertion of the latter. I do not know, for Divodas appears to be a pre-Buddhist king, according to numerous signs.

By late afternoon the rain had stopped, though clouds galore sealed the sky. We boarded a boat at the Ghat renowned as Dasaswamedh in memory of Brahma performing ten Aswamedh Yajnas on the spot in mythical times. The boatman first took us near Manikarnika Ghat (so named because here the ear-jewel of Vishnu had got immersed in the river) where half a dozen pyres were burning, and then, in the opposite direction, along the line of palaces of the erstwhile Maharajas. Most of them were evidently uncared for and on the balcony of one hung some tattered and soiled clothes.

'They are no longer in royal use, Sir; they are sold away to ordinary people like me, chunk by chunk – even room by room,' informed our helmsman.

The Maharajas built palaces in several big cities to enjoy life, but here they did so to enjoy death, for death at Varanasi, both for the king and the commoner, was an easy passage to the heavens.

It started drizzling. The helmsman at once brought out an umbrella and handed it over to us.

'What about you?'

'We are accustomed to rains and storms. But look. Do you know the name of this Ghat? This is Harischandra Ghat.'

Through the drizzle and dusk flashed the scene I used to witness in village operas in my childhood – undoubtedly one of the most moving scenes in the literatures of the world. King Harishchandra, true to his promise, has surrendered everything he had to Visvamitra and is reduced to a pauper. His queen Saivya is a maidservant in a household and maintains her little son Rohit with her meager earnings. She does not know where her husband is. The son, bitten by a snake, dies. But she is not allowed to absent herself from her duties even to carry the dead child for cremation. She can do so only at midnight. The man who guards the cremation ground must collect his master's fee for allowing

the facility to be used, even though the queen has nothing to give him. Through a heart-breaking exchange they come to discover the identity of each other: the guard was none other than King Harishchandra himself! Both decide to die in their son's funeral pyre.

But their misfortune has come to an end. The apparently heartless Visvamitra reveals his compassionate self. Everything, including the dead son, is restored to the couple - and their endurance and truthfulness remain an all-time example for people in the grip of misfortune.

We hurried to the shore before the clouds melted into a fresh downpour. From my room in the hotel I tried to feel the heartthrobs of a timeless Varanasi through moments cool and lonely – and remembered C.A.Kelly's poem written in the 19th century:

*Thy Gods have wrapt thee round as with a shroud,
Saintly Benares, where from morn till night,
From mosque-crowned street and temple-haunted height,
Throb out the voiceful murmurs of the crowd,
Over thy hallowed Ganges echoing loud;
While in the deep nook of each flower-clasped shrine,
Ever the speechless Shape, in calm divine,
Broods o'er the suppliant heads before him bowed.
But the majestic River rolls beneath,
Serene, relentless, bearing towards the sea
The dust of those, who, happy in their death,
By her blest margin meet Eternity.
Last, the clear sunset throws a golden wreath,
And the sweet Night sinks down all silently.*

* * *

(From 'My Little India')

(CPS Bulletin April 2, 20010)

A seer among scholars the venerable Prof Manoj Das who lives in Aurobindo Ashram, Auroville and teaches at Sri Aurobindo International Centre of Education has graciously permitted the publication of this essay from his book *My Little India*.

GREAT EXPECTATIONS

Shri K. Chakravarthi IAS(Retd)

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Prasanthi Nilayam

Salutations at the Lotus Feet of Bhagavan. Esteemed Vice-Chancellor and Teacher-friends. Not having been a teacher, I cannot tell you what you should be doing as teachers. I can at best tell you what I would expect of my teacher as a student then, and as a continuing student even after entering the Administrative Service. By being so, I have escaped the plaintive cry of the poet, “Breathes there a man with soul so dead?”

I would expect of my teacher to have great scholarship - a scholarship that's so forbidding that my respect towards him is spontaneous. He would have wide reading and deep understanding. He would be an engaging conversationalist who would take me through the complexities of the subject with effortless ease. He would render the most difficult concept so elusively simple. He would choose his words with great care so as to convey the full import of his communications. He would be a great storehouse of information, a great repository of knowledge and a symbol of wisdom in such a way that he defies the poet T S Eliot when he complains “Where is the wisdom, lost in knowledge, where's the knowledge lost in information?”

I would expect him to be incisive in his analytic rigor. He would be quick to see through the inconsistencies in my logic and with a few deft touches bring order to my edifice. He would demolish my thesis with a certain intellectual ruthlessness, but without any damage to my self confidence. He would allow me to learn on my own and yet would be there to lean on.

He would lay before me the vastness of the subject and the successive steps through which I should be able to see my way. He will not minimize the difficulty but encourage me to traverse the ground on my own but with the assurance of his guidance.

He would enable me to see different fascinating facets of the problem and allow me to choose the one in which I will find my metier. He would be so demanding that sometimes I could feel he's heartless and expect of me to put in superhuman effort leading me to feel whether it is at all worthwhile to continue with him. He would be such a mind reader that he would immediately ease the pressure and would restore in me the zest for learning. He would take me to the farthest limits of my ability only to make me realize that I am capable of doing far more than what I thought I could. He would be strict but not harsh, gentle but firm. He would teach me how time is precious by engaging himself in a variety of assignments and moving from one to another with ease and dexterity. He would be extraordinarily hard working and still have no trace of strain. He would have time for everyone and give the impression that time is so elastic. He would give himself so utterly to others that one is left to wonder whether he has any time for himself.

He would take me through the maze of arguments and counter-arguments with such thoroughness that I am left with the feeling that there's more to reality than what meets the eye. He would tear apart and then put together. He would make me dissect and then ask me to put them together. He would expect me to assemble, disassemble and reassemble. He would help me see a pattern in the apparently vast assemblage of inchoate data. He would provide me, the wayfarer, guideposts in the long journey towards self-discovery and self-fulfillment. His immense knowledge and capacity for self-renewal would give a freshness to old ideas that everyday is a new dawn and every student a guided self learner.

But beyond these, I would expect of my teacher to have a sense of humour, the ability to laugh at himself and at the world. He would be a man of wit who sees the sublimity and the absurdity of the world. He would have a keen sense of what's right and wrong and have a passion for getting right things done in the right way. His personal life is seen as being founded on virtue and has a quiet sense of public morality which makes him a true representative of the human race. I would expect him to show a strong insistence on the unity of the universe and man's duty as part of a great choice for all his doing. I would expect him to be others-centric and not self-centric, I would expect him to teach that "we are all members of a world-wide brotherhood and that all of us live our lives as fellow-workers with God."

I would expect him to open vistas of enquiry beyond the subjects I study and research. I would expect him to make me understand that there are many things in heaven and earth that are dreamt of in my philosophy. I would expect him to let me know the futility of counting the grains of sand on the sea-shore but set sail on my journey, crossing the seas, through gentle breeze and stormy weather, through the rhythmic waves and great tides. I would expect him to tell me that all great tasks have humble beginnings and if the world cannot be reformed, I reform myself so that I see the world through my reformed eyes. He will tell me that there are times for action and time for reflection so that I do not show Hamlet-like inaction and Othello-like lack of reflection. I expect him to teach me that there are great discontinuities in human progress and evolution, and yet there's a great continuity so that I understand that while all else change externally, human nature remains more or less the same, and the quest for the good, the noble, the lofty and the sublime will always be there for me and everyone else.

He will help me see so much beauty and so much goodness, leaving me to wonder how much beauty and goodness must be with the architect behind this creation; that the world is not built by random bricks of chance and that a great design is behind it, and the more I see the randomness, the greater is the clarity of the design. I expect my teacher to let me know the secret of his childlike wonder at seeing this creation, despite his weighty scholarship; that behind his sage-like visage, there are gleaming eyes eager to capture eternity, through the vanishing brilliance of the moment.

I expect my teacher to teach me as much through his silence as his eloquence. Needless I say that I expect him, by human measure, the nearest to God?

Shri Chakravarti who was selected for the Indian Administrative Service in 1960 joined Sri Sathya Sai Organization in 1981 and became the first Registrar of Sri Sathya Sai Deemed University. The distinguished civil servant opted to leave the prestigious administrative service for the higher and nobler service in Sri Sathya Sai Trust as Baba's trusted lieutenant. CPS offers its grateful thanks to Shri Chakravarthi for presenting a copy of his recent address to teachers of Sri Sathya Sai University and other educational institutions for publication in the Bulletin.

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CREATION OF NEW STATES UNDER THE CONSTITUTION: A *CLARIFICATORY ESSAY*

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The Union Government will have to take a decision on the demand for a Telangana state at least in a few months time, if not earlier. The withdrawal or suspension of strikes seems to suggest some sort of an indication from Delhi that 'enough is enough' and that unless relative peace is restored and the state administration is allowed to function no decision should be expected. Ironically enough both the protagonists of Telangana and the agitators for the preservation of the status-quo seem to feel that the tide is turning in their favour.

As to the exact shape the solution might take, it is anybody's guess. What we have is kite-flying. One way out, as a Congress Party spokesman stated that the Union Home Minister will make an announcement (its content though is like an enigma wrapped in a mystery and put in a conjurer's box) sometime this month itself. However, immediately following this comes the announcement that the Centre may be settling for a Second States Reorganization. This occurs in the context of the Uttar Pradesh Chief Minister, Miss Mayawati's reiteration of her proposal that her government would ask for a drastic reshaping of the state, to be divided into four different units. This caught New Delhi, the Congress Party in particular, with a cleft foot. More so, coming as this is before the soon-to-come election in U.P. If Telangana is to be created, Mayawati's demand cannot be ignored. And now it appears that Miss Mayawati is going to ask the U.P. Legislature to pass a resolution proposing a four-fold division of U.P.

Whatever may be the precise shape of things to come, some sort of a definite step in the direction of a solution will be in the offing sooner than later. Here comes the stage for the initiation of formal Constitutional measures in the matter. Article 3 of the Constitution is the definitive basis for the creation of new states in the Union. It is essential that the article is understood in the proper perspective. The need is all the more because there seems to be confusion with regard to the nature and scope of some of the parts of this article. Especially, there is a major divergence as to the interpretation of the provision relating to the concerned existing State legislature's role in moving a resolution asking the Centre to take the initiative in creating a new state or states from within an existing state.

This essay's chief purpose is to state and analyse Art 3 and elucidate the implications therein. In this endeavour, comparison with the position under the Govt. of India Act, 1935, the predecessor to the present Constitution which further highlights the scope and conditionalities that sound the mandate that this article gives to the Union in the matter of the creation of new states.

Whatever the inclination of the Congress-led UPA, a clarification of the Constitutional position on the creation and split-up of states is much needed. There are assertions about the feasibility of bending the Constitutional requirements in creating a new state out of the existing composite Andhra Pradesh. For instance, no less a person than Lal Krishna Advani proclaimed that there is no need for the Andhra Pradesh legislature to again express its opinion on the creation of Telangana, arguably because the legislature had already done so in a one form or another.

Yet the Constitution has a provision, Article-3, which categorically lays down specific steps in the process of creating new states and the break-up of an individual existing state. It is but appropriate to analyse these provisions and the analogous provisions in pre-existing Indian Constitutional set-ups to understand the nature of legal imperatives governing the issue.

Article 3 and 4 of the Constitution read:

3. Formation of new States and alteration of areas, boundaries or names of existing States. Parliament may by law

- (a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;
- (b) increase the area of any State;
- (c) diminish the area of any State;
- (d) alter the boundaries of any State;
- (e) alter the name of any State;

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States (The words and letters “specified in Part A or Part B of the First Schedule” omitted by the Constitution (Seventh Amendment) Act 1956, s.29 and Schedule.) the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.

Explanation I. In this Article, in clauses (a) to (e), “State” includes a Union territory, but in the proviso, “State” does not include a Union territory.

Explanation II. The power conferred on Parliament by clause (a) includes the power to form a new State or Union territory by uniting a part of any State or Union territory to any other State or Union territory.”

4. Laws made under articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters. – (1) Any law referred to in article 2 or article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.

(2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.

A brief explanation of the two Articles:

First, Art 3 clearly provides that Parliament by law may create a new State either by bringing in a territory not a part of erstwhile India or by splitting existing States. But such a law cannot be initiated by Parliament or State legislatures themselves *suo motto*. It is for the President of India, as the Head of the India Union (i.e. not as the Head of the Union Government) to take the initiative.

The proviso, in particular needs careful reading for interpretative clarity.

1. The use of the two words “except” and “unless” in line/like two of the proviso prima facie raise a problem. The word except conditions the recommendation of the President and the word unless relates to the referral of the Bill to the Legislature of that State (whose areas, boundaries or name are affected by the Bill) for expressing its views thereon.

Grammatically the word: “except”, is a preposition and the word: “unless”, is a conjunction. In terms of nuance ‘unless’ connotes a slightly more compulsive tone. Therefore, the ‘step’ of referring to a bill to the state Legislature, though only second in order of sequence of the Precedential initiative under Article 3 is a more binding constitutional initiative on the part of the President howsoever imprecise may be first process of the President’s obligation to include a recommendation to Parliament to initiate the Bill.

In terms of the sequence of the two initiatives: First, that of drafting a Bill to be introduced in either House of Parliament and second, that of reference to the concerned Legislature, it is clear that the drafting of the Bill and its introduction in either House of Parliament come first. This is evident from the fact that the existence of Bill should precede its reference to any concerned State. Still what is not very clear is whether the President herself/himself sends a draft Bill or advises Parliament to take up the initiative. Yet, another point is whether the physical existence of the Bill accompanies the Presidential recommendation to Parliament or the Bill is to be drafted by the Executive to be introduced.

Then there is yet another issue to be understood. Technically, indeed constitutionally, the proviso provides that the referral of the Bill to the State Legislature is to be done by the President herself/himself. Doesn’t this mean that Parliament after getting the Bill drafted by the Executive instrumentality should send the Bill to the President for the performance of her/his duty to refer to the state legislature? The sequence of these steps may appear very artificial or at best a constitutional nicety that may appear trivial. Even so, they are both conceptually and procedurally significant Constitutional imperatives.

Let us now turn to the issue of the nature and scope of President’s reference to the State legislature. One thing is very clear that Parliament sue motto can refer a Bill proposing the creation of a new state with all the variations that the creation of a new state entail. Secondly, the Presidential reference is much to the Legislature of the concerned State but not to the State Government. Thirdly, the Reference’s scope is restricted to expressing its views there on (i.e. the proposed creative / bifurcate alteration of boundaries etc.) and nothing more.

Elucidation of Article 4

Article 4 is as important as the preceding one. For, the common person may wonder whether action under Art 3 by Parliament does not constitute an Amendment of the Constitution attracting the amendment article, Art 368. For, after all, the creation of a new State does prima facie, involve, for example, the representation of the concerned erstwhile State in Parliament, which comes under the purview of the amendment article and consequently regaining the ratification of not less than one half of the States before the Amendment is requiring presented for Presidential assent. In other words, if legislation under Art 3 does constitute an Amendment, than the existing State legislature gets a role in the ratification process under Art 368 in addition to its role under Art 3 itself.

Article 4 puts paid to this prima facie impression by proclaiming that no laws made under Articles 2 and 3 shall be deemed to be an amendment of the Constitution. Therefore, creation etc. of a new State can be done solely under the power conferred by Art 3 on Parliament, subject of course to the

initiating role of the President and the expression of its view by the concerned legislature as required under Art 3 itself.

Contrast with the position under the Govt. of India Act, 1935

Section 290 of the Government of India Act, 1935, deals with the creation of new Provinces. Quoting it in full is necessary to understand the crucial differences that inhere in relation to this problem of creation of new provinces and the creation of new States Constitution.

Section 290 of the Govt. of India Act, 1935, reads as following:

290. (1) Subject to the provisions of this section, His Majesty may by Order in Council –

- (a) create a new Province;
- (b) increase the area of any Province;
- (c) diminish the area of any Province;
- (d) alter the boundaries of any Province:

Provided that, before the draft of any such Order is laid before Parliament, the Secretary of State shall take such steps as His Majesty may direct for ascertaining the views of the Federal Government and the Chambers of the Federal Legislature and the views of the Government and the Chamber or Chambers of the Legislature of any Province which will be affected by the Order, both with respect to the proposal to make the Order and with respect to the provisions to be inserted therein.

(2) An Order made under this section may contain such provisions for varying the representation in the Federal Legislature of any Governor's Province the boundaries of which are altered by the Order and for varying the composition of the Legislature of any such Province, such provisions with respect to apportionments and adjustments of and in respect of assets and liabilities, and such other supplemental, incidental and consequential provisions as His Majesty may deem necessary or proper:

Provided that no such Order shall vary the total membership of either Chamber of the Federal Legislature.

(3) In this section the expression "Province" means either a Governor's Province or a Chief Commissioner's Province.

The first major contrast is that it is of His Majesty, by Order in Council, takes the initiative about creation of any Province, increase the area of any Province, diminish the area of any Province, alter the boundaries of any Province.

Then, here too there is the Proviso that before the draft of any such Order in Council is laid before Parliament (British Parliament), the Secretary of State for India (the British Cabinet Minister in Charge of Indian affairs) take such steps as His Majesty may direct for ascertaining the views of the Federal Government and the Chambers of the Federal Legislature and the views of the Government and the Chamber or Chambers of the Legislature of any Province which will be affected by the Order, both with respect to the proposal to make the Order and with respect to the provisions to be inserted therein. Here the difference in the nature and scope of the Constitutional process that the Secretary of State should initiate and the nature and scope of the present Constitution's Presidential reference to ascertain the views of the 'stakeholders' is very significant indeed.

First, under Section 290 of the Govt. of India Act, 1935, the Secretary of State had to ascertain the views of the Federal Government and the Federal Legislature. Further, equally importantly, the views of the Government and the Legislature of the Province concerned are to be ascertained.

Under the present Constitution, Art. 3 provides for reference only to the Legislature of the State for “expressing its views thereon within such period as may be specified in the reference.” Thus, very clearly the ‘views’ of the State Government are excluded from the purview of the Reference.

It would seem that the divergence of the two Constitutional documents on this issue is even more manifest in that while under the 1935 Constitution the Federal Govt. and Federal Legislatures’ views are to be ascertained, under the present Constitution neither the Union Parliament’s views nor that of the Union Government’s need be expressed on the issue of the creation of a state before the Bill is introduced in Parliament. Of course, when once the Bill is introduced in Parliament, it will its duty and privilege to discuss the Bill. Yet, the critical point is that Parliamentary discussion of the Bill can only come after the State Legislature’s views are received in terms of the Presidential reference. Thus, according to the Constitutional provision of Article 3 the concerned State Legislature’s views take precedence in point of time over Parliament’s discussion of the Bill. Now, what precisely is the ambit of the State Legislature role over the creation of a State? It’s crystal clear that the Head of the Union, the President should refer the matter to the State Legislature for its “views there on”. This makes it explicit that the State Legislature’s right to express its views arises only after it receives the Presidential reference and not prior to the reference.

Pro-Telangana groups frequently indulge in talk about the A.P. Legislature taking itself the initiative to pass a resolution urging the creation of Telangana. This appears to be more expression of passion without any sense of the Constitutional design. Simply put the Assembly and the Council may pass any numbers of resolutions on the partition of the State. But none of them would be Constitutionally relevant to the issue in question. For, unless the A.P. Legislature responds to a reference by the President on the issue, its views will have no relevance to the issue of the creation of Telangana.

A Digression on State Legislature’s power to pass Resolutions:

Further, on the question of a State Legislature power to pass resolutions, it is very important remember that, even if the Legislature is determined to exercise its right to voice its opinion, these are some binding boundaries which, it cannot cross. The bottom line is that it cannot pass a resolution on a subject that does not fall in its field of Legislative competence- whatever may be emotional and even satyagrahic urging, the space for its freedom of expression, of its opinion is strictly restrained by its legislative ‘vires’ as prescribed by the provisions of List II (State List) and List III (Concurrence List) of the Seventh Schedule of the present Constitution. Nowhere in these two empowering Lists, there is any unilateral competence to express opinions on the architecture of the Indian Union. It squarely rests on the legislative ‘vires’ of the Union Parliament alone. Any doubts about the overlapping jurisdictions of the Union and State legislature’s provisions are removed by the Residuary Power provision in the Constitution which rests that power surely and squarely on the Union Parliament. Therefore, it is warranted that the only and only way a state legislature is entitled to express its views on the future identity of itself is when a Presidential Reference is made under Article 3 to the State legislature to ascertain its views (not of the concerned State Govt.). Any number of expressions of views of the Legislature out of the context of a Presidential reference under the proviso to Article 3 would be of little consequence. Thus, it would seem that L.K. Advani is totally out of touch with the niceties of Constitutional requirements when he stated that the A.P. Legislature need no longer bother about expressing its specific support for a separate Telangana State. Of course, the state legislature may pass resolutions on this issue as a manner of expressing its views as part of its political process to whatever effect.

Corroborative evidence about the limits of competence of State Legislature comes from the former Secretary General of the Lok Sabha, Mr. P.D.T. Acharya. Reacting to the spectacle of the Tamil Nadu Legislative Assembly urging the President of India, to commute the death sentence of the three of Rajiv Gandhi's killers, and similar attempt made by the Jammu and Kashmir Assembly in favour of the Parliament attack case convict, Afzal Guru.

Mr. Acharya, commenting on the powers of the State Legislatures to pass resolutions, in these contexts said that such resolutions seeking mercy for the convicts even after the President has rejected them. What is relevant for our present context is the legislative competence of a State Legislature to pass resolutions on extraneous views. He said, "Passing a resolution by a Assembly seeking pardon for someone, who did an act of terrorism is tantamount to saying "He is our terrorist, therefore, please spare him".

Whatever may be the correctness or otherwise this opinion regarding a legislature urging mercy for those awaiting death penalty, the crucial point of Mr. Acharya's comment rests on his considered opinion on the overall competence of the State Legislature. On this his views are categorical: "Under the Constitutional scheme, the State Legislature has been given exclusive legislature process in respect of items in the State list. They could also legislate matters in the Concurrent List except in cases of reforming where the law made by Parliament on what subject would prevail." In other words, unless a legislature can show that in initiating a legislation or a resolution it passes is within its legislative norms, such a legislation or resolution has no validity.

Now the big question is does the creation, extension or alteration of the boundaries of a State in the union fall under a State's legislative competence. Scanning closely the State and Concurrent lists, one cannot find a provision endowing such a power. Art 3 confers that power solely on the President and the Union Parliament.

However, how can then a state, desiring for the alteration of its boundaries, for legitimate, credible reason, move in the matter. For example, minorities in substantial numbers may desire separation from an erstwhile state entity, what then is the Constitutional Vivendi available? The answer is not difficult to give. A state's wishes or those of its minorities to offer its existing identity can be conveyed through the channels of the political parties and so on. But has the State Legislature itself no role in expressing its wishes to move the Centre to initiate separation?

Mr. Acharya's remarks quoted above seem too technical and legalistic. A state legislature cannot be banned from expressing any view concerning its future identity. Is the Presidential reference the sole and one-time opportunity for a state legislature to express its views. Perhaps, the way out of this rather strict and narrow interpretation is to say that a state may generally bring the issue of its future identity to the notice of the Union even through a resolution; but the nature of that initiative cannot be construed as its constitutionally sanctioned initiative in the matter. On the whole, it looks as if that constitutionally warranted role only arises after and by reason of a Presidential reference under Art 3. The point that is apparently forgotten when people talk of the sufficiency of a resolution unconnected with the Presidential reference under Art 3.

Present Constitution diminished the Scope for the States' initiative and for their broader say it would seem that the Constitution is rather vague over the question of constitutional sanction for states initiatives with regard to their identity. A voluminous constitutional document like the present Constitution would have done well to include more specific provisions affording a say to State Legislature some *suo motto* power to have an earlier say in the matter of their shape, (as economic, cultural and other conditions get changed), subject of course to the final decision of the Union

Parliament. The hangover of the legacy of the 1935 Act seems to have been heavy in this aspect of the Constitution.

What the 1935 Act initiating a federal set-up for the first time during the Raj, what it did was to confer on the British Crown the power to initiate charges in the 'mapping' of India's provinces. Earlier under the Government of India Act, 1919 under Section 52 A of that Act this power was vested in the hands of the Governor-General in Council to act with the provisions sanction of the Secretary of State for India. Under the Act of 1935 this power had been vested in His Majesty as the Constitution of this power is incompatible with the rather heightened status of provinces as units in the new Federation.

The present Constitution substituted the role of His Majesty with that of the President of India. Yet, in so doing, it actually diminished the ambit and scope of the process of ascertaining the wishes of the State whose borders are to be readjusted or a new state to be carved out of an erstwhile State entity. As the text of Sec. 290 of the Govt. of India Act, 1936 quoted above shows, under that Act, the reference of His Majesty for "ascertaining the views" includes the views of the Federal Government and the Federal Legislative Chambers as also the views of the Provincial Government and Provincial Legislature. Thus, even before the Federal Legislature proceeds to discuss the draft Bill, it was given the opportunity of a say in the matter of a proposed alteration or creation of a province. Equally important was the provision requiring the ascertaining of the views of the concerned Provincial Government along with those of the Provincial Legislature. All in all the 1935 Act provided for a much more comprehensive consultation process in the matter of creation of new provinces.

The comparison (or contrast) with the U.S. Constitution, the first Anglo-Federation, as it were, is interesting and instructive. Simply put, India evolved from a unitary Constitution under British Law to a Federation in 1935. The U.S. Constitution emerged from being sovereign thirteen British Colonies into a paradigm Federation.

That said some qualifications are to be considered for India. Till the coming of the Regulating Act, 1773, what was the nature of the East India polity? Three Presidencies each under a Governor in Council directly under the Board of Directors of the East India Company was this arrangement to be regarded as a Confederation, Federation or whatever. The Regulating Act, in a sense created a loose-federation under a Governor General in Calcutta. Communications and personality factors made the centralised power in Calcutta more than little fractious. Witness, for instance, Cornwallis Zamindari system in Bengal (+ Bihar and Orissa) not acceptable in Madras under Munroe. The very diversity of India meant that even Bentinck's reforms were mainly confined to Bengal. The event of 1857 here confined mostly to the North of the Vindhyas while Madras mostly left and along with the far north, the Punjab.

Whatever, the differences, 1861 did create a devolutionary system and clubbing together of regions, with Calcutta, under the Governor General in Council in Command, next only to the Imperial Government in London. Now, a devolutionary polity, though a subcategory in federalist theory emerged. Yet, it is not a federation. The Acts of 1909 (Minto-Morely Constitution) or even the 1919 (Montague-Chelmsford Reform) did only improve the nature of the devolutionary model. The latter did bring in some significant evolutionary mutations within the devolutionary model. It was only at the Round Table Conferences that the Federal Idea for India found favour with Britain. The desire to bring some integration between British India and Princely India and a closer integration vis-a-vis British India that led this integrative impetus in bringing in the Federation. Even so, the Imperial authority was reluctant to see it as a federal structure full-fledged. The Princes were reluctant and

London was dragging its feet to make the 1935 Acts Constitution get congruent with the Canadian model of 1867, as it engaged under the British North America Act, 1867.

To sum up, India's Constitutional evolution resembled more a Federation resulting from a break-up of a Unitary Constitution – a fission model than a coming together of independent British Colonies fusing together into a broader Union, which is the United States model that came more than 140 years before the Indian model got unveiled in 1935.

Comparison with the U.S. Constitution on creation of new states Section 3 of Article IV of the U.S. Constitution dealing with Static Relations (meaning States' Relations) reads thus:

“New States may be admitted by the Congress into this Union; but no new State shall be formed or created within the jurisdiction of any other state; now any state be formed by the Junction of two or more states, or parts of states, without the consent of the states concerned as well of the Congress.”

Comparing with the Indian situation three points stand out. Each states in the U.S. has a veto, power as it were, over the matter of altering its individual boundaries without its comment; though the Congress too has the power in the matter.

1. Congress has the sole power to admit New States into the Union.

2. But the above congressional power is constrained in the case of the creation of new States found within the boundaries of any other state (existing static) or formation of any State by the combination of two or more States cannot be done without the consent of the concerned States. In other words, where a New State is created from within the areas of one or other existing States a 'veto' power, as it were, is given to the affected States legislatures, in the sense that their consent is a precondition before Congress can create the New State.

In this context, it should be remembered that many instances of States boundaries have been altered during the more than two hundred years of the Constitution's existence. But this is done with the consent, even the initiative of the concerned States.

3. All States, whether the original thirteen English Colonies that got re-designated as States under the Constitution of 1786 or these admitted thereafter enjoy equal rights. So much so equality of States has become a doctrinal truism of U.S. Constitutional Law.

Even so this doctrine did encounter conflicting interpretations by the courts in the U.S. For that matter, even at the constitutional convention at Philadelphia there was loud dissent on the 'equality' doctrine and its many-sided implications. Finally the Supreme Court in 1911 in the case of *Coyle V Smith* decidedly reasserted the doctrine by a majority decision in the following words.

“The Power (of the Congress) is to admit 'new states' into this Union. 'The Union' was and is or Union of States, in power, dignity and authority, each competent to exert that residuum of sovereignty not delegated to the United States by the Constitution itself. To maintain otherwise would be to that the Union, through the power of Congress to admit new States, might come to be a union of States unequal in power, as including States whose powers were restricted only by the Constitution, with other whose powers had been further restricted by an act of Congress accepted as a condition of admission.”

The foregoing explication of the U.S. provisions project vital differences between the U.S. and India constitutional provisions. In the U.S. the consent of a State for alteration of its identity (boundaries etc.) is a constitutional precondition; in India this simply is not so, whether under the

1935 Act or under the present Constitution. Further, the doctrine of the Equality of States in the U.S. also contrasts with the position in India. Remember by that the Indian Constitution (1950) originally provided a hierarchical gradation of states as listed in Part I, Part II and Part III of the First Schedule. Though this has been abolished later the élan of Indian federation is for more weighted in terms of centralism.

And this legal spirit of centralism is directly related to the very nature of India's Constitutional evolution.

That said, one should not forget that the fact that Indian states cannot initiate a demand for internal separation does not prevent initiatives at the social and political levels. Populist agitations and initiatives from the networks of political party organisation and a host of similar other agitational channels, do more than compensate for the absence of *suo motto* constitutional authority.

Yet, while the social, cultural, political and economic avenues are the obvious channels that civil society projects to the tackled by the legal and constitutional process. This division of the domain of civil society from the realm of the legal is the essence of a democratic society.

We are here mainly concerned with the final destination of socio-political agitation for its resolution which is the legal process as entrenched in the constitution. That indeed is the purpose of this article which endeavoured to elucidate the constitutional provisions and highlight the anomalies and the resulting discrepancies that appear at the sub-surface-levels of political and social strata. Still, it is the constitutional provisions that ultimately will have to be followed, however, formally. After all, in polity fenced by constitutionalism, legalism becomes unavoidable.

This is one more point to be considered arising out of the Special Provisions with respect to the State of Andhra Pradesh under Art 371-D. These provide for equitable opportunities for people belonging to different parts of the State in the matter of public employment and the matter of education. A provision for a special Administrative Tribunal for Andhra Pradesh is also provided for. And this article has a non-obstante provision too thereby making it prevail over other constitutional provisions. Political rhetoric in some quarters argues that these provisions are obstacles in the creation of Telangana solely under Art 3. But this is an ill-informed one. For Art 3 read along with Art 4 enables Parliament to provide for all "supplemental, incidental and consequential provisions" to create a new state. Therefore, it is but to be expected that a bill that provides for the creation of a new state will take care of provisions in Art 371-D that in effect overcomes the non-obstante clause in that article.

(Courtesy : *Law Animated World*)

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PRESIDENT OF INDIA

Titular Head of State or Protector of the Constitution?

Shri.P.S. Rammohan Rao, I.P.S. (Retd),

Former Governor of Tamil Nadu and Ex Director General of Police, Andhra Pradesh

The ensuing Presidential election has revived the debate on what kind of President, India should have. The traditional view is that the President should be a person well versed in the political process and as conversant with the constitutional lexicon and the limitations of his office. There is the rival view that considering the mosaic of India's social fabric and the plurality of its politics, the President should be one who can rise above the din, dust and dirt of politics to articulate a lofty vision and agenda for the Country's progress and prosperity.

2. Till now India had had three Presidents who were apolitical but distinguished in their respective walks of life. All of them left office in high public esteem. The remainder, nine in number, came from active public life as politicians. Their record was, indeed, mixed with a few of them, held responsible for controversial constitutional decisions and, in one or two instances, of even constitutional overreach. Some others were hailed for their stature, sagacity and ability in steering the Country out of considerable political turbulence and turmoil.

3. The debate has arisen more from the nature of the constitutional mandate and role of the Presidency than from the personal background of the President. Infact, it is as old as the Indian Republic with the first President and the first Prime Minister differing rather publicly on the role and responsibilities of the President. The present, therefore, seems an opportune time to examine India's constitutional history for a reappraisal of the office of the President of India.

4. Articles 52 to 62 and 74 of the Constitution of India define the position, role and the limitations of the office of President. The President is elected by an electoral college consisting of the elected members of both the Houses of Parliament and elected members of all the Legislative Assemblies of States (Article 55). The executive power of the Government of India is vested in the President (Article 53) but is to be exercised with the "aid" of and in accordance with the "advice" of a Council of Ministers (Cabinet) headed by the Prime Minister (Article 74). The condition of having to be bound by the advice of the Cabinet was introduced in this Article by the 42nd Amendment of the Constitution in 1976. 44th Amendment in 1978 provided the limited option for the President to return such advice to the Cabinet for reconsideration once as also his compulsion to accept the reconsidered advice without a further demur.

5. To gain a proper perspective on the limits of Presidential authority, it seems appropriate to look at the corresponding constitutional provisions for Governors of States. A Governor is appointed (not elected) by the President and holds office during his pleasure (Articles 155 and 156). There shall be a Council of Ministers (Cabinet) with the Chief Minister at the head "to aid and advise him in the exercise of his functions except in so far as he is by and under the constitution required to exercise his functions or any of them in his discretion" (Article 163(1)). The subject matter or the manner of exercise of his discretion is left to his own decisions and can't be challenged even in a court (Article 163 (2)). Of course, some areas of discretion were enumerated in the Constitution itself. But in respect of article 356 under which Governor sends a report to the President for imposition of President's rule or Article 200 under which he has to reserve legislation, impinging on the position of State High Courts, for consideration by the President, his discretion and independence from the Cabinet are recognized by implication.

6. The ambit of constitutional authority of the President and Governor was definitively spelt out by the Supreme Court in what is popularly known as “Shamsher Singh’s” case which was decided through two separate but concurrent judgements in 1974, much before the 42nd and 44th amendments cited. The judgements were delivered by Chief Justice AN Ray and Justice VR Krishna Iyer. Observing “Not the Potomac but the Thames fertilizes the flow of Yamuna,” Krishna Iyer declared the law to be “that the President and Governor exercise their formal constitutional powers only upon and in accordance with the advice of their ministers save in a few well known exceptional situations” in which action, independent of the advice of the cabinet is compelled by the “Peril to Democracy”. Clarifying that the “list is not exhaustive nor dogmatic” he cited such situations as relating to a) choice of the Prime Minister (Chief Minister) subject to the paramount consideration of the choice commanding majority in the House b) dismissal of a Government which refuses to Quit on loss of majority in the House and c) dissolution of the House in order to obtain a fresh mandate from the people. The 42nd amendment subsequent to this judgement doesn’t in any way alter this ratio though later Supreme Court judgements like “Bommai” have elaborated the ratio and thereby set some boundary conditions for the exercise of such discretion.

7. In November 2004, a 5 member bench of the Supreme Court, further expanded the scope of the discretionary authority of the Governor in the case of MP Special Police Establishment Vs State of MP and others. This case arose out of the Governor’s sanction U/s 197 CRPC to prosecute two ex-ministers of MP under section 13(1) (d) read with Sect 13(2) of the Prevention of corruption Act and Section 120 – B IPC criminal conspiracy on the basis of a report from the Lok Ayuktha, though the cabinet advised him to the contrary. The judgement, delivered by Justice S.N. Variava relied on “Shamsher Singh’s case” and also the famous ‘Antulay’s case’ (1982) in which the Court held that in a case requiring Governor’s sanction to prosecute the Chief Minister, the Governor would have to “as a matter of propriety, necessarily, act in his own discretion and not on the advice of the council of ministers”. Rejecting the argument that Antulay’s case applied only to the Chief Minister, the judgement laid down that where the advice of the cabinet could be questioned on grounds of manifestly inherent / apparent bias, irrationality and non-consideration of relevant factors, the Governor would be right to act in his own discretion and accord sanction. Variava pointed out that “in cases where a prima-facie case is clearly made out and sanction to prosecute is refused or withheld, democracy itself will be at stake”

8. Two little noted circumstances, surrounding the discretionary jurisdiction of the Governor and the President, deserve mention here. The drafting committee of the Constituent Assembly entrusted with the part covering the States, proposed direct election of the Governor by the people and specified discretionary jurisdiction relating to Law and Order; summoning and dissolution of State Assembly, superintendence and control of Elections and appointment of members of State Public service Commission and the Advocate General. But the Constitution, as finally adopted, opted for the appointment of Governor by the President and yet invested him with an implied but limited discretionary jurisdiction even which was denied to the President. Even more important to note is the fact that 42nd amendment of 1976 enjoining upon the President to act only upon the “aid and advice” of the Cabinet was not extended to the Governor, thereby leaving intact his discretionary jurisdiction embedded in Articles 163 (1) and (2).

9. The issue of the President being bound by the advice of the cabinet was raised in the Constituent Assembly by its President Rajendra Prasad who was also India’s first President. Dr Ambedkar explained that it would be specified in an instrument of Instructions to be appended to the Constitution. But no such instrument was appended and Rajendra Prasad, himself was the first to contest with Prime Minister Nehru this very proposition in regard to the Hindu Code Bill. It is not as if the Constitution bars the President completely from acting independent of the advice of the cabinet.. In Article 103 regarding

disqualification of members of Parliament and Article 217(3) relating to determination of the age of a Judge of High Court, the Constitution does not bind the President to the advice of the cabinet.

10. Notwithstanding the pronouncements of the Supreme Court, cited earlier, the different construction and wording of Articles 74 and 163 seem to create the anomaly that the Governor, a mere appointee of the President and remaining in office at his pleasure, has a wider discretionary authority than the President himself who is elected by an electoral college which represents the nation as a whole by transcending political parties. For instance, even if entirely hypothetical, will the President be permitted to act in his own judgement, independent of the advice of his cabinet to sanction prosecution of a Prime Minister or a Cabinet Minister indicted by an independent commission of enquiry or Lokpal if and when such an institution comes into being? Of course, *Antulay's* case as also the MP Police establishment case seem to support such independence of action. But our received constitutional wisdom is that since India adopted the British model of parliamentary cabinet form of Government, the Indian President is cast strictly in the mould of the British Monarch.

11. An objective appreciation of the constitutional histories of Britain and India could support a different view. British Governance evolved through conventions and piecemeal laws from absolute monarchy to a parliamentary democracy with the Monarch as a mere ceremonial head of state who attains that position by the right of birth. Even as late as in the 18th and 19th centuries, the British Monarch decided who his prime minister was and ministers were directly accountable to him. In this period, a preponderant majority of the prime ministers came from the House of Lords. It is only in the 20th century that Prime Ministers came to be chosen from the House of Commons through majority support. India, on the other hand, took shape from a highly fragmented polity of disparate linguistic regions, religions and governance systems over two millennia. Its founding fathers fulfilled Macaulay's wish and prediction of acquiring liberal English education to eventually adopt English institutions of governance. In doing so they were influenced by the historical fact that India was rarely a united entity. Therefore, they felt that parliamentary form of govt. would ensure a strong centre as an antidote to centrifugal forces. While the desire for a strong centre resulted in nominated Governors for states, democratic impulses of the liberal British tradition acted in favour of an elected President as head of State.

12. President of India by the nature of his electoral mandate represents the unity and even more, the diversity of the nation unlike the Prime Minister, who in essence, represents only his political grouping. In fact, he need not even be a MP at the time of his choice as Prime Minister and can get elected to the Lok Sabha on the strength of his office or even enter the Rajya Sabha, within six months. This is in stark contrast to Britain where in 1963, on the Queen's preference for him as against Edward Heath, Douglas Alexander Hume, on becoming Prime Minister, resigned from the House of Lords to get elected to the House of Commons. It therefore appears a little incongruous and rather undemocratic that the President of India with a wider electoral mandate than the Prime Minister should not have even the discretionary authority of a nominated Governor, while the Prime Minister, in practice, is seen as more powerful than even the President of USA

13. In terms of their oaths of office under Articles 60 and 159 respectively, the President and the Governor have to preserve, protect and defend the Constitution and the law. Under Article 61, the President can be impeached if he acts in violation of the Constitution. Since the Governor is appointed by the President and serves at his pleasure, there was no need to provide for his impeachment. He can be eased out, if he violates the Constitution or even otherwise as has been the experience.

Therefore, should the President act on the advice of his cabinet in any matter even if it appears to him

either in his own judgement or on the basis of expert advice, contrary to the Constitution? Is the mere return of the advice for reconsideration enough? What if the cabinet reiterates its position?

14. Indian Constitutional experience since the late 50's has shown that the use of a strong centre to subserve the partisan political interests of the party or combination of parties ruling at the Centre has often subjected the President to serious discomfiture and sometimes, even the embarrassment of acting against his best judgement on the frayed edges of the Constitution. Equally, fragmented electoral mandates and unstable coalitions have also compelled him to play more than a ceremonial role and exercise some of the discretionary jurisdiction delineated by the Supreme Court.

15. There thus seems to be a clear need which may only grow, to invest the President, in the manner of the Governor, with a discretionary jurisdiction, whose broad contours could be incorporated into the Constitution. Broadly, the discretionary authority of the President should cover three areas

1) Where his oath comes in conflict with the cabinet's advice and there is "peril to democracy" as pointed out by the Supreme Court.

2) Where central govt is clearly an interested party in a matter relating to a state or states and particularly when such a state is governed by a different political dispensation and therefore the Central Govt can have a manifestly inherent or apparent bias.

3) a) While the President will have to be bound by the cabinet's advice in regard to implementation of the cabinet's legislative policy and concomitant executive functions, he should have freedom in matters relating to administrative action unconnected with policy in which the cabinet's advice smacks of partisan political interest.

b) Such matters would cover appointments to constitutional offices which by their nature, are required to be independent and politically neutral. These include Governors, Central Election Commissioners and the like. Higher judiciary also falls into this category though the approach may have to be different and broader to include the views of the executive, the judiciary and also such jurists as are respected by the judiciary.

4) The President will also need to have some leeway in regard to inclusion of persons under cloud in the council of ministers and / or their continuance in office. It is believed that the British Monarch exerts moral influence in this regard.

16. The elected nature of the office and the federal and diverse character of the Indian State differentiate and distinguish the Indian President from the British Monarch. For these reasons, the President needs to be above the dust and din of politics even while being fully conversant with the political process and the complex social, cultural and economic matrix of the nation. There is need for a national debate on the office of the President in terms of the issues framed above.

P. S. Rammohan Rao, a topper of the 1956 batch of the Indian Police Service, was one of the leading lights of India's Intelligence Bureau which he served with distinction for thirteen years before he returned to the Andhra Pradesh cadre. Known and admired for his analytical skills and articulation of a high order, Rao held several key positions in the Police Department before his elevation as Director General of Police, Andhra Pradesh in 1988. In recognition of his abilities, he was made Governor of Tamil Nadu. Widely read Rammohan Rao's interests are varied and he continues to write scholarly articles on different subjects. He was for sometime Vice-President of the Hyderabad Cricket Association.

WILL THE SPARROW EVER RETURN ?

Dr. E.A.S.Sarma, IAS (Retd)

Where has the sparrow disappeared?

Behold, within the leafy shade,
Those bright blue eggs together laid!
On me the chance-discovered sight
Gleamed like a vision of delight
Stay near me—do not take thy flight!
A little longer stay in sight!

The Sparrow's Nest by William Wordsworth

I spent my childhood in a small town called Srikakulam, on the east coast, midway between Calcutta (now Kolkata) and Madras (now Chennai). It was originally a part of the ancient Kalinga, I was told. In the modern times it was a part of the erstwhile Madras Presidency to begin with and later, a part of the present day Andhra Pradesh (AP).

Srikakulam was a sleepy little town; amazingly, with a composite culture. We were regulars at the dargah, in our own backyard, where we were assured of fistfuls of beaten rice and jaggery. The big mosque in the town was equally fascinating as it had a thickly wooded ground all around it, where we could play hide and seek. The shrub growth there had quite a few snakes and we would hide behind the mosque's pillars and watch them slither and slide. In fact, the field snakes were a common sight wherever there was greenery in the town. The main attraction at the famous Sun temple of Arasavilli, a couple of miles away, was the turtles, which we fed with bananas. My house was set in a large orchard, with rare fruit bearing trees lovingly nurtured by my grandfather. There were all kinds of flowering and fruiting trees, brought from different parts of the country. A shallow well with a manually operated irrigation facility, known locally as *yetham*, provided water to the garden. As children, to my grandmother's utter chagrin, we would wallow in the cool water. We would watch the birds quench their thirst and the occasional snake put its head out. Scared, we would streak past our garden. On the auspicious day of *Nagulachavithi*, a snake festival popular in the south, the local people used to visit our garden to propitiate the snakes by offering milk and eggs at a few mounds where the snakes were supposed to take shelter. Those were the halcyon days, when towns like Srikakulam were less congested, with farmlands interspersing the urban patches and with the people living in harmony with the nature. Greenery was the rule and the larger brick and cement structures were the exception. Building activity used to be not as active as it is these days. Real estate greed was conspicuous by its near absence.

It was as if the people valued their peace more than anything else. Changes, if they disturbed their lives were actively shunned. I still remember the story that my parents told me then. Our town had no direct rail connection. The nearest railway station was Dusi, about 6 kilometers away. The other railway station nearby was Amadalavalasa, 10 kilometers away. The latter was more easily accessible by a bus service that was both frequent and convenient. Those days, the railways still largely used steam locomotives that deposited hard lumps of coke all along the track and belched out dark smoke with a typical unpleasant smell. Srikakulam became the administrative headquarters of the newly formed district in 1950 and it gained importance overnight. Someone proposed that the

town should have its own railway station and it should be connected to the main line between Calcutta and Madras. Many local residents seemed to have vehemently opposed the proposal, fearing that proximity to the rail track would pollute the surroundings and increase the prices of vegetables! I am not sure whether this story was an exaggerated version of how the residents feared any change from the status quo of a peaceful and quiet life they were leading. Ironically, the town has expanded since then to take both Dusi and Amadalavalasa into its urban reach!

When I look back on my childhood in Srikakulam, what strikes me most is the memory of how much in harmony with nature our lives were. One slice of memory that leaps back to me strongly is the presence of innumerable house sparrows in the house. Ours was a sprawling two storied house, with tiled roofs and long verandahs. There were enough places for the house sparrows to nest, roost, breed, hatch their eggs and tenderly look after their young ones. They seemed to proliferate overnight. They were voracious eaters of grain, weed, insects, worms and even butterflies. They were busybodies of a sort. They went into frenzied activity during the breeding season; the house would be littered with grass and twigs; their eggs would sometimes fall to the ground and mess up the flooring. Undeterred, they would make their nests at all the impossible places. They were the torment of my mother, and my grandmother, who constantly chased them away since they made a nuisance of themselves. They found the house sparrows a noisy, petulant and defiant lot.

The sparrows, along with their elder brothers the crows, marauded everything that they came across; be it the *dalls* spread on mats to dry or the paddy before being packed off to the mills to be dehusked. As a little boy, I was fascinated by their activity and watched them closely. They would peck at their own reflection in the mirror; they would come close to me, but not close enough, to feed on the grain that I offered them. They were particularly excited when the paddy came home; as the grain was measured to the singsong rhythm of the count, the sparrows would literally dance around, fearlessly.

These sparrows seemed to zoom in and zoom out in sizeable flocks. They were indeed a gregarious lot. When they came into the house, or when they flocked out together, they made a ruckus of noise. In a way, they added a sense of vibrant activity to the surroundings. Like the immortal Schrödinger's cat, the sparrows seemed to be inside the house and outside, at the same time! In the afternoon heat of the summers, when the household took its siesta, the tick tock of my grand father's clock and the chirping of the sparrows spelt peace and tranquility in the house. A professional bird watcher told me that the scientific name for a house sparrow was "*passer domesticus*". I always wondered why the scientists made it so difficult by giving the flora and the fauna such tongue twisting, incomprehensible names! The house sparrows were different from the smaller and more slender tree sparrows. The house sparrows took the human beings in the house for granted and treated the house as theirs. No wonder that the Savaras, a tribe in Orissa and AP have immortalised the sparrow in their folk art. The sparrow is the central figure in the wall paintings of the *Savaras*.

The universal appearance of the free-wheeling sparrow in the villages and the towns of south India inspired the great poet, Subramanya Bharathi, to describe the bird as the symbol of freedom. The poet, who composed inspiring poems that spurred the people into action during the eventful days of the freedom movement, must have envied the unfettered way in which the sparrow led its life. Today, six decades later, the sparrows seem to have receded into nowhere. I no longer see their nests nor hear their incessant chirp. Of course, in the towns and the cities, the old tiled roofs have given place to concrete slabs that are not welcoming to the sparrow to build its nest. The city is denuded of its greenery. Thousands of trees are cut down every year in the name of new construction activity and

widening of the streets. Tree planting has become yet another token component of a myriad government schemes that exist for the ubiquitous contractor and not for the people at large. While crores of rupees of the tax payers' money are spent ostensibly for creating an illusory "green belt" in and around the cities and the towns, there is hardly any evidence of the newly planted trees providing a breathing place for the people or the much needed shade from the scorching sun anywhere. Instead of relying more on the kind of tree growth that the nature provides on its own, the municipalities seem to be more intent on planting outlandish trees along the streets and covering the road dividers with modern lawns, both in need of constant watering. Since most cities and towns face a serious water shortage, such artificial greenery can rarely survive.

There are no longer enough twigs or grass for the sparrow to build its nest and rear its young ones. Even in the backyard gardens which have shrunk in size, the use of pesticides has robbed the sparrow of its insect and worm feed. The air in the cities and the towns is filled with toxic pollutants released every minute by industrial units and vehicular traffic. It is not as though the sparrow has receded into the vast rural hinterland. Even there, concrete structures are fast replacing the traditional roofed buildings. Pesticides have seeped far and deep into the farm lands, the water sources, the rural terrain and everything else associated with agriculture. Polluting industry that is the mascot of modernism in India has filled all that nature has given us, the land, the air, the surface water bodies and even the ground water aquifers, with chemicals that have rendered living unsustainable. I am told that even the combustion of the apparently benign "unleaded" petrol releases a toxic chemical, methyl nitrite which kills the small insects that form the major source of diet for the sparrow! The sparrow has perhaps joined the ever increasing numbers of the species that are fast becoming extinct. "Butterflies are sensitive indicators," Sir David Attenborough, an avid environmentalist himself, said. "They decline when habitats are destroyed and when man harms the environment." When butterflies are less, so is fruit production, as it is the butterflies that facilitate cross pollination that is necessary for sustaining it. Man seems to be in a self-destructive campaign, for no reason or rhyme. One could replace the butterflies in David Attenborough's statement with sparrows. The decline in the population of the sparrows is perhaps yet another indicator of the impending ecological crisis we face today. Our ecology is a delicately balanced system, with each of its component species supporting the others. There are two important lessons one could perhaps draw from this. In ecology, no single species is more important than the other. Each is crucial for the collective survival of the total system of which it is a component. Once the ecological system starts breaking up, it could become a chain reaction of self destruction. Every day's delay in countering this process will render the corrective action that much more traumatic and expensive. The burden of ecological degradation will fall first on the poor who depend heavily for their living on the commons that the nature has bestowed. In the long run, of course, the burden has to be borne by each and every one of us.

Does the rapid disappearance of sparrows and butterflies represent a whisper from the nature that we are on the path of decline? Is anyone listening to this? Is there a way to reverse this trend?

Will the Sparrow ever return?
So birds of peace and hope and love
Come fluttering earthward from above,
To settle on life's window-sills,
And ease our load of earthly ills;

- *The Sparrow* by Paul Laurence Dunbar

The load of the earthly ills is difficult to measure but its after effects are easy to experience.

Global Footprint Network's 2010 report based on 2007 data provides an approximate idea of the ecological footprint for India. The human demand on the Indian ecosystem is roughly 1.8 times of what the Indian system can sustain, compared to the corresponding figure of 1.4 for the planet earth! We are certainly going down the path of ecological decline.

What is more worrisome is the decline in the biodiversity because the planet's future will depend critically on how balanced its ecosystem is. WWF's Living Planet Report for 2010 has computed the Living Planet Index for the planet as a whole, by taking into account the trends in the case of 7,953 populations and 2,544 species. The study found that the biodiversity of the planet has declined by 30% between 1970 and 2007. One should not be surprised if the corresponding index, if prepared for India, would be equally worrisome, if not more. As the years go by, the rate of decline is sure to accelerate, as a result of our increasing ecological profligacy. The planet as a whole and of course we, as a part of it, are sliding down into an unfathomable abyss. Should this not wake us up and spur us into action? For once, can we think globally and act locally? Is there a global view among those that are in a position to influence the opinion where it matters? I recently came across a report on how a vast stretch of land, quite rich in biodiversity, was being acquired for a project and how a person, highly qualified in advanced technology, who was pushing the project against intense public opposition, tried to defend it by saying that the people should not unnecessarily worry about the loss of biodiversity, as his organization would replace it with much "better biodiversity"! The educated elite who are more at ease with the concrete jungles in which they live have not tried to understand how delicately balanced is the ecology that sustains life on the planet and how a tiny missing link or an intrusive toxic pollutant can quickly destroy the balance and take us to the precipice from where it is not easy to come back.

Come to think of it, it is the humble "illiterate" villager whose life is inextricably interwoven with the nature around him that has a better understanding of the importance of biodiversity and the forces that pose a threat to it. The more fortunate urbanites should learn a lesson or two on biodiversity from their less fortunate rural cousins. Coming back to Vizag where the wetlands and the mangroves have mostly disappeared, where the hills are being depleted rapidly, where the water bodies are being destroyed, where the greenery is being denuded and where the sea is being mercilessly polluted, is it not ironic that the citizens remain unperturbed and indifferent to the impending disaster, both global and local?

People who inhabit these urban agglomerations are fortunate to have the best educational facilities and a wide ranging access to the vast knowledge portals of the world through the ubiquitous internet. While they may be preoccupied with their professions and their urban worries, they should perhaps play a decisive role in turning the tide of ecological decline and become the harbingers of the much needed change in the paradigm of development, a change that will usher in ecological regeneration based on people's participation in shaping the course of development. Coming back to the house sparrow, I came across an interesting story about how this unique bird spread its kith and kin all over the world. Some people say that the species originated around the Mediterranean Sea and moved into different parts of Europe. It is not clear whether the house sparrows found in India had their origin in the Mediterranean or they are the original residents of India. Its migration across the Atlantic Ocean to the United States took place hardly one hundred and sixty years ago. When the green inch worms were decimating the greenery in New York's Central Park, someone thought that the antidote to the pest was the house sparrow which lived on a similar worm in Europe. The first eight pairs brought to

the city failed to survive the colder climate of New York. Later, a few more were introduced in the city and they survived, adapted themselves to the climate, even multiplied and spread across the continent. They fed themselves with the grain that spilled from the horses' feed. Many sparrow-friendly people helped them nest in artificial nests. In the Netherlands where the sparrow ruled the roost a century ago is now put on the endangered list to be carefully protected! The disappearing house sparrow in India is but one delicate link in the ecological chain. There may be many other similar links that have either disappeared already or will soon disappear. These missing links symbolize the impending doom. Can we regenerate the ecology to save our ecosystem? Will the sparrow ever return?

It was the civil society of Orissa that came to the rescue of the dwindling numbers of Olive Ridleys along the State's coast line. During the nineties, the villagers formed themselves into Rushikulya Sea Turtle Protection Committee (RSTPC) to save the Olive Ridleys. The same committee has now extended its helping hand to the house sparrow.

"Sparrows have again become part of daily life at the village. They can be seen perching on heads of children and elders; they are regular visitors at the local grocery shop to get their quota of grains" says a report that appeared in *The Hindu* on February 19, 2011. The lesson that can be drawn from this is that ecological restoration is squarely in the hands of the people. If there is a will, there is a way. I hope what I have described in this book will move the civil society at large to appreciate the true meaning of development, the inseparable association between the livelihoods of the people and the ecology that surrounds them and the central role in democracies that public consultation processes should play. Mahadevi Verma, the great Hindi writer, in her story, *Goraiya*, hoped that one day the sparrow would return and enrich our lives.

Let us hope it does!

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E.A.S.Sarma, a post-graduate in nuclear physics from Andhra University and in public administration from the Harvard University, besides having a doctorate from IIT-Delhi, joined the Indian Administrative Service in 1965. After holding many important positions in the Government of Andhra Pradesh and Union Government, Dr.Sarma opted for voluntary retirement in 2000. He was Principal, Administrative Staff College of India (ASCI), Hyderabad from 2001 to 2004. He is the Founder-Convenor of Forum for Better Visakh (FBV), an unregistered civil society forum set up in 2004. 'Honesty is the best policy for him. Dr.E.A.S.Sarma belongs to the rare breed of bureaucrats which has been fighting against the deficiencies of the Indian democratic system both during the service and after retirement.' Dr.Sarma is a tireless crusader for public causes and human rights. His wife, Mrs. Rani Sarma, is a historian and convenor of INTACH.

INTELLCTUAL PROPERTY RIGHTS AND THEIR STUDY

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1. What are IPRs?

Intellectual property refers broadly to the creations of the human mind. Intellectual property rights (IPRs) protect the interests of creators by giving them property rights over their creations. IPRs protect (1) literary, artistic, and scientific works, (2) performances of performing artists, phonograms, broadcasts and telecasts, (3) inventions in all fields of human endeavour, (4) industrial designs, and (5) trademarks, and commercial names and designations. IPRs include patents, copyright and related rights, trademarks, and geographical indicators.

A distinction has to be drawn between patents and copyright on the one hand, and trademarks and geographical indicators on the other. Patents and copyrights are designed to promote creative endeavour of individuals and organisations. Copyright covers among others, literary works, visual art (paintings, drawings, sculpture, photographs, and films), performing arts (music, dance and drama), and computer software. Patents cover technical inventions such as new processes and new products. In contrast to patents and copyright, trademarks and geographical indicators have little to do with creativity; they are termed intellectual property rights more as a matter of convention than of conceptual coherence. They are identifiers which help the consumers to identify the source of origin of a commodity, a particular firm in the case of trademarks, and a particular region in the case of geographical indicators. Trademarks encourage their owners to maintain and improve the quality of the products sold under the trademark in order to meet consumer expectations; they reward the manufacturer who consistently produces high-quality goods. They save buyers of products, particularly consumers, a great deal of time and effort required to make repeated inquiries about products susceptible to quality or taste variations. Or to use economic jargon, trademarks contribute to distributional efficiency by reducing the transaction costs buyers would have to incur in ascertaining the quality of products they buy. Well-known examples of geographical indicators are names like Darjeeling tea, Kanjeevaram silk, Swiss Chocolate and Champagne; such names are associated throughout the world with products of a certain nature and quality. The concept of geographical indicators gained currency when in 1994 they were incorporated for the first time in an international treaty, that treaty being TRIPs (Agreement on Trade-related Aspects of Intellectual Property Rights). Another distinction between trademarks and geographical indicators on the one hand, and of patents and copyright on the other is that the former can be granted in perpetuity while the protection under copyright and patents is for a fixed duration at the end of which the knowledge or information protected falls into public domain and can be accessed by anyone without restriction. In what follows, the term IPR is limited to patents and copyright.

Patent is an exclusive right granted by the State to an inventor for a fixed period, known as term of protection. During that term, an inventor is protected from unauthorized use of his invention.

The invention could be a new product or a new process for manufacturing a new product or a known product. A patent granted for a new product is called product patent and that for a new process a process patent. An inventor can use his invention himself or license others subject to the stipulated terms and conditions including the payment of a royalty. Over the last few decades, the

scope of patents has been expanding so much so that ‘everything under the sun made by man’ is now patentable; processes which can be patented now include those applied in the service industries eg., business operations, and computer algorithms. Innovation is the commercialization of an invention. It can be product innovation that commercializes a new product, or process innovation that commercializes a new process. It is technical invention and innovation that drives competitiveness of firms as well as international competitiveness of nations; in the era of globalisation and economic interdependence, fostering international competitiveness is a major task of governments all over the world. While patents are essential for fostering innovation, they are not without social and economic costs. In the short run, if market conditions permit, a firm holding a patent can use the market power it acquired through patent protection to restrict production based on his patent, or charge a price far in excess of the cost of production plus amortization of the cost of his invention plus a reasonable rate of return on the capital invested for the manufacture. Patent laws seek to curb the exercise of market power by stipulating that the patent-holder ‘works’ his patent, that is to say use the patent to manufacture goods or services for sale to the public. Should he fail to supply the public the goods or services in reasonable quantities or at reasonable price, government can authorise the use of invention by third parties and stipulate the royalty to be paid. Similarly, government can also make use of the invention in public interest without the permission of the patent-holder, and pay royalty for such use. In principle, patents might also inhibit technological advancement as the invented knowledge is the private property of the patent-holder during the validity period of a patent. To prevent this from happening, patent laws exclude from the scope of patents (1) discoveries of materials or substances already existing in nature, (2) abstract ideas like scientific theories or mathematical methods, and (3) methods of treatment for humans or animals, or diagnostic methods practiced on humans or animals excepting the medicines and other products used in such treatments. The laws also permit the use of the patented products solely for purposes of scientific research and experiment. Patent law also requires disclosure of the invention in a manner sufficiently clear for the invention to be carried out by a person skilled in the art. In spite of the possible misuse of patents, the rationale for patents lies in the fact that in the long run society would be better off by promoting inventions which create new products and new processes. The trade-off between the short-run possible loss and the long-run gain is at the centre of a long-standing and rather acrimonious debate on patents. Economists are deeply divided as to whether in fact the market conditions actually permit patent-holders to impose welfare losses on the society. Whatever, patents are like democracy. It has been said that democracy is neither perfect nor all-wise; the justification for democracy lies in the fact that it is the worst form of government except all those other forms that have been tried from time to time. Likewise, it has been said that it is almost impossible to conceive of any social institution so faulty in so many respects but yet patents survive because there seems to be nothing better. To generalise, in human affairs, the choice is rarely between good and evil but between or among imperfect alternatives, or as Galbraith put it between the disastrous and the unpalatable.

The objective underlying copyright is similar to that underlying patents: patents are designed to foster technical invention and innovation, and copyright literary and artistic creativity. Copyright confer an exclusive right on the right-holder to authorise the reproduction (copying in popular parlance) of a work, or its publication and distribution, or its performance and broadcasting, or its transformation through acts like translation, adaptation, and modification. In spite of sharing a similar objective, copyright differ significantly from patents in terms of both substance and procedure. The crux of patent right is protection of the concrete, novel and useful idea underlying the technical invention and of the investment undertaken to commercialise the idea; in contrast, copyright do not protect ideas but expression of ideas. The distinction between ideas and expression is best captured by an anecdote which captures the puzzlement of the ever logical and rational Paul Dirac at fellow physicist Oppenheimer reading Dante in the original Italian: ‘How can one do both physics and poetry? In physics we try to explain in simple terms something that nobody knew before. In poetry, it is the exact opposite.’ Functionality in art is determined by the artist’s own vision and perception and not

by external standards, not even those of fellow artists. Philosophy, it is said, gives awkward answers to perennial questions; likewise an artist expresses his sensual experiences and his viewpoints on the perennial questions in language, music or visual forms. The originality of and creativity in art and literature lie in visualization and expression, or in simple terms order and arrangement; they do not necessarily lie in the ideas or theme. Shakespeare's grandeur lies in his expression and not in the stories of his plays, which he borrowed from elsewhere. Same is true of Kalidasa's *Kumarasambhavam* and *Abhijnana Sakuntalam*. In fact, it has been claimed that the whole oeuvre of world's drama revolves around seventy odd plots. The plot of star-crossed lovers is common across cultures, as *Romeo and Juliet*, *Heer Ranjha* and *Laila Majnu* would vouch. Therefore, by protecting expression and not ideas, copyright protects what is distinctive in art and literature.

Another distinctive feature of copyright is fair use which allows copyrighted material to be used without the authorization of the copyright owner, for limited purposes such as criticism, comment, news reporting, teaching, research and so on. In view of the fact that copyright does not protect ideas, its term of protection generally sixty years is far longer than that of patents which is twenty years from the filing of the date of application. Access to previous works is critical to creativity of all kinds as well as to advancement of all knowledge. Newton could see further than those before him because he stood on the shoulders of the giants before him, and Einstein in turn stood on the shoulders of Newton, Maxwell, Planck and Lorenz. Art and literature are no different. The romantic image of an inspired writer notwithstanding, there is indeed an element of truth in the contention of Northrop Frye that 'poetry can only be made out of other poems; novels out of others'. Music and visual arts draw inspiration from previous works. No visual artist, however avant-garde, ignores tradition and escapes influence of his peers, past or contemporary; at the very least, tradition is the point of departure, the status quo against which he revolts. Aesthetically, serious art collectors and critics see contemporary art-making as a process evolving out of a historical context, so their valuation of a purchase depends on the likely stylistic evolution of the artist and, indeed, of the school or movement in which he works. The trinity of exclusion of ideas, limited term and fair use ensure that the wellsprings of creativity and scholarship are not fenced off by copyright as private property.

Yet another distinctive feature of copyright is that copyright is acquired automatically and does not require any formality; in contrast the acquisition of a patent right necessitates going through an elaborate procedure involving the filing of a patent application, proving that the invention is novel, non-obvious, and has utility, and rebutting opposition to the grant of the patent claimed.

Developed in response to the invention of the printing press, the framework of copyright stood the test of time. The framework could assimilate many new technologies of artistic creation and dissemination such as photography, cinematography, radio and television broadcasting, audio and video recording, and reprography. Wherever necessary, specifically tailored rules were drafted within the copyright framework to take note of the distinctive features of the technology or to adapt the new technology to the doctrinal demands of the copyright system in vogue. The framework was found partly efficacious to protect works not usually linked with artistic and literary activity, such as databases, encyclopaedias, and other compilations of facts (works of fact), and architectural drawings and computer software (works of function). The framework is now in the process of adjusting to the technological revolution triggered by digital technologies. These technologies pose a mighty challenge to copyright by making protection in the digital medium almost impossible. Thus scanning erases the distinction between ideas and expression, and between text, voice and image. Once digitalized Beethoven's symphonies, Shakespeare's sonnets, and Satyajit Ray's *Pather Panchali* are all one, just numeric strings of 'one's and 'zero's. Digitalisation erases the distinction between the genius and mediocre. The works of Keats and a poetaster, of Beethoven and a humdrum music composer, and of Ravi Verma and the street corner portrait painter, all are reduced to numerical strings distinguishable only by the length and the sequence of 'one's and 'zero's of the numerical string. Further, once digitalised and put on the Internet, any work can be downloaded in the privacy of home to make a

perfect copy, which can also be shared with, that is to say transmitted simultaneously to, millions across the globe. A seemingly unending stream of technologies like compression formats, file sharing techniques, peer-to peer networks continuously enhance the facility, fidelity and ubiquity of digital transmission and reception. The gales of creative destruction unleashed by digital technologies are sweeping national and global economic, social and cultural landscapes and also political landscapes if one takes note of the recent developments in the Arab world. An author of a literary or artistic work can now reach his audience directly without the intermediation of a publisher or distributor. Digital technologies have thus knocked down the distinction between an author and a publisher, between a consumer and a distributor, and between access to, reproduction, distribution and communication of a work. Established industries like print journalism and music industry have been receiving hard knocks, and forced to drastically alter their business models, and new industries are springing up. Digital technologies pose a quintessential dilemma for the policymaker. Without protecting the numerical string neither ideas nor expression can be protected in the digital environment; however, its protection could only be at the cost of upsetting the elegant elements of copyright that together provide balanced protection.

The numerical reduction of all works is not only destructive but creative. It opens new vistas for learning, innovation, creativity, and cultural preservation and transmission. Learning resources in the multimedia are a class apart from their print or audiovisual predecessors, not merely in the enormity and variety of information that can be brought together but also in the integration of information and the facility for interactive use of the resources. The combination of more than one form of expression is not unique to multimedia. Newspapers, journals and books, for example, combine text and images. The power of cinema and TV is due to the fusion of sound and images. What makes multimedia distinctive is that the different expressions do not exist in juxtaposition but are integrated to an extent that any distinction or any attempt at distinguishing between the various expressions and elements initially included in the work is either impossible or makes no sense. The parts congeal into the whole and the whole is larger than the sum of the parts. This genre of learning resources has the potential to bring the whole world of senses and ideas within the grasp of the learner anywhere in the world. In a fully networked world there can be no limits on the ability to locate and share learning resources anywhere in the world. From the pedagogic point of view, what is charming about multimedia is its interactivity. Interactivity is not limited to searching and fast retrieval of the material embodied in the multimedia work; it is possible to manipulate and modify that material to such an extent that it is transformed into something altogether different. Interactive use is critical reading in the post-modern sense, deconstructing and reconstructing a work by the reader so that it is he, and not the author, who creates meaning in a work. A related aesthetic experience is the new musical experience made possible by altering the tonal characteristics of a work that is being listened.

Digital documentation by the Indira Gandhi Centre for Culture and Arts (IGNCA), of the Gita Govinda tradition is a good example of cultural conservation and transmission which is inconceivable without multimedia. This documentation captures the tradition in its entirety, all the textual variations, paintings, and music and dance forms across the length and breadth of the country. Another interesting example is IGNCA's documentation of the holistic cultural world of the Brihadeeswara temple, a world heritage living monument in its entirety. The documentation vividly captures the conflation of the tangible heritage of architecture, sculpture and paintings and the intangible heritage temple of rituals, music, dance, and festivals, and of continuity and change. Digital technologies also offer a possibility to the developing countries of not possible as existing international instruments have only prospective effect and therefore do not cover objects that were moved during the colonial era. Digital technologies make it possible to scan the dispersed collections all over the world and to bring together 'virtually' the cultural diaspora of these countries and thereby regain the lost cultural patrimony. An example is the project undertaken by the Andrews Mellon Foundation which, in collaboration with the Chinese government, is engaged in recreating the Dunhuang Caves of China with their priceless Buddhist art.

All in all, it is copyright that is now intellectually the most exciting arena of intellectual property rights. There are broadly three major approaches to the reconstruction of copyright in the Digital Age. The first pronounces the death of copyright, a claim captured in the famous statement of John Perry Barlow that 'Information wants to be free, and has to be set free'. Barlow's one-liner has become the rallying point of radical dissent which demands untrammelled freedom to download and experience any material posted on World Wide Web. Barlow elaborated his assertion by declaring that we are sailing into the future on a sinking ship.

This ship, the accumulated canon of copyright and patent law, was developed to convey forms and methods of expression entirely different from the vaporous cargo it is now being asked to carry we will need to develop an entirely new set of methods as befits this entirely new set of circumstances.

The second approach asserts that digital technology 'is not the first, and probably not the last challenge to copyright', and that the copyright framework is resilient enough to cope with the challenges of digital technologies. The third approach is captured by the famous statement of Charles Clark that 'the answer to the machine lies in the machine'. Machine could provide the answer through technological measures to prevent unauthorized access to digitalized works as well as copying of such works. The second and third approaches have dominated the policy making process. The reconstruction of copyright in the Digital Age had begun with the adoption of two Internet Treaties by Diplomatic Conference organised by the World Intellectual Property Organization (WIPO) in December 1996.

2. IPR Studies

Given the pervasive role of IPRs in the contemporary world, their study has come to be an important element of the educational mission of higher education system all over the world. IPR literacy has necessarily to be a part of the broad liberal education to be imparted to every graduate irrespective of specialisation. It is important for students of business management, public policy, and economics to have a basic understanding of the role that IPRs plays in promoting technological advancement, economic development, building business and international competitiveness, and international trade. Business strategy taught to students of business and technology management should necessarily instil in the students a good understanding of managing R&D, and strategically managing the knowledge assets created by R & D through ingenious use of IPRs. Basic law degree programmes need to offer introductory courses that give students a general understanding of the philosophy and application of IPR law. Specialized post-graduate law programmes should typically provide a more comprehensive, specialized knowledge of the theory and practice of IPR law. Judges and police officials need to be trained in the conceptual and practical aspects of IPR law and its enforcement. Obviously the oeuvre of IPRs teaching has to be very broad, encompassing introductory courses, specialised courses, seminars, and practice-oriented training courses.

Over the last fifteen years, there has been a tremendous spurt in the study of intellectual property rights in our country. Prior to 1997, instruction in IPRs was rather rudimentary, and when imparted formed part of the teaching of commercial law. IPRs are now a distinct part of the syllabi and curricula of most undergraduate and postgraduate law programs, and also of programs at Indian Institutes of Technology, Indian Institutes of Management, and at the National Policy Academy and the National Academy for Customs and Excise. Institutions like the Indian Law Institute offer diploma programs. The George Washington University has been organising annual meetings on IPRs in India. IIT, Bombay had begun organising IPR Researcher s' Confluence. The Ministry of Human Resource Development had funded the setting up of eighteen HRD chairs for the study IPRs in five National Law Schools, five universities five IITs, and three IIMs. The University Grants Commission has been funding the establishment of IPR cells in universities. The Federation of Indian Chambers of Commerce and Industry (FICCI) had set up an Intellectual Property Development Institute in Delhi, and the Department of Industrial Policy and Promotion an Intellectual Property Training Institute at Nagpur.

A group of users and owners of Intellectual Property had established a National Intellectual Property Organisation in Delhi.

The efflorescence of academic interest in the study of IPRs is a sequel to the increased salience of IPRs in the national and global economy as well as politics. Prior to the Uruguay Round of negotiations which culminated in the establishment of the WTO (World Trade Organization) and TRIPs, there was no public awareness of IPRs. Public awareness was generated by the strong opposition to the TRIPs by the domestic pharmaceutical industry, farmer groups, NGOs, and opposition parties. From times immemorial, turmeric was used as a home remedy, and neem seeds as a natural pesticide, and yet in early 1990s patents were granted for such uses in the United States; thereupon turmeric and neem seeds came to be powerful symbols, much like salt of Salt Satyagraha, of the seeming neo-imperialism underlying TRIPs. Though opposition to TRIPs still lingers in the pharmaceutical industry and some NGOs, there is a sea-change in the attitude of businesses to TRIPs and IPRs. Growth Industries like the IT industry and biotechnology as well as long-established industries like film, and recorded music industry have a strong interest in a strong IPR regime as they lose substantial revenue by 'piracy' (unauthorised use) of their products such as computer software, CDs and DVDs of music and films. Thus many Bollywood and Tollywood film stars have been in the forefront of campaigns against piracy, and have been urging state governments to rigorously enforce laws punishing such piracy. Industry associations like FICCI (Federation of Indian Chamber of Commerce and Industry) and CII (Confederation of Indian industry), which were earlier ambivalent about IPRs, have been pro-actively organising conferences and symposia on IPR related issues. The domestic pharmaceutical industry, which was the bastion of opposition to TRIPs and stood most to lose by TRIPs itself, is no longer monolithic in its opposition. Willy-nilly, that industry had to adapt to a new IPR regime put in place by the government in order to comply with the binding obligations under TRIPs; different segments of the industry responded widely differently to the challenge of adjusting to the new IPR regime, so much so that many segments of the industry have now a vested interest in a strong IPR regime. These include Biotech firms, firms engaged in 'contract manufacture' and 'contract research' outsourced by MNCs abroad, and firms with a strong R & D capability and a potential to discover new drugs, and firms earning with a substantial proportion of their revenues through exports to developed country markets. All in all, businesses are far more conscious of the need to protect and augment the value of their knowledge assets; they are more aggressive in securing and litigating IPRs like patents and trade-marks. This in turn had generated a demand for in-house as well as outside IPR expertise, particularly legal expertise. In keeping with changed times, the CSIR has been moving away from imitative research to the generation of new applied knowledge and patenting of such knowledge.

CSIR also built up a Traditional Knowledge Digital Library so that traditional knowledge is not misappropriated through wrongful patent claims. IPR consultancy organisations like Brain League have sprung up. While the demand for IPR expertise had played an important role in boosting IPR studies, 'supply factors' also played an important role. Since 1997, MHRD has been assisting higher education institutions for engaging in IPR studies. The genesis of the support can be traced to the realisation by the author when he led the Indian Delegation to the 1996 WIPO Diplomatic Conference¹³ that the in-house expertise in the government was inadequate to address complex IPR issues, and that unless interdisciplinary IPR studies were promoted in our country, it is difficult to advance national interest in multilateral IPR forums like WTO and WIPO. The efflorescence of IPR studies is a welcome trend. However, we have a considerable way to go to catch up with countries like the United States. When one takes a close look at IPR studies, one finds that growth is mostly confined to the teaching of IPR law; teaching of IPR economics or of the management of knowledge assets has not grown to the extent it ought to have. Research is rather limited. Interdisciplinarity is more talked about than practiced. The next part 14 outlines why interdisciplinarity is necessary for a proper study of IPRs, and what interdisciplinarity means for IPR teaching and research. The third and

last part seeks to provoke the readers to think critically about the perspectives that ought to be adopted for policy-oriented IPR research.

II. IPR Studies: The Why and Wherefore of Interdisciplinarity

1. Why Interdisciplinarity

Figuratively, IPRs are like the elephant in the story of the elephant and the six blind men; the holistic picture necessary for policymaking can be derived only if the policy problem that is sought to be addressed is studied from different perspectives such as technological invention and innovation, entrepreneurship, economics, law and business management. Each of these disciplines has precious and distinctive conceptual frameworks and analytical tools; however, each discipline can grasp only one part of the elephant. Thus the IPR legal professional does not find it necessary in his day-to-day work to draw upon other disciplines. For good reasons, he may feel that IPR law, or for that matter law itself, is an autonomous, self-sufficient discipline that had evolved and would continue to evolve on its own, and would always adequately meet the needs of the society. However, law by itself cannot guide the choices that underlie policymaking. Every legal rule establishes a structure of incentives, which influence human and institutional behaviour; these shifts in behaviour have societal and economic consequences. These consequences cannot be forecast or evaluated only by applying legal principles or by invoking values like justice and equity. To elaborate, whether product patent should be granted for pharmaceutical products or not cannot be determined solely by application of legal principles. Those who oppose such product patents often invoke Article 12 of the International Covenant on Economic, Social and Cultural Rights which provides that 'everyone has the right to the enjoyment of the highest [mind you highest] attainable standard of physical and mental health'. The more diligent among them are also likely to invoke Article 15 (b) of the same Covenant which declares that everyone has the right to 'enjoy the benefits of scientific progress and its applications'. But then the very next clause, Article 15 (c), provides that everyone has the right to 'benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author'. It is therefore obvious that there is a conflict between Articles 12 and 15 (b) on the one hand and Article 15 (c) on the other. Neither the Covenant nor any legal principles can help resolve the conflict among these rights. Issues of equity can never be settled without reference to the philosophy to which one subscribes; the saying 'Equity varies with the length of the Chancellor's foot' captures this ineluctable fact. However, economic analysis can help minimise the subjectivity inherent in reconciling the conflict among these rights, by working out the implications of product patent for the prices of medicines, household and government budgets, exports and balance of payments, the profitability of drug companies, and the implications for technological innovation and introduction of new, more efficacious and safer medicines. IPR laws have and would continue to evolve in response to technological and economic forces.

Therefore, informed public policymaking in areas like IPRs, whether by the judiciary or the legislature or the executive, calls for the conjoint application of law and economics to the issues on hand. Judicial adjudication of IPRs is no more compatible with economic illiteracy than illiteracy itself. Needless to say, teaching of law as well as judicial training needs to equip the students with basic principles of economics as well of the economics relevant to the area of legal specialisation. What is true of IPRs is equally true of many areas of policymaking.

Policymaking by its very nature is interdisciplinary in nature. At the minimum, the policymaker needs to factor in inputs from the relevant subject matter expertise, law, economics, politics, and the process of policymaking. The problems that policymakers have to address are increasingly getting more complex, and the expertise within the government is often inadequate for the job. The knowledge that even the best of officials and ministers have is of two types: experiential knowledge of the subject matter relevant to the policy proposed to be made, and knowledge of the machinery of government, how to get a policy or programme made and approved, or how to get things done. Even if one has

appropriate professional qualifications, he would have to draw upon expertise outside the government for addressing many of the policy problems, particularly those considered by multilateral conferences like those on trade, IPRs or environment. The practice of law it is said is a jealous mistress. Politics and administration are no different. It is therefore difficult even for experts within government to be on the frontiers of knowledge in their areas of specialisation. Figuratively, long years in government reduce even a Tansen 15 into a Kansen, a music maestro to a connoisseur. However, being a Kansen, having critical discernment is good enough, provided he does not sing solo but instead assembles a good orchestra which is what policymaking and effective participation in multilateral conferences require. The author's personal experience with 1996 WIPO Diplomatic Conference vividly illustrates this point.

One fine morning in January 1996, while he was Additional Secretary in the Department of Education, HRD Ministry, the author was asked to supervise the Copyright Division. A few months later, he got the news like a bolt from the blue that a few months later WIPO would convene a Diplomatic Conference to consider three new treaties so as to adopt copyright to the Internet Age. Soon enough, three draft treaties arrived from WIPO. The controversy over the Uruguay Round of negotiations and TRIPs having not yet died down, handling the Diplomatic Conference was quite a sensitive matter. With passage of time, the controversy surrounding the Uruguay Round and TRIPs those days looks rather comical. Arthur Dunkel was the Director General of GATT, and but for his initiative the Uruguay Round might have collapsed. In our country Dunkel became a household name for infamy; his name came to be the rallying point for all those who were opposed to the government irrespective of the fact whether they had any specific view on the outcomes of the Uruguay Round negotiations or not. Thus Tau Devi Lal, who was Deputy Prime Minister during V.P.Singh's government, claimed that Dunkel was a multinational corporation (MNC) headed by Dunkel, that GATT had already purchased two districts of Haryana, Gurgaon for Japan and Faridabad for Germany, and that Chief Minister Bhajan Lal was on a foreign tour to sell the remaining districts of Haryana to Israel, Singapore and others. There were bazaar rumours that farmers would not be able to sow their seeds because of Dunkel, and that GATT would employ chowkidars to prevent people from plucking neem twigs. Apart from the political sensitivity, the Diplomatic Conference posed yet another challenge: the topics covered by the Conference were mostly uncharted territory. Most, particularly the younger generation, would now take for granted that one could use a laptop to download and read, hear or view as the case may be of text or music or films from the Internet. But back in 1996, Internet was still in its infancy in our country. Even in the United States, it was still a novelty. Broadband was unknown in our country. Even in the United States, the Clinton Administration was talking of building a national information infrastructure to bring together separate communication systems into an advanced high-speed, interactive, broadband, digital communication system. As it is, copyright is said to be an esoteric branch of metaphysics. The legal provisions of the draft WIPO Internet treaties were more arcane, and spoke of things of which no one had direct experience in our country. Before one could evaluate the legal provisions of the draft treaties, one should know what the provisions were talking about. That meant we should have some idea of what were the technologies to digitalise content, what were the technological measures to protect the content such as encryption, and what were the technological possibilities for circumventing such technological measures. As the relevant technologies were in their infancy, it was desirable to have some idea of how technologies were likely to evolve, so that the provisions of the treaty did not get obsolete too soon or obstruct the development of desirable technologies. It was also desirable to get some idea of the economic and business implications of not protecting content in the digital medium, before we could assess whether the protection proposed by the draft treaties were optimal from our country's point of view. And then, it was necessary to evaluate the legal soundness of the treaty provisions from our country's point of view. We did not have a national law anywhere in the world that could have thrown some light on what the draft WIPO treaties were talking about. As would be elaborated later, in the Global Era of IPRs, it is not unusual for binding global obligations to emerge before any country made the

relevant national law. All this meant that we needed to pool knowledge of different kinds, which no single discipline say law or economics or technology would have. We did not have the necessary expertise within the government. Institutional memory in the government was rather poor; as a prelude to the Diplomatic Conference, WIPO had been organizing for about five years since 1991 meetings of experts to consider the issues that were covered by the Internet Treaties. In the Ministry, even the proceedings of all those meetings were not available. Foreign travel was rare those days and considered as a favour granted to officials, so much so that different officers went for different meetings, and there was no continuity in India's representation in those meetings, and no one knew about the sequence of developments in those meetings. As a preparation for the Diplomatic Conference the author put together a group of officials from different ministries, industry associations, and experts from the academia to deliberate on the treaties. Of the experts who attended the meetings of the group, Dr. Gopalakrishnan of the National Law School University, Bangalore provided the most useful inputs for the Conference. At the Diplomatic Conference, the Indian delegation was by happenstance seated by the side of the American delegation. The Indian delegation to the Conference was tiny, just five musketeers, the author, Dr. Gopalakrishnan and three officers from government, while the American delegation was a jumbo delegation with thirty-three members. There were two dozen other Americans as part of other delegations, and were assisting their country. The delegation of the European Community was only a little smaller but it was strongly backed up by the delegations of Member States of European Community. While participating in the Conference, the author felt like David being pitted against not one but many Goliaths. Looking back, it was indeed a miracle that the author could grasp the salience of the Diplomatic Conference ahead of the Conference. By happenstance, one day among the academic articles the author used to get every fortnight from the Americans Library under its service Article Alert, he got an article entitled Copyright or Copygrab authored by Pamela Samuelson, Professor of Law and Communications at the University of California, Berkeley. That alerted the author to the fact that a battle royal was going on in the United States between content providers like computer software firms, Hollywood and book publishers on the one hand, and Internet Service Providers, manufacturers of electronic hardware and consumer electronics, and fair-use groups of librarians and researchers on the other. Internet Services Providers and computer manufacturers were worried that extending copyright to the digital domain would render them liable for penal action if any of their users downloaded copyrighted material from the World Wide Web without authorization; similarly, librarians and researchers were worried that fair use, that is to say the right to access material for educational and such other purposes, would be restricted. In contrast, content providers were concerned that if copyright was not extended to the digital domain their business interests would be adversely affected. Paula Samuelson's description of the battle royal helped the author to prepare for the avalanche of lobbying by transnational alliances of business interest groups. The foyer of the Conference venue was like a grand bazaar with hundred of lobbyists hawking their positions. As in a court of law, arguments and counter-arguments by the business adversaries were useful to grasp the problem. Just by pluck and luck, the Indian delegation could work on the conflict between the United States and the European Union, and pursue ably our national interest. His experience with the Diplomatic Conference brought home to the author realised that one cannot always depend upon luck and miracles, and that it is imperative to create an institutional base for the study of IPRs so that we have the necessary expertise in the country to take on other countries in international forums, and identify and pursue our national interest. And that led to the idea of the HRD chairs.

2. How to Practice Interdisciplinarity

It was mentioned earlier that while there have been significant advance in the teaching of IPRs, there is much to be done in the matter of research, and adopting an interdisciplinary approach. Practicing interdisciplinarity necessitates rigorously examining three questions:

Question No. 1: Does interdisciplinarity mean we should produce scholars who are equally proficient in all the disciplines relevant to IPRs?

Question No. 2: What are the impediments to practice of interdisciplinarity?

Question No. 3: How can these impediments be overcome?

The answer to the first question is very much in the negative. We live an age of increasing specialisation, and that trend cannot be reversed. The expansion of knowledge has been so phenomenal that the Age of Renaissance Men when scholars could be experts in many fields is over. It is difficult to be an expert even in all the areas of a single discipline so much so that what all one could hope for is expertise in a discipline coupled with a broad liberal education. Even if the Ph.D programme in IPRs draw students for different disciplines, as is the case with the Inter-University Centre for Study of IPRs, Cochin, it is inevitable that excepting those who continue to engage in policy work they would return to specialisation in one discipline or other. Thus, after acquiring a doctoral degree, the student would take to either teaching or practice of IPR law, or of teaching and practice of IPR economics, or of business consultancy to help firms manage their IP assets. The question then is how does one promote interdisciplinarity when specialisation is unavoidable. For serious interdisciplinary work, it is imperative the different types of experts come together and work. There two main impediments for such work:

* First, tunnel vision that arises from narrow specialisation and absence of a broad liberal education, and

* Second, mutual incomprehension arising from the fact that different disciplines have different vocabularies of discourse, conceptual frameworks, and analytical toolkits.

It is therefore important to take steps, particularly in advanced programmes, to remove these impediments. The motto is specialise in one discipline say IPR law or IPR economics but complement the specialisation with a familiarity with disciplines relevant to IPR studies, so that IPR education does not produce men whom Nietzsche¹⁷ called inverted cripples

Men who lack everything save one thing, of which they have too much, men who are nothing but a huge eye, or a huge belly or something else huge.

The author came across a classic case of tunnel vision at the 1996 WIPO Diplomatic Conference. At that Conference, there were attempts by a few Latin American countries to extend protection to computer programmes and rentals beyond what was provided by TRIPs. The Indian delegation was particular that the draft treaty should not go beyond TRIPs as TRIPs had come into effect just a year earlier, and it was too early to change. The Indian point of view was stiffly resisted by delegates of some Latin American countries who argued that TRIPs was an irrelevant consideration. They argued that WIPO was a forum for discussing not trade but the rights of authors and that WIPO was designed to continually expand such rights. They were copyright lawyers who were ignorant of the larger economic and political implications of going beyond TRIPs. They ignored the vital fact that under Article 7 (2) of TRIPs Agreement the higher protection conferred by the Internet Treaty might be adopted by the Ministerial Conference without further formal acceptance process. It is therefore imperative that the master and the doctoral programs in IPRs have a core curriculum that requires students to acquire the basic concepts and analytical tools of different disciplines relevant to IPRs.

Following are specific suggestions for promoting interdisciplinarity in the study of IPRs:

* The syllabus and curriculum of specialised IPR courses in the is Master degree programme in law (LL.M) should include a basic knowledge of the economics of the firm, industrial organisation, that is to say, the branch of economics dealing with the structure, conduct and performance of industries, and of regulation, economics of technological invention, innovation and dissemination,

business models adopted by knowledge-intensive industries such as book publishing, film industry, and valuation and management of knowledge assets, and the policy process through which national laws as well as global norms and standards fall in place.

* Specialised institutions like Inter-University Centre for Study of IPRs, Cochin should start a Master programme in IPR policy. This programme would give greater weight to economics, technology generation and management, and to international IPR regimes than the LL.M programme. In addition it would also bring in policy analysis, the structure and process of WTO and WIPO, international relations, and the praxis of multilateral negotiations.

* Institutions which offer a Master programme in public policy and management should offer technology development and management, and IPRs as electives. Similarly institutions which offer the MBA programme should offer technology development and management, and IPRs as electives.

Turning from IPR teaching to research, much of IPR research is of direct relevance to national and global policymakers. Findings of research which evaluate the functioning of extant IPR policies and laws, and of their impact on businesses, and competitiveness as well as their social implications are of interest to policymakers. Even where research seeks to expand basic theoretical knowledge it is of relevance to policymakers in addressing the new challenges that IPR face, eg., adapting IPRs to the digital age, to the demand for protection of traditional knowledge so that communities which possess such knowledge gain from the attempts of firms to commercialise such knowledge, and attempts of enthusiasts to promote open-source generation of computer software and knowledge in lieu of proprietary development of software and knowledge by private firms seeking to maximise profits. Policy-oriented research by academia would be more effective if specialised institutions like Inter-University Centre for Study of IPRs, Cochin develop into think tanks. Instead of being reactive, and helping the government with advice when called upon, they should be proactive, scan national and international IPR developments, identify key emerging areas, and study them with interdisciplinary teams drawn from different faculties. It would be a good idea to bring out an alert on the global IPR developments, and organise an annual conference that brings together policymakers, IPR academics and practitioners. Talking of scanning, scanning has two aspects: scanning the subject matter itself and scanning the political, judicial and business environment. In every subject area, concepts evolve, new fashions emerge. In every subject area there are contested terrains eg., in IPRs, the scope of pharmaceutical patenting, the patentability of life forms, the scope of fair use in the digital environment, appropriateness of protecting commercial adaptations of indigenous knowledge.

The course of battles in the contested terrain as well conceptual advances and fashions impact on ongoing and future negotiations. Scanning the policy development, judicial environment and interest group activity in important countries helps us to assess the stands that these countries are likely to take in multilateral negotiations, and plan our moves and countermoves. It is also necessary to scan the disputes between major countries on IPR and related issues, follow their resolution through bilateral process or arbitration, and dispute settlement mechanisms like those of WTO, analyze the results of scanning for their implications on our IPR policies and on future negotiations. It is heartening that the Commerce ministry is scanning the WTO developments and publishing them regularly. The Waterfall Institute is scanning the developments in IPRs, mostly of patents. These scans need to be intensified. To my knowledge there is no systematic scanning of copyright.

III: Perspectives for IPR Policy-oriented Research

A democratic government has to be a government of all people, and not of some sections of the citizens. People honestly differ on the manner in which the polity, society and economy have to be organised and managed, and how the country should engage the rest of the world. Therefore, there could be honest differences of opinion on the manner in which a policy issue should be addressed. Further, with every major policy some gain, and some lose, and it is but human that those who stand

to gain would support a policy-in-the-making while those who stand to lose would try to block the policy-in-the-making. It is therefore imperative for a democratic government to take note of multiple viewpoints, strive to harmonise the viewpoints, and to announce a policy that is in keeping with national interest and is acceptable to as many as possible. It is therefore rightly said that compromise 'is the true gospel of democratic politics' and that 'uncompromising thought is the luxury of the closeted recluse...untrammelled reasoning is the indulgence of the philosopher, of the dreamer of sweet dreams'.¹⁹ It follows that policy-oriented research cannot altogether ignore the world-as-is, and should reflect and evaluate multiple viewpoints as objectively as is humanly possible. It ought not to be driven by a particular view of the world or seek to rubbish points of view with which one does not agree. There is much nostalgia in our country about the Indian Patent Act, 1970, and a strong antipathy to TRIPs. Such feelings are unhistorical, and are akin to sighing for the horse carriage. We cannot forget the fact that we are in the global era of IPRs; nor can we forget this fact that this era arose from the March of History. There are four periods in the history of Intellectual Property protection: the Age of Commons from the beginning of history till about 18th century when Industrial Revolution began, National Era that lasted from the 18th century till the adoption of the Paris and Berne Conventions in the penultimate decade of the 19th century, the International Era that lasted from the end of the National era till the entry into force of the TRIPS Agreement on January 1 1995, and the Global Era thereafter. In the Age of Commons, neither ideas nor expressions nor gadgets were protected. In the National Era, protection of intellectual property was confined to national boundaries through national laws designed to promote domestic production and interests. As these laws did not extend beyond national borders, the inventive ideas and creative works could be freely commercialized in other countries without any restraint. To give an example, books of popular authors like Charles Dickens were reprinted in the United States without any remuneration to the authors, thereby earning for that country the dubious title of The Prince of Pirates[RVA2]. Lobbying by celebrated authors and inventors led to the adoption of the Paris and Berne Conventions.

Without getting into technicalities, both the Conventions provided for wide variation in the scope and duration of protection. Thus, the Paris Convention left it to a Member State to decide whether or not to provide for product patents, and to specify the term of protection.

Countries had a wide choice: they could join these conventions or competing conventions like the Universal Copyright Convention, or just stay away from any convention. Once in about twenty years the Conventions used to be revised so as to promote harmonization of national laws; the general principle of these revision conferences was to make haste slowly. Revision of a Convention required unanimity among the Member States. That is to say, a single country could block the revision. And further, it was open for a Member State not to accede to the version that results from the revision of a Convention. Thus, in mid-1980s when India was considering the question whether India should accede to the Paris Convention, Dr. Bogsch, the then Director General, WIPO could assure the Indian government in good faith that India can accede to the Paris Convention without any modification of the Indian Patent Act. This was in spite of the fact that the Indian Patent Act, 1970 prohibited the grant of product patents for food, chemicals, and drug products; even the process patenting that it allowed for these products was limited to a maximum period of seven years as against the fourteen years permissible to all other products. Apart from compulsory licensing, the Act provided for a license of right, that is to say anyone is entitled to a license as a matter of right without having to prove the conditions necessary for grant of compulsory license. These policies led to a spectacular growth of the Indian pharmaceutical industry. It is customary in our country to sign the glory of the Indian Patent Act; however, from a historical perspective, it was nothing unusual and was a product of its time. This fact should not be lost sight of in the discourse of intellectual property rights in our country. Thus even as late as 1990, two decades after the 1970 Indian Patent Act was enacted, among 33 sizeable developing and developed nations, 14 offered no patent protection for pharmaceutical products, 15 for food products, and 11 for chemical products. Even Switzerland, home to three of the

world's leading pharmaceutical companies, provided no drug product patent protection until 1977. This historical fact as well as the fact that United States turn from the Prince of Pirates into an unremitting champion of IPRs proves the IPR version of Mile's Law, namely where a country stands on the IPR regimes depends on its stage of economic development. At the current stage of its economic development, Indian stand on IPRs need not necessarily be the same as in 1970. It is indeed folly to continue sticking to one valid principle in the face of wholly differing contexts and applying that principle indiscriminately to public policies. Or as Lenin put it, our faults of today are often continuation of the merits of yesterday. Coming back to the distinction between the Global Era and the International Era of IPRs, in the Global Era the objective of multilateral conferences on IPRs is not harmonization of national laws as in the international era, but laying down a global law which has to be complied with every country. Thus in contrast to the Paris, Berne and other Conventions of the international era, the TRIPs Agreement lays down binding minimum norms not only in respect of levels and duration of protection but also in regard to enforcement and adjudication procedures giving countries very limited discretion. Further open, periodic review of national laws in WTO informed by the spirit of adverse judicial process, and the dispute settlement mechanism 'with teeth' leave countries with little choice but to comply, unless they choose to withdraw from the world and forgo the benefits of trade.

TRIPs is thus in effect a global law with built-in mechanisms to ensure that nations do not stray from the straight and narrow path of rectitude. In the evolution of the Global Era, the 1996 WIPO Diplomatic Conference is another significant landmark. For all its distinctiveness, TRIPs did not create any new standard that did not exist in any national law; it laid down a global law that was the highest common denominator of the national legislative provision were laid down as standards from which no deviation was brooked. It goes much farther than the TRIPs negotiations in that a global law was proposed and put in place before there was any national law. Neither the United States nor the European Union had a domestic law on copyright in the digital medium. It was only after the Diplomatic Conference adopted the Internet Treaties, did countries accede to these treaties and make domestic laws. An important feature of the Global Era is that in every area of public policy, be it IPRs or human rights, or trade, there are either binding global obligations or norms or values, and much of domestic policymaking and governance have come to be just adapting of global norms, values and obligations to the national context. Figuratively, many national laws such as IPR laws are now minor dialectical variations of a global language. In the Global Era, policy ingenuity lies in working on the structure and process of multilateral negotiations so as to steer the negotiations towards outcomes that are the best possible from one's point of view, choosing a plausible interpretation of the outcome craft a policy that flows from that interpretation, and securing domestic and international legitimacy for that policy.

Whether one likes TRIPs or not, one cannot but admire the brilliant policy advocacy by American industry associations with a strong interest in a strong IPR regime, and the brilliant negotiating strategy of the United States. A study of the policy advocacy and the negotiating strategy offers valuable lessons for us to pursue our national interest in multilateral forums like WTO and WIPO. Similarly, whether one likes or not, policy-oriented research and policymaking have to proceed from the premise that in the Global Era of IPRs, binding global IPR obligations are a historic inevitability. For a long long time economic analysis of the firm and economic history did not take note of technology. It was Karl Marx who brought in technology in the discourse on economic change by arguing that in acquiring new forces of production (that is technology) men change their mode of production, and that in changing their way of earning their living, they change all their social relations, as well as principles, ideas, and categories. As technological paradigms shift so do modes of production, and so do law, custom and habit. Schumpeter carried forward Marx's economic interpretation of history, and placed technological innovation at the centre of his economic analysis of the firm and industries, and of economic history. In simplistic terms, since the Industrial Revolution, four

technological revolutions had run their course, and we are in the midst of the fifth. Each revolution was triggered by the bunching of technological innovations which not only created new products and processes but also together created new growth sectors, and a far reaching alteration of the structure of the economy as well as of society. The first technological revolution, often called the Age of Cotton Textile, Coal and Steam, lasted from 1782 to 1845, the second, the Age of Steel and Railways from 1845 to 1892, the third, the Age of Electricity, from 1892 to 1948, the fourth, the Age of Hydrocarbons and the Automobile, from 1948, till about early 1980s. Thus in the last industrial revolution that culminated in the early 1980s, the leading sectors were automobiles, synthetic materials, petrochemicals, and agrochemicals, all based on low cost crude oil and energy intensive material. Each technological revolution is associated with a major shift in the technological paradigm; new shared visions of efficient production and guiding principles of product and process innovation emerge. A technological paradigm conditions technological imagination and thinking. Thus nowadays, if an engine has to be devised no one would think of the use of steam. In all these eras, an economy could organize the production of goods and services either through State enterprises or through private sector or by both as in a mixed economy.

Except in economies where the ownership of all means of production as well as production are vested in the State, it is absolutely necessary to have a legal framework that respects property rights, and enables a reasonable rate of returns on investment to be earned. There might be limits on the property rights and profitability in the larger public interest, but property rights and profitability cannot be eliminated all together. The contemporary technological revolution began in early 1980s with custom-made knowledge as the building block of the new technological paradigm. The leading sectors are likely to be information technology, biotechnology, nanotechnology and new materials; all of these are based on the discovery and application of knowledge much as the leading sectors of the previous industrial revolution depended on low cost and energy intensive materials. The knowledge intensity of products and services in the ongoing technological revolution is expected to be substantially higher than in the previous eras. Thus, the knowledge intensity of contemporary biotechnology based drug discovery is much higher than the conventional hit and run chemistry based drug discovery. The distinctive characteristic of knowledge as the basic building block of the new technological paradigm is that it takes considerable time, effort and investment to develop, apply and commercialise it, but once knowledge is commercialised others can easily access it; and once embedded in the digital medium, knowledge respects no national boundaries and can easily be accessed. The infamous Wikileaks profoundly illustrate this point; the United States government collected voluminous and precious information from all over the world through its extensive network, and yet in no time it became public property of one and all mainly because it was stored and transmitted in the digital domain. It has been said of the revolt against Mubarak in Egypt that the exponentially expanding world of information technologies with goofy names like Twitter and Facebook is now creating permanent instability inside formerly stable political arrangements. The same can be said of IPRs, particularly copyright; way back in 1996, in India, copyright was a placid arena free of the conflicts that characterised patents; the fierce gales of technological innovation had drastically altered the landscape of copyright so much so copyright has come to be more contentious than even patents. There are demands that information wants to be free, and should be set free so that copyright is legally declared to be the right to copy, and anyone can download any digital content without any restriction. In reconstructing IPRs in the new technological era, one cannot ignore the fact that almost all the innovation has to be done by private firms and individuals. There could be exceptions where innovation could be done by the State or through Open Source models of innovation. However, exceptions prove the rule, and legal regimes cannot be anchored in exceptions. To paraphrase what Marx once said only alchemists of revolution can ignore objective conditions: nor can human nature be ignored. Therefore IPR protection in the new era cannot be weaker than in the past. Given that information in the digital domain respects no national boundaries, and that custom-made knowledge based products and services account for an increasing share of international trade, there is no alternative

to have global IPR laws. Marx famously declared that ‘the hand-mill will give you a society with the feudal lord; the steam mill a society with the industrial capitalist’. Likewise, the global knowledge-based era would give you a global IPR law. There is yet another postulate that Schumpeter made. The fundamental impulse that advances public welfare comes from new goods, new methods of production and transportation, new markets and new management patterns. This impulse continually revolutionises the economic structure from within, incessantly destroying the old one, incessantly creating a new one.

The process of creative destruction progressively raises the standard of life of the masses by continually making available to the masses an avalanche of new products and services that even kings and queens of yore could not dream of, and by enhancing their purchasing power through continuously enlarging the basket of goods workers could procure for a given amount of labour. In appraising the performance of an industry, it is necessary to go beyond conventional economic analysis which examines whether or not production is maximised, whether price equals the marginal cost, and whether the profit of firms exceeds the return required to maintain their investment at the level required to produce the industry’s equilibrium output efficiently. It is very important to examine how well the industry generates dynamic impulses which would incessantly transform it. It is not perfectly competitive markets but monopoly that affords an ideal platform for shooting at the rapidly and jerkily moving targets of new technology; there is therefore no general case for indiscriminate prosecution of everything that qualifies as a monopoly or a restrictive trade practice. Schumpeter had no doubt overstated his case, but the fact remains that it is the prospect of spectacular rewards that induce entrepreneurs to venture into untrodden paths; for every entrepreneur who succeeds and reaps rich rewards, hundreds fail. Given the risk of innovation, the introduction of new methods of production and new commodities is inconceivable with perfect competition which envisages free entry of firms in an industry, and does not provide for rewards for undertaking risky investment in innovation. Technological innovation requires that the entrepreneur has the time and space to garner rich rewards for his risky venture. An entrepreneur exploits what he creates, and is entitled for protective measures like patents to appropriate the fruits of his efforts. This fact might be unpleasant but is a fact of life which IPR regimes cannot ignore. To discuss IPRs from a social perspective without juxtaposing the imperative of technological innovation and artistic creation, or vice versa, is to be a blind man in the tale of the elephant and the six blind men.

To conclude, it is important, particularly in policy-oriented research, to have a holistic perspective, and not make up the mind and then proceed to gather evidence. Research loses its relevance for policy advice if it ignores the world-as-is and driven by a particular view of the world, or seeks to rubbish points of view with which one does not agree.

(Keynote address delivered by the author at the Inter-University Centre for IPR Studies, Cochin Science and Technological University, Cochin on 13 February 2011)

(CPS Bulletin Aug 2011 -June 2012)

R.Vaidyanatha Ayyar who had his early education in Anakapalli, obtained the M.Sc degree in Chemistry and Ph.D from Andhra University. Later he studied for the Master's degree in Public Administration at Kennedy School of Government, Harvard University. He held prestigious positions in the administrative service in his home state Andhra Pradesh and the Government of India. As Secretary HRD Government of India he initiated some important measures for the promotion of higher education. After superannuation he worked as Professor of Management Studies at the Indian Institute of Management Studies, Bangalore. His book Public Policy making in India (2009) was well received. “This unique volume integrates various elements of the policymaking process that have, till date, been dealt with separately. These include interest group politics, the role of the media, judicial policymaking, and policy entrepreneurship by civil society groups. Policymaking is no longer a read.”

ETHICS IN CORPORATE GOVERNANCE

Shri C.Anjaneya Reddy, I.P.S.,(Retd)

Former Chairman, Andhra Pradesh Tourism
Development Corporation and Ex Director General of Police (A.P.)

Of late, Hyderabad has been in the news for wrong reasons – corporate scams, scams in financial companies, urban co-operative banks, micro-finance companies etc. In our childhood, we were told that Kumbakonam was the epicenter of all scams. Hyderabad seems to have taken its place now. It is therefore appropriate that the CVC thought it fit to participate in a discussion of this kind in this city. The number of scams are so many and of such magnitude, the CVC would do well to press for a separate Bureau of Economic Offences and relieve the CBI of this kind of work, as it has come to be burdened with too many investigations, many of them, not relevant to its intended role.

Today's theme is Ethics in Corporate Management – a lofty theme indeed! I must confess at the outset that my experience is limited to running State-level Public Sector Companies; I realize what all I say may not be entirely relevant to the Central PSUs. Many practices of GOI undertakings are perhaps better; no wonder many CPSUs and many government owned banks have been doing well. At the State-level, we seem to be still grappling with basics. Before I go into some detail based entirely on my experience of governance in public sector, I would like to invite your attention to an important fact. As the economy opens up, as our businesses merge more and more into international businesses, as new companies sprout by the dozen in the country, as more and more international companies open shop here, there is a dire need to monitor the happenings and ensure that we do not become wise after a scam occurs.

I know regulation has become a dirty word these days: everyone wants deregulation, deregulation of everything so that our 'enterprising' businessmen and resourceful politicians can profit from it! Profit-making of companies has come to be replaced by profiteering of individuals. Satyam has now become an international case study for ingenuity in manipulation of accounts. At this rate we will evolve as a poor nation with a few islands of wealth, a sure symptom of a perverse economy. There was a time when we admired the model of total control of businesses. Today we seem to be opting for total de-control. Wisdom seems to lie somewhere in the middle i.e. monitoring businesses without interfering with them, fostering initiative while containing avarice! This seems to be the challenge of our times.

Let me now talk of the public sector- as I have already said some of what I say may not be true of Central PSUs. Public sector is in a peculiar situation today. The PSUs are told they will not survive unless they compete and compete successfully with private sector. And to do that the Public Sector needs a level-playing ground that is not there. Also, there is an unseemly anxiety to privatize more and more undertakings. Ironically, while the private sector is rid of many controls, the public sector continues to be hemmed in from all sides. Some of its woes:

It is burdened with legacies of the past employment practices: you do not have the kind of people you need and where you need them; Competence has to be found within the constraints of reservation and promotion policies Chief Executives are not selected most of the time for their suitability. Directors are interested in the pelf if any, rather than its operations. The bureaucrat and the politician still hang heavy on them; multiple scrutinies often by people not qualified for it. Various committees - from language committees to legislative committees - descend on them, travel and feast at their cost. Enforcement agencies and tax-collecting agencies subject them to avoidable scrutinies while conniving with their counterparts in the private sector (an example is the illicit transport operators that violate the rights of the RTCs).

At the end of it all, the State PSUs are occupied with survival rather than troubled by ethics. If ethical conduct means corporate fairness, transparency and accountability there is not much scope or opportunity for them to be otherwise. If at all, there is some scope for further improvement in a few areas, firstly, the process of selection of Chief Executives is not only not transparent but arbitrary; there is no mechanism in place to identify and bring in a person suitable for the job. Often, administrators are picked up at random; no effort is made to identify if they have the competence and aptitude needed for the job. Many of them not only do not have the right attitude but are often burdened with their sense of importance. Very often, they do not know anything about the job on hand nor do they have the modesty to benefit from the experience of their professional colleagues and subordinates. In many cases, they are transferred before they come to grips with problems.

The PSUs have to evolve more transparent HRD policies and desist from practices which militate against the interests of workers. I refer to the increasing trend to outsource jobs to the so-called manpower agencies. At this point of time, these agencies function in our country, more like slave-labor providers rather than professional agencies. They are known to exploit their workers in many ways: they find ways to violate the minimum wages law and to avoid providing for provident fund and health insurance, let alone accident insurance. In many companies, there is a glaring difference between the working conditions of the 'permanent' employees and those provided by the manpower agencies. They don't get equal wage for equal work; the situation makes for a sense of deprivation and bitterness among the latter. There is a dire need to effectively monitor the functioning of the manpower providers; presently there seems to be no worthwhile supervision. Instead of this category of workers, companies can retain a sizeable group of their employees on contract and do away with workers provided by manpower agencies in all core areas. Many State PSUs have to become more user-friendly. The ownership syndrome on part of the employees is still there. Much is still to be done to bring about an attitudinal change among the employees, particularly in the Service Sector; they are yet to become service-oriented. The Railways are an example of a user-unfriendly organization; they still suffer from the Sellers' Market psychology. The Public Sector Undertakings have to play a greater role in safe-guarding our environment. A critical look at any of our Railway or Bus Stations strewn with plastic waste and empty bottles of packaged water would convince us of the need for better involvement of these PSUs in conserving the environment.

If IRCTC or State RTCs can arrive at a system to reduce their profits in selling packaged water bottles by a rupee and use that rupee to buy back an empty can, our Railway and Bus Station premises would be picked clean, greatly improving the environment. If only they give thought, they can evolve many such useful schemes to prevent environmental degradation and that would be part of their Corporate Social Responsibility. It is not desirable to stabilize the public sector; it should be given the autonomy needed and helped to function effectively. Our concern at this point shall be to run all our enterprises efficiently and effectively. It is not important whether an enterprise is in Private or Public Sector. What is important is how efficiently and effectively it is run and how responsible it is to the society!

(CPS Bulletin Aug 2, 2010)

Chennuru Anjaneya Reddy is widely respected for his outstanding work as police officer and administrator. As Vice Chairman & Managing Director of Andhra Pradesh Road Transport Corporation he helped the corporation to recover from losses and register profits amounting to over Rs 125 crores. Later as the Chairman of Andhra Pradesh State Tourism Development Corporation he gave a new direction to the promotion of tourism in the state. The corporation's annual turnover leap-frogged from a few crores to Rs 130 crores during his tenure. He is Founder Vice-President of Ananda Buddha Vihara which was consecrated in 2003 at Hyderabad by His Holiness Shri Dalai Lama. He is actively engaged in the promotion of Buddhist culture through publications and protection of the numerous ancient Buddhist sites and monuments in Andhra Pradesh.

GOVERNANCE FOR INCLUSIVE GROWTH

Prof. K.C. REDDY

(Chairman of Rajiv Education and Employment Mission of AP and Vice Chairman of Rajiv Education and Employment Council)

Independent India has made significant progress in accelerating economic growth and to some extent, even in reducing poverty levels. This growth has been particularly satisfying since 1991, in the post reform period. However, India's achievement in human development has been sub optimal indicating that the country needs to address the issue of equality of opportunities, both social and economic, apart from building a strong social capital base to exploit the basic advantage of the country's large young population.

GROWING DIVIDE

India to-day presents glaring contrasts in some key areas, such as sectoral productivity levels and quality of educational and health institutions. Productivity differentials are sharp between rural and urban areas, both in formal and informal sectors, agriculture and industry, industry and services etc., Similarly, there is a growing divide between those who attend private schools and Government schools, the former qualifying to access top of the line tertiary institutions at home and abroad while the latter have fewer choices with many ending up in distance education or low quality tertiary institutions.

Together, sectoral productivity differentials and quality differentials in education and health indicate that the benefits of economic growth are not being shared in a fair way by different social and economic groups. Consequently while India is shining in some regions and in a few sectors, a large proportion, about one third living in rural India, is yet to benefit from the progress made in the country. It is rightly said that reforms have bypassed certain sectors and sections raising questions on the very philosophy underlying the current development process. The issue is especially significant in the context of high rates of economic growth, which the country has achieved in the recent past.

NEW APPROACH

Realizing the divisions and dichotomies that persist, the Government of India has come up with an inclusive approach as the key strategy for development during the XI Five Year Plan. The critical element of the inclusive approach as stated in the XI Plan Approach Paper is "to provide the mass of our people access to basic facilities such as health, education, clean drinking water etc., that they need. Governments at different levels have to ensure the provision of these services and this must be an essential part of our strategy for inclusive growth".

Inclusive growth is multidimensional. It is different from and goes beyond poverty alleviating interventions in many ways. First, it should ensure participation of a larger proportion of population in the growth process. Second, those included must possess capability to contribute to growth and thus participate in the growth process.

Third, their capabilities should enhance their ability to take a piece of the growing cake. It is appropriate to quote Gandhiji here: "The measure of a country's greatness should be based on how well it cares for its most vulnerable population".

The 2006 World Development Report with a focus on equity and development conveyed effectively the message that equity is complementary in some fundamental respects, to the pursuit of long-run

prosperity. Institutions and policies that promote level playing field - where all members of society have similar chances to become socially active, politically influential. and economically productive - contribute to sustainable growth and development. Greater equity is thus doubly good for poverty through potential beneficial effects on aggregate long-run development and through greater opportunities for poorer groups with in any society.

To ensure the achievement of inclusive growth, a paradigm shift in policy and strategy is very much needed, Investments have to be raised in those sectors which will ensure wider participation and more equitable distribution of benefits. For instance, relatively higher infrastructure investment. both social and physical. is to take place in those regions and areas that are least likely to attract them on their own, The traditional approach to achieve such shift in investment has been to provide tax and other incentives to investors, which have not worked to the desired extent. Here comes the criticality of the role of State investments and it is best for the State to heavily invest in the regions lagging behind.

Generous budgetary allocations alone will not do. Resources need to be wisely invested and effectively monitored to ensure reasonable returns. In terms of conventional wisdom, improved incomes through accelerated economic growth are expected to improve the quality of institutions to facilitate their response to the changing requirements of people and address the challenges of globalization. However, the Indian institutions do not appear to have responded adequately to care for the people who have become vulnerable in the process of economic transformation and restructuring.

It is relevant to refer to the sentiment echoed in the lead article on India in the March 8 issue of the Economist, "...outlays and outcomes are not the same thing. Standing between the two is an administrative machine corroded by apathy and corruption, The Government's subsidies fail to reach the poor, its schools fail to teach them and its rural clinics fail to treat them." It is thus clear that investments in physical infrastructure alone will not help to deliver the services effectively. We need to focus on soft infrastructure, including governance, probity in public life, quality education and health care to ensure the desired outcomes, In short, we have to focus on governance-standards.

WHAT IS GOVERNANCE ?

It is not unusual for definitions of governance to vary though the final intent remains the same. Among some of the popular definitions are those provided by the UNDP, the European Commission (EC), the ILO and the World Bank.

The following is extracted from the explanation of governance given by EC.

Governance concerns the State's ability to serve the citizens. It refers to the rules, processes, and behaviors by which interests are articulated, resources are managed, and power is exercised in society.

The way public functions are carried out, public resources are managed and public regulatory powers are exercised is the major issue to be addressed in this context.

The ILO agrees that an effective and democratically accountable state can support high economic growth through appropriate macroeconomic policies, provide public goods and social protection, raise capability of people and enterprises and deal with vulnerability. Contrary to the prevailing' trend to downsize the State, it argues, there is a great deal that the State can do to promote decent work and that this is a widespread political demand in the democratic process. The State should, for instance, provide and enforce fair rules of the game across the economy and in particular protect the rights of both workers and enterprises in the informal and rural economy, a key issue for decent work. A range of specific policies can

aim to both maximize the rate of growth of new jobs that yield incomes above the poverty line, and raise the Productivity and incomes of those in informal employment. (World Commission on the social Dimension of Globalization. A fair Globalization creating' opportunities for all. ILO, Geneva, 2004)

In a similar fashion, the World Bank defines governance "as the traditions and institutions by which authority in a country is exercised for the common good. This includes - (i) the process by which those in authority are selected, monitored and replaced, (ii) the capacity of the government to effectively manage its resources and implement sound policies, and (iii) the respect of citizens and the State for the institutions that govern economic and social interactions among' them."

Veerappa Moily, former Chairman of Administrative Reforms Commission, summed up aptly the critical role of governance for growth in an endowment lecture delivered at Osmania University. "Governance is admittedly the weak link in our quest for prosperity and equity. Elimination of corruption is not only a moral imperative but an economic necessity for a nation aspiring' to catch up with the rest of the world. Improved governance in the form of non-expropriation, contract enforcements and decrease in bureaucratic delays and corruption can raise GDP growth rate significantly" (Dr.Burgula Ramakrishna Rao Endowment Lecture on Governance in India - Emerging paradigms and perspectives, Osmania University, March 15, 2007)

GOOD GOVERNANCE

Good Governance as a concept has become popular since 1989-90. A term that is being regularly used in academic discussions and public discourse good governance is sometimes shrouded in semantic ambiguity. That is why there are more than one definition of good governance. Good government is the ideal of democracy. It is associated with democracy and human rights and it implies respect for human rights, dignity, justice, equity, participation and accountability. Good governance, an ideal of liberal democracy, is a combination of politics and administration and also of administration and management. As a policy metaphor it means 'depoliticization of the political process.'

Experts have identified three dimensions of good governance as: 1) the form of political regime 2) the process by which authority is exercised in the management of a country's economic and social resources and 3) the capacity of governments to design, formulate and implement policies and discharge functions. It implies the ideal orientation of a State that works to achieve self-resistant and sustainable development and social justice and the ideal functioning of the government that operates most effectively and efficiently.

The ideal of good governance is enshrined in the Indian Constitution. The Preamble to the Constitution is a bold and eloquent declaration of the commitment of the people and the government of India to secure to all her citizens equal rights, social justice and economic opportunity for individual development and collective well being. The two important chapters on Fundamental Rights and Directive Principles of State Policy bear testimony to it. That is why these two chapters are called "the arms of the (social and economic) revolution."

It is an undisputed fact that notwithstanding some aberrations here and there our democracy has stood the test of time and emerged stronger from both internal crises and external threats. The first phase of our democracy was on the consolidation of the hard earned freedom and institution building which was accomplished under Jawaharlal Nehru's leadership. The second phase, however, was marred by wars forced on India, the famine and food crisis of the mid-sixties, and the derailment of the system during the 1975-77 national emergency. In spite of such impediments our democracy did not lose its vitality as evidenced by the increasing involvement of the people across the length and breadth of the country in the process of social and economic transformation. The voice of the disadvantaged and neglected sections of the society came to be heard and recognized as vital for rapid transformation. The third phase witnessed the opening up of India's economy and laying the path for modernization through reform.

GOVERNANCE INDICATORS

In a July 2007 World Bank Policy Research Paper entitled Governance Matters VI: Aggregate and Individual Governance Indicators 1996-2006, Daniel Kaufmann, Aart Kraay and Massimo Mastruzzi provide the methodological details as well as the component and aggregate indicators across countries and over time of Governance. The following six components form part of governance indicators: Voice and Accountability, Political Stability and Absence of Violence, Government Effectiveness, Regulatory Quality, Rule of Law, and Control of Corruption. Each is explained as follows.

Voice and Accountability (VA) - measuring the extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and a free media. [Note: If the citizens are not able to throw out a non-performing government, then of what use is all the government machinery? VA is thus an important parameter of governance.]

Political Stability and Absence of Violence (PV) - measuring' perception of the likelihood that the government will be destabilized or overthrown by unconstitutional or violent means, including domestic violence and terrorism.

Government Effectiveness (GE)- measuring the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies.

Regulatory Quality (RQ) - measuring the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development.

Rule of Law (RL) - measuring the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, the police, and the courts, as well as the likelihood of crime and violence.

Control of Corruption (CC) - measuring' the extent to which public power is exercised for private gain including both petty and grand forms of corruption as well as "capture" of the state by elite and private interests. These six components are measured based on country wide investigations and the six indicators are based on appropriately aggregated sub-indices.

INDIA IN COMPARATIVE CONTEXT AND IMPLICATIONS

With worst score put at negative 2.5 and the best positive 2.5, the scores for India in 2006 along with those for China and a few of our Eastern neighbours are worth probing.

Governance indicators for Selected Countries for 2006

Country	VA	PS	GE	RQ	RL	CC
China	- 1.61	-0.37	-0.01	-0.19	-0.40	-0.53
India	0.35	-0.84	-0.04	-0.15	0.17	-0.21
Indonesia	-0.25	-1.17	-0.38	-0.26	-0.82	-0.77
Malaysia	-0.34	0.35	1.02	0.67	0.58	0.38
Singapore	-0.07	1.30	2.20	1.85	1.82	2.30
Thailand	-0.50	-0.99	0.29	0.37	0.33	-0.26

VA= Voice and accountability, PS=political stability, GE=Government effectiveness RQ= Regulatory quality, RE= Rule of Law, CC=Control of Corruption.

Looking at China in the Table, we in India should be cautiously optimistic since our scores are better than China's on all parameters except one (Political stability). Yet, when we look at the relatively more prosperous Eastern neighbours, there is a lot we need to do to improve our governance standards.

In the case of India, the worst score of -0.84 was obtained for political stability. The issue should be addressed first. The score reflects the perception that the government [at the centre, since the scores are for the nation as a whole] of the day may not complete its full term. This apprehension has become routine in our vibrant democracy. Unless electoral reforms address and tackle this issue, it is impossible to gain a better score on political stability.

There is also room for significant improvements in government effectiveness, regulatory quality, rule of law and control of corruption. If all that we have is freedom and democracy, it is no consolation to the impoverished, unskilled and uneducated people of the country. Inclusive growth without effective governance will mean mechanical and statistical inclusions combined with continuing insecurity and deprivation for the included. Successful economies have been able to achieve social transformation through good governance and sound public sector management.

The engine of social and economic transformation is no longer driven by the political leaders only. Engineers, professionals, technocrats, businessmen and others are all involved in the huge exercise. And the biggest advantage is the fact that more than fifty percent of India's huge population is under 25. It is aptly remarked by an expert that India is getting richer and younger whereas China is getting richer - certainly far ahead of India - but older unlike India.

India's democracy created history by empowering 330 million people, most of whom were illiterate, through the right to vote and the opportunity to shape their own system of governance. Sixty years later India now seeks to liberate her billion plus people from the shackles of poverty, unemployment and injustice. Good governance is vital for achieving the ideal. And a critical outcome of good governance is inclusive growth which the first Prime Minister had in mind when he called upon the people "to become partners in the great task of building' a new India."

Arvind Panagariya in his recent book, *India: "The Emerging Giant."* summed up beautifully the role of Government in India at the current juncture. "The government plays an extensive role in the Indian economy. It not only runs the general administration and provides security as all Governments do, but it also redistributes incomes through subsidies, provides economic services such as telecommunication: plays a central role in the provision of social services such as health and education; and even directly engages in manufacturing activity."

Given the complex nature of our society and the consequent challenges India needs a multi pronged strategy to improve the efficiency of the governance-machinery in order to achieve a faster and more equitable growth.

We need to underscore that the growth of an economy and in particular with a focus on inclusiveness through equitable distribution of socio-economic opportunities is not merely a product of economic policies and productivity of its industry and agriculture. The economic growth of a country is also contingent on the way it governs itself.

Size of public expenditure in India is low compared to OECD countries. But it may not be correct to infer that the State's incapacity to deliver is a result of shortage of resources alone. Indian Governments were never short of resources for carrying out vital functions necessary for development. Excluding the local government's expenditure and inter-governmental transfers the combined total expenditure of the

Union and State Governments, according to the budget estimates is a whopping Rs.2000 Crores per day and in terms of purchasing power it is equivalent to Rs.2 billion a day. In 1980-81 the total expenditures of the central and state Governments stood at 26.3% of GDP and peaked to 31 percent in 2003-04 since 2004-05 expenditures started reversing and the bulk of compression took place via reduction in capital expenditure.

In this connection a reflection on the budgetary allocation towards various poverty alleviation programmes during the IX Five Year Plan (1997-2002) would raise a number of important questions demanding answers from many functionaries in the system. The Rs. 40,000 crores budgeted during the plan was adequate to provide 3 Kg food per day per family throughout the Plan period; but food security continued to be a major area of concern of policy in the subsequent years.

The disintegration of the erstwhile Soviet Union and the sustained acceleration of transition economies is testimony to the view that good governance is a critical component of economic growth. Making democracy and economic and social institutions compatible with each other must be the ultimate objective of every initiative and wish of every well meaning Indian.

The basic issue therefore is on the outcomes and the relevant questions are –

How to make the state apparatus function in a responsive and productive manner? and

Is the state apparatus appropriate to implement programmes for economic prosperity of people at large?

It has to be recognized that social goods like school education and primary health care cannot be accessed by most citizens without State's intermediation on funding. In a country like India with vertical hierarchies, caste divisions and moral neutrality to social inequalities. States role is critical. If Governments fail in these critical areas, the bulk of our gene pool is wasted and educational opportunities severely limited to a small proportion of population thus affecting people particularly from the poorer sections in terms of their ability to participate in both social and economic activities. Democracy will then be limited in terms of real and effective participation to a small proportion of people. India simply cannot afford to allow such an outcome.

Excerpts from Prof. Vijayanarayana Reddy Endowment Lecture Delivered at Acharya Nagarjuna University on 23rd April 2008.

K.C.Reddy obtained the Master's degree in Economics and later the Ph.D. degree also from Andhra University. Joining the faculty of the Department of Economics he rose to become Professor and Head of the Department and also held important positions in the University like Chairman of the Faculty of Arts Director, School of Economics, Director, Academic Staff College, Member, Board of Management and Academic Senate. In 2004, he was appointed Chairman of Andhra Pradesh State Council of Higher Education. He became Foundation Vice-Chancellor of Rajiv Gandhi University of Knowledge Technologies. He initiated a number of innovative programmes to build quality and relevance in higher education in the State. Currently, Vice-Chairman, Rajiv Education and Employment Council of Andhra Pradesh (REECAP) and Chairman, Rajiv Education and Employment Mission of Andhra Pradesh (REEMAP). He was President of Indian Economic Association during 2006.

POLICY CRISIS IN HIGHER EDUCATION: *REFORM OR DEFORM?*

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Introduction:

Higher education in India is engulfed with several problems and major reforms are long over due. But unfortunately the system has been characterised with a big policy vacuum for a long period¹. Somewhat surprisingly, all of a sudden, now there is a rush for reforms, in what is described as an 'epochal year' for education reforms that witnesses a paradigm shift in education policies. It is a period of speedy reforms intended to be brought through a series of legislative measures. There are currently eight-nine Bills being formulated by the Ministry of Human Resource Development (MHRD) of the Government of India relating to reforms in higher education and they are at various stages; some are approved by the Union Cabinet, some are subjected to consultation, some are made available for public discussion; some are still treated as 'secret' and are not available to the public, some have already been placed on the table of the Parliament, some have gone to the Parliament Standing Committees, some have been passed by either house of the Parliament; and probably all are ready for introduction in and passing by the Parliament. The several bills are: (i) The Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010, (ii) The Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and University Bill, 2010, (iii) The Educational Tribunals Bill, 2010, (iv) The National Accreditation Regulatory Authority for Higher Educational Institutions Bill, 2010, (v) The Universities for Innovation Bill 2010, (vi) The National Commission For Higher Education and Research (NCHER) Bill, 2010, (vii) The Protection and Utilisation of Public Funded Intellectual Property Bill 2008, (viii) National Academic Depository Bill, and may be (ix) a Bill to enable Public-Private Partnership in Education. There may be many more bills in the pipeline.² The first four of these bills have been introduced in the Parliament on 3 May 2010³ and the bill on intellectual property was introduced a couple of years ago. The Bill on Universities for Innovation, perhaps along with others is likely to be introduced in the winter session of the Parliament. The Bill on the Educational Tribunals, tabled in the Parliament without considering any recommendations of the Parliamentary Standing Committee to which it was referred earlier for review, was passed by the Lok Sabha, but could not go through the monsoon session of the Rajya Sabha, as there has been opposition from the members of the ruling party, besides others. It has been deferred for the next session of the Parliament.

It may be necessary to look at all these bills and other initiatives being taken together, as they constitute a package of reforms that the government plans to make for the development of higher education. However, at the same time each one has also to be examined in detail, as each one individually and all collectively have serious long term implications for the development of higher education in the country. This article provides a short commentary on five of these bills.

At the outset it may be noted that the current legislative measures have been initiated in the background of three major reports on higher education prepared by the high level committees appointed by the union government in the recent past. They are: the Ambani-Birla Committee report on higher education,⁴ the Report to the Nation of the National Knowledge Commission (NKC)⁵ – both chaired

by top industrialists, and the report submitted by Yashpal Committee, chaired by an educationist. The Ambani-Birla Committee though noted the critical importance of the role of the state in development of higher education in several developed countries of the world, strongly suggested that government in India should leave higher education altogether to the private sector lock stock and barrel; it should step in only when the private sector needs it; and that the government should at best confine itself to school education. Further, it pleaded for legislation of the Private University Bill, which was pending in the Rajya Sabha since 1995, and also suggested that user pay principle be strictly enforced in higher education. The National Knowledge Commission also made similar recommendations. It further favoured opening of Indian higher education scene to foreign universities and allowing of Indian universities going abroad, or simply trade in higher education. The Yashpal Committee has argued more for rejuvenation of higher education, de-fragmentation of knowledge and care in relying on private university systems and even with respect to internationalization. It also favoured less regulation of the universities by the government, stating that universities should be self-regulating institutions.

Ten Common Features of the Bills

As reflected in the several of the legislative initiatives taken by the Government of India, there are a few underlying assumptions and features that bind them together. First, they reflect a new understanding of the government on the role of the State in the development of higher education. Traditionally State has been an active player – in policy making, planning and providing higher education in India, like in most other countries of the world. The emerging assumption of the present time is that the State can minimize its role in higher education, not because of lack of funds, but because of the emerging conviction that higher education is not a sector that the government should be bothered about. Government can adopt a policy of laissez-fairism; and at best, it can confine its role of an enabler, one which provides a loose framework of rules and regulations for those who wish to enter into the business of education. In a sense, the Bills assume that higher education can be left to a large extent to the markets.

Secondly, formulated in the neo-liberal environment, all the Bills assume either explicitly or implicitly, and even encourage, commoditization of higher education and consequently privatisation and even commercialisation of higher education. Corporate sector is given an enhanced role in higher education: members of the corporate sector are to be made members of the governing bodies of some of the new institutions that are proposed to be set up. In fact, a few institutions, including grants-giving organisations are to be established under the Companies Act!

Thirdly, several bills perceive higher education as one that is to serve more global needs than to serve national social and economic purposes. The Bills aim at making India a global education hub that serves global markets.

Fourthly, the underlying assumption of all the Bills is that the existing institutions cannot be reformed and they need to be replaced by new structures; or that even if they are restructured and revitalized, they will not serve the neo-liberal goals, as they were set up in a period characterised by an altogether different development paradigm. Hence it was assumed that better altogether new organisations are established in place of the existing ones.

Fifthly, the several Bills provide for setting up of new autonomous institutions. These institutions will not only enjoy a very high degree of autonomy – completely free from government or social control, but also they are accountable to none. Autonomy, not ‘autonomy with accountability’ will be the feature of many of the new institutions.

Sixthly, while some of the Bills (like the Bill that prohibits unfair practices and the one meant to set up Educational Tribunals) are ostensibly very well-intended, they mark only a very small step in right direction and they are highly inadequate to solve the problems and innumerable unfair and corrupt practices that our higher education system is inflicted with.

Seventh, in contrast to policy initiatives made earlier only after extensive consultations in the meetings of the Central Advisory Board of Education (CABE), in which education ministers of all states participate, and consensus is reached on the issues, the process of making the present set of Bills does not recognise the need for the union government to consult states on issues relating to education, which is a concurrent subject on which state governments spend considerable amounts – in fact, higher than what the union government spends – from their budgetary resources, affecting the ‘meaningful’ relationship between the centre and the states that the National Policy on Education (1986) promised. Only in case of the draft Bill relating to the NCHER, there have been extensive public discussions and also in the CABE meeting.

Eighth, the way the four bills were introduced in the Parliament without any prior consultation with the public marks some kind of a haste and secrecy on the part of the government, which are not necessary in a democracy like ours in launching a package of reforms in a sector like higher education.

Ninth, the several bills also highlight the lack of cohesion, if not presence of friction, between not only the union government and the state governments, but also between several ministries/ departments involved in higher education at the central level, as the coverage of some of the Bills excludes institutions of higher education run by different ministries/ departments, like health, and agriculture, and even sub-departments of the Department of Education, like teacher education; and some ministries/ departments have already proposed parallel legislations.

Lastly, the several Bills, together, are characterised with absence of a long term and holistic vision of development of the society and the role of education therein.

Every Bill looks like a quick-fix solution – poor and inadequate, to a specific problem. For example, it is well noted that the present size of the system of higher education is highly inadequate and that the government may not have sufficient resources for large scale expansion and to increase the gross enrolment ratio to 15 percent by 2012 and then gradually to 30 percent. The Foreign Educational Institutions Bill is viewed as a solution to this. The problem of quality of education and lack of autonomy is to be tackled with the setting up of innovation universities as proposed in the Innovation Universities Bill. It is presumed that autonomy or no autonomy, it does not matter for the existing universities. The issue of the absence of a national database of academic records and awards is to be dealt with by the proposed National Academic Depository Bill that aims at building an efficient electronic database facilitating secure storage, efficient retrieval etc., by the central and state governments. The problem of inadequate and ineffective system of regulation by the existence of a large number of regulating bodies is to be tackled by the Bill that proposes to set up the NCHER. That there are several unfair and corrupt practices prevalent in our institutions of higher education is acknowledged with the Bill that prohibits unfair practices. The problem that our higher education system is vexed with numerous legal conflicts, over-burdening the courts, has to be answered by the Educational Tribunals Bill. The Bill for National Accreditation Authority has to ensure improved methods of accreditation and assessment and to make accreditation mandatory for all. The Educational Tribunal Bill and the National Accreditation Authority Bill are also expected to meet the requirements of the World Trade Organisation (WTO) and the General Agreement on Trade and Services (GATS)

that insist on setting up methods of transparency and grievance redressal mechanisms before higher education is 'committed.' Thus the several Bills view higher education in small fragments, in bits and pieces and not as a holistic process. The Bills also do not recognise the need to strengthen the existing institutions. Further, the solutions thought in the form of the Bills are inadequate in some cases, and are not necessarily based on sound thinking. One also notices no effort to relate one Bill to the other. As shown later, some of these Bills are illconceived, and are based on questionable presumptions and untenable assumptions.

The Foreign Educational Institutions Bill

A Foreign Educational Institutions Bill was first introduced in the Rajya Sabha in 1995,⁹ and was later revived in 2007 but could not go through the proceedings in the Parliament. The government has promised that it would reintroduce the Bill after making suitable amendments. The present government has resolved immediately after resuming office for the second term, to work for the enactment of the Bill. Now a fresh Bill, viz., the Foreign Educational Institutions (Regulation of Entry and Operations) Bill has been approved by the Cabinet and was introduced in the Parliament.

This Bill is considered, by the government as "a milestone which will enhance choices, increase competition and benchmark quality. A larger revolution than even in the telecom sector awaits us," The Bill, the stated objective of which is "to regulate entry and operation of foreign educational institutions imparting or intending to impart higher education " is based on certain faulty assumptions that the government makes, some of which are clear from the pronouncements of the government in the overall context of this and other Bills. They are: (a) once the Bill is passed, huge foreign direct investment (FDI) will flow into India; (b) top ranking universities will come to India which will provide access to high quality education to the Indian students in India, that too at a fraction of cost of normal foreign education, as students save on travel costs and costs of living abroad, besides partial savings in tuition etc; (c) India will save huge foreign exchange which is now going out in the form of students numbering about 100,000 going abroad for studies, which is estimated to be around US\$ 7.5-10 billion a year; (d) foreign institutions not only provide high quality education, but will also contribute to improvement in quality of overall education, as their entry will result in competition and competition automatically improves quality and efficiency; and (e) most importantly, foreign institutions will come to India to solve our problems relating to inadequate access, quality and funding in higher education and hence government can reduce substantially, if not minimise its responsibility of providing education to the people.

There is no basis to argue that any of these assumptions is tenable. First, since 100 percent FDI is allowed on 'automatic route' in higher education, it is assumed that the Bill is going to open the flood gates for many foreign universities and that they will come with huge capital to invest in India. But foreign universities are found to be more interested (i) in taking students to their home universities as that will yield more revenues to their universities and their economies at large, and that will also promote diversity in their university campuses; and (ii) if at all necessary, in having collaboration with Indian counterparts as a part of twinning and other similar arrangements, which involves use of locally available infrastructure, than in coming to India with massive capital to invest in building university campuses in India. In the recent past this has been stated very clearly by some of the visiting ministers and university delegations from abroad. So to claim that higher education through this Bill will become the 'largest FDI earner' may not be justifiable.

Second, recent indications are also clear that no top ranking universities are eager to come to India or to other developing countries to offer quality education programmes. It is the two-tier and three-tier universities which would be interested in coming to India to exploit the huge markets and to offer low quality programmes, even unaccredited programmes, taking advantage of the loopholes in our rules and regulations and weak regulatory mechanism. Top ranking universities are interested in India, but only for collaboration in high quality research activities, and not for normal degree programmes. This does not result in flow of FDI and setting up of foreign universities on Indian soil. Further, even when top ranking universities come to India to offer education programmes, it is important to note that only those newly created wings of the universities whose mandate is to go abroad to raise resources on a business mode, will come to India, so that they can make money and cross-subsidise the education of the native students.

Third, the Bill is seen as one that provides great opportunities for Indian students to study in their home country only, without feeling the need to go abroad; the flight of the students to go abroad will stop. It is important to note that many students who go abroad, go abroad not only for a degree, but also mainly for studying abroad in a foreign university in foreign atmosphere and settle there at least with a work permit. Large numbers of those who are going abroad for studies will not opt to study in a foreign university within India. Even if foreign universities set up campuses in India, the whole ambiance of a foreign university and its sociopolitical milieu cannot be transplanted in India. Hence such universities will not be attractive to a large number of students who are nowadays going abroad. The students will continue to emigrate in growing numbers. Therefore, to say that we will save huge foreign exchange may not be right.

Fourth, if at all the entry of foreign institutions results in any competition, that will be between unequals, as many of our public and even private institutions are severely starved of resources – financial, physical as well as teachers; and they are subject to tough regulations of the government, while the foreign universities will be least subject to any regulations of the government. Competition between unequals will be unhealthy producing unhealthy results. More importantly, competition does not necessarily result in increase in improvement in quality and in efficiency. It can indeed produce avoidable costs to the society.

Lastly, the most untenable assumption is that the goal of the foreign institutions is development of our nation and that they will come here to solve our problems, relating to inequitable access, falling standards and scarcity of public finances — the three most important problems that the Indian higher education system is facing. One should note that the foreign institutions come here to solve their own problems; even some of the best universities in the West are increasingly experiencing falling enrollments and facing shortage of public funds; and they are encouraged by their governments to go abroad to make money. They will not be interested in offering solutions to our problems of inadequate access, poor quality and resource scarcity. The assumption that foreign institutions will expand access to higher education and will help in boosting the gross enrolment ratio in higher education to our goal of 30 percent is highly contestable, given their interests and given the relative magnitude of number of students to join foreign institutions, which will have unregulated fee structure. Entry of foreign universities will help neither our higher education system nor our economy in any significant way. It may have adverse effects. There is no evidence of any developing country having prospered educationally or economically by relying on foreign universities. In fact, the evidence is abundant to show that strong and vibrant higher education systems are built mainly by the governments and with public funds. Self-reliance in higher education is critical for India to emerge as a knowledge superpower.

Two important features of the draft Bill are very striking. According to the Bill, the role of the government of India or bodies like the University Grants Commission (UGC) (or any other body to come up in its place, viz., the NCHER discussed later here) is extremely limited in case of the foreign institutions. The role of the government is confined to granting of permission to set up the institution. The government has no role in administration – admissions (forget about reservations), fee policies, recruitment of faculty or other staff – domestic or foreign, their qualifications, salary structure, etc.; it has no role in academic aspects – curriculum, methods of teaching, evaluation and examination system, recognition of degrees, etc.; it has no role of any kind in the governance of the institutions; and there is no supervision of any aspect, no accreditation or no assessment by any Indian bodies. This is contrary to the earlier thinking that foreign institutions will be recognised as deemed universities and will be under the purview of the UGC and that they would be subject to fee control and reservation policies. The provisions in the present Bill mean a very high degree of laissez-faireism – non-involvement of the government in higher education to be provided by the foreign institutions. To allay any doubts that the government might formulate rules later, the Bill clearly states that further rules will be made only to clarify the provisions of the Act and that no rules will be made after two years after the Act is made.

The second feature, which is a corollary to the first, refers to the complete freehand given to the foreign institutions in all these matters, from setting up institutions to running them. Once they get the permission from the government, which also does not require any promise or statement, if not an affidavit on any of the above issues, they can decide on every major and minor issue on their own. They do not have to even submit any annual reports to the government. Their operations and their performance will not be subject to any examination by any body. There is no provision for any kind of social control and they are accountable to none. This reflects the neoliberal government's unquestioned faith in markets. One doubts, whether even in a free market economy, any educational institution is so free to do whatever it wants to do and whether governments in those countries have so much faith in the markets, and opt to be onlookers only.

However, the Bill provides for revoking the status granted to a foreign institution, "if the [University Grants] Commission is satisfied that someone has violated any provisions of this Act or of the University Grants Commission Act 1956 or any other Act in force in India." The problem is how will the Commission be satisfied? After all, it does not have any overseeing powers, if not supervising and inspecting responsibilities; it does not have to receive any reports on the activities or practices of the institutions or its accounts or on any activity or it does not have to visit the universities for inspection or for any purpose.

On the other side, the Bill offers two kinds of guarantees to promote the entry of foreign institutions and their flourishing. It guarantees speedy process of applications – the concerned statutory authority is to give the recommendation to the Registrar within three months after receipt of application from the foreign institution; the Registrar will have to submit the report to the Commission within six months and the Commission will have to tender advice to the Central government within 30 days; and the Central government will notify or communicate the rejection within a period of 30 days. Everything will be done on a fast track mode, in all within a period of eight months. The second kind of assurance is to the students, so that students do not worry, and do not have feel the need to be too cautious to take admission in these universities. The Bill guarantees to the students that they will be taken care in case of any eventuality. The Bill states that in case of withdrawal of the foreign education provider for whatever be the reason, the Central government shall make alternative educational facilities for students.

According to the Bill, the conditions to get permission to set up a foreign institution in India are very minimal: an institution has to have experience of offering educational services for about 20 years; it has to deposit Rs. 50 crore as a corpus fund; it has to offer courses of study which should be “in conformity with the standards laid down by the statutory authority, and is of quality” to those offered in the main campus of the university in the country in which it is established; it cannot repatriate surplus revenues; 75 percent of revenues generated should be used for development of institution in India and 25 percent need to be deposited into the corpus fund; and it has to publish prospectus of the institution giving details on fees, number of seats, admission criteria, etc. The Bill provides for exemption from the conditions which in themselves are so minimal, in case of reputed institutions with international standing from these minimum conditions, except the condition relating to use of surplus revenues. Criteria for granting exemption will be formulated by the government later.

While we need actually tough regulations, as foreign institutions and international forces are very strong and their activities cannot be easily controlled, the Bill provides for token regulations only. In the recent years there was a talk that these institutions will be recognised as deemed universities and the rules and regulations applicable to deemed universities will be applicable to them; further these institutions would be subject to policies of government of India relating to reservations in student admissions, their fee structure will be regulated, and the courses they offer would have to be recognised by the parent universities abroad as well as Indian bodies. But none of these conditions figure in the draft Bill! It is important to note that some of the countries that have allowed the entry of foreign institutions have laid down strict conditions regarding accreditation of courses, and also regarding enrolments of native and foreign students, besides about the faculty, physical infrastructure and other aspects. Quite surprisingly, the draft Bill makes no mention of any condition regarding accreditation and recognition of the courses of study by the appropriate public bodies either in the country of origin or in India, if not both.

The Bill makes a distinction between ‘Foreign Educational Institution’ and ‘Foreign Education Provider.’ The later is the one which is recognised by the Central Government to enter India and to offer education programmes in India; and the Foreign Educational Institution is one which is established or incorporated outside India and has been offering educational services in the country in which it had been established or incorporated, and which offers or proposes to offer educational programmes in India through conventional method independently or in collaboration with any institution in India. In other words, the later one is not recognised by the government of India. One would expect that such a Bill will require these institutions to seek formal permission from government to continue their activities, and apply for recognition of their education programmes or to quit, so that all the foreign educational institutions come under the purview of one common set of regulations. The Bill does not propose any thing of this kind. Only those institutions which intend to offer degree/diploma or equivalent programmes have to take the permission. As the Bills states, “No foreign educational institution shall admit any person as a student, or collect any fee from such person or its students in India for any course of study leading to the award of a degree or a diploma, by whatever name called, unless such institution has been notified by the Central Government as a foreign education provider...” The Bill not only recognises that non-recognised institutions exist in India, but it also allows for their continuation in India without seeking permission from the government. They will of course be required, according to the Bill, to furnish a report about their activities to the Commission and publish the information on their websites. The question is why will they do so, particularly as, an

institution which is permitted and notified by the government to carry on its operations in India, in contrast, does not have to submit any report to any one. So the on-going business, however murky it is, of several unauthorised foreign educational institutions can go on uninterrupted and the Bill will have no effect on these institutions.

The Bill, which was titled in its earlier form in 2007 as the Foreign Educational Institutions (Regulation of Entry and Operations, Maintenance of Quality and Prevention of Commercialisation) Bill, is now simply called the Foreign Educational Institutions (Regulation of Entry and Operations) Bill, probably realising that maintenance of quality and prevention of commercialisation of higher education are too difficult goals to be achieved by this Bill or that commercialisation of higher education is an accepted phenomenon. The private sector has extended a 'red carpet welcome' to the Bill, probably expecting that eventually the government will be forced to extend similar freedom with a similar token minimal set of regulations to them in order to provide a level playing field for ensuring competition etc. The private sector might view it as an added opportunity for the private institutions along with foreign institutions to work together to relegate the public higher education system to a distant insignificant second place on the higher education scene in the country, as it is already happening in case of higher professional and technical education in some of the major states in India.

As stated in the 'Statement of Objects and Reasons' of the Bill, "there is no comprehensive and effective policy for regulation on the operations of all the foreign educational institutions in the country." It is also stated that "due to lack of policy or regulatory regime it has been very difficult to make meaningful assessment of the operations of the foreign educational institutions.." One wonders whether the Bill provides any comprehensive and effective policy and helps in making any meaningful assessment of the operations of these institutions, and whether the Bill will help "to maintain the standards of higher education within the country."

In the recent past, the Yashpal Committee and a Committee of Experts constituted specifically to look into this issue under the Chairmanship of C.N.R. Rao¹¹ have suggested caution in the whole approach; they have suggested to adopt a highly selective approach – to identify and invite a few best universities in the world to come to India and offer education programmes, and not to offer a blanket entry permit for all kinds of institutions to come and do business in higher education, which treat higher education as a commodity — as an international tradable commodity meant for profit-making, and not as a public good. Unfortunately the Bill does exactly what these committees have suggested not to do. It treats higher education as a tradable commodity. The stated objective of the Bill is "to provide for regulation of entry and operation of foreign educational institutions ..."; but the actual objective seems to facilitate easy entry of foreign institutions into India and to help smoothen the process of making commitment of higher education by the Government of India to the WTO under the framework of GATS, an issue which has been pending for the last several years, particularly after the confusion created by making an 'initial offer' and a 'revised' offer to the GATS by the Department of Commerce, Government of India in 2005, and the intent of the MHRD to ask the Department of Commerce to withdraw the offer.

The Bill on Unfair Practices in Higher Education

The unfair practices adopted by many institutions, particularly private institutions of higher education in India are widely known and they are a legion, consisting of a vast variety of corrupt practices, starting from the period of founding of an institution and getting recognition from the government for the same to the conducting of examinations and awarding of degrees. In between, a

multitude of unfair methods that are practiced cover areas such as admissions, levying of fees, recruitment of teaching and nonteaching staff, payment of salaries, assessment and accreditation of courses of study and various other aspects, all of which come broadly under the simple label of corruption. Several private universities and colleges are established without proper permission from the appropriate bodies; students are admitted in these universities and degree and diploma programmes are offered which are not recognised by the government, and accordingly fake certificates are issued. The existing laws are found to be highly inadequate to deal with such a whole host of issues. Except publishing periodically a list of fake universities and other institutions by the UGC, and issuing by the government periodically 'advisories' in the form of advertisements to the students and parents to be aware of dubious claims of the dubious institutions, the government is not able to do anything, even with respect to those very fake universities. Despite such periodic announcements by the government, the business is going on without any problem in those institutions in broad day light.

The MHRD and the UGC have attempted in the recent past at framing rules and regulations relating to admission and fees in private professional institutions in 2005 and 2007,¹² with a view to check some of these malpractices, and even to regulate the growth of private institutions. But they seemed to have been not finalised, and also not taken into consideration while making the present Bill. Some states have formulated their own rules and regulations. In the meanwhile, growth of private institutions continues to be rapid, along with all unscrupulous methods in their academic and non-academic operations, necessitating judiciary to intervene often, sometimes to the discomfort of the students, the institutions and even the government. The judgments of the High Courts and Supreme Court have also not been consistent.

Given all this, one would be expecting a comprehensive legislation that checks unfair practices of a wide variety in the higher educational institutions and guarantees equitable access to quality higher professional education to the meritorious students. The Bill titled 'Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill 2010' which aims at the prohibition of unfair practices in higher educational institutions, has to be seen in this broad context. The Bill signifies, in a sense, an acknowledgement of the widespread prevalence of unfair practices in our institutions of higher education, and it marks a small and an inadequate effort on the part of the Government of India to tackle the problem. In a sense, the Bill is only a partial response to a large and widespread disease and does not even cover some of the vital issues covered by the draft framework of rules and regulations formulated earlier by the UGC and the MHRD. Not only are several areas of practices by the private institutions not covered in the present Bill, it also does not provide for any role for the State. Earlier formulations have provided for elaborate mechanisms for the State, including state governments, to regulate admissions procedures, fees etc., to check several other undesirable practices, and to ensure admission of economically weaker sections in these institutions. Viewed in this background, the scope and limits of the present Bill seem to be quite restrictive and are unnecessarily narrowly confined to a few selected issues.

How far the Bill will be able to check the widely prevalent malpractices in higher educational institutions in India? From the very title of the Bill, it appears that the Bill is not comprehensive enough to deal with a wide range of corrupt practices prevalent in several educational institutions in India. For no understandable reason, its scope is restricted to technical and medical institutions and universities including deemed universities; it excludes other universities, colleges for general and professional education and other institutions of higher general education, including notably colleges for teacher education, besides all school level institutions. After all, unfair practices are not confined

to medical and technical colleges and universities. Colleges for general education and even junior (intermediate) colleges are also severely afflicted with such diseases, though the magnitude of corruption involved may be less. Ideally, the Bill could have covered all educational institutions at all levels in the country.

Secondly and more importantly one notes that the Bill is largely confined to practices relating to student admissions and fees. Though these two are very important issues, there is no reason to exclude other unfair practices from the ambit of the Bill. For example, the Bill does not state anything about the practices of unrecognized institutions of higher education offering degrees and diplomas. Even recognised institutions can continue to do their business without any dedicated quality faculty in required numbers, or infrastructure, including laboratories, libraries, playgrounds etc., despite the Bill. Secondly, under-payment of salaries to the teachers, which is still a widely prevalent practice, does not attract any penalty under this Bill. Any misinformation given to the public bodies while seeking recognition or accreditation or assessment is not covered by the Bill. One of the most commonly known practice of the private institutions has been hiring of faculty, furniture and equipment (and even patients in case of medical institutions) strictly for the duration of the visits of the inspection/assessment teams of the UGC, and the All-India Council for Technical Education (AICTE) etc. Similarly it is very common for a small society/trust owned primarily by a single person, who happens to be either a big businessman or a political heavy-weight, to run a chain of aided or unaided undergraduate colleges offering general or technical or medical education, sometimes all types of education. Only a few teachers are appointed in these colleges, who are required to teach in more than one college, necessitating shift in their duties from one college to the other during the day or week; but they are paid salaries from one college account only, that also much below the officially approved salaries. The Bill also does not refer to violation of public policies, say protective discrimination or reservations for weaker sections in admissions or recruitment of faculty and other staff members. The Bill chooses to ignore many more such corrupt and unfair familiar practices prevalent in many private (and some public) institutions. The Statement of Objects and Reasons of the Bill does refer to a couple of other unfair practices such as engagement of unqualified or ineligible teaching faculty and low quality delivery of education services; but they do not figure in the Bill.

The Bill states that charging of capitation fee or donation is an unfair practice; but it does not refer to charging of fees much above the costs of the programme or of running the institution as an offence. Charging of any fees or any amount of a given fees, which are not mentioned in the prospectus is an offence. Only with respect to the price of the prospectus, it is mentioned that the price should not be more than 'reasonable cost of its publication and distribution.' While the Bill intends to promote transparency in the functioning of the institutions, it does not prohibit, for example, profit making and commercialisation of higher education. So long as a practice is transparent, it is acceptable, even if it is otherwise well known as an unfair, corrupt and condemnable practice.

The Bill concentrates on non-transparent and questionable admission processes — admission without entrance test, charging of capitation fees and donations for admitting students, not issuing receipts in respect of payments made by students, not refunding the fee in case of withdrawal of admission, forcible withholding of original certificates and other documents of students, and false claims made in the advertisements etc. While charging of capitation fee/donation is a cognizable offence, all other offences are to be treated according to the Bill, non-cognizable. It does not state how much can be the fees, or how much should be refunded in case of withdrawal by the students, etc. It only requires the institutions to publish a detailed prospectus, making the practices transparent. The

Bill does not even state that non-submission of prospects, annual reports and financial statements to public bodies, as required by law, is an offence. The Bill only states that the government or appropriate statutory authority has the power to call, by a general or a special order, for information from any institution periodically or as and when required. But non-furnishing of the information is not considered as an offence on the part of the institution. There is no punishment for offering unrecognized courses of study and bogus degrees to the students or to any other kind of corrupt practices. Further, the Bill provides for monetar penalties up to Rs. 50 lakh for many of the offences listed in the Bill. The amount of penalty seems to be very small for institutions that charge a capitation fee of Rs. 15-20 lakh per student for admission. Certainly the punishment/penalty is too small for the business-minded educational institutions to worry about. Interestingly not only charging of capitation fees or donation is an offence, but also the Bill prohibits payment or even to offer to pay capitation fee or a donation by a person for admission, though the penalty in such cases is not specified.

Further, the Bill seems to provide for non-applicability of the Bill to minority institutions, though it is not very clear. Such an exemption is unwarranted. No institutions should be allowed to follow corrupt and unfair practices. After all, it is an unfair practice. Secondly, if it is proved that an offence is committed without one's knowledge, he/she is not liable to be punished, according to the Bill. If an offence is committed in an institution without the knowledge of the head or the manager of the institution, one would expect that at least the institution, if not the individual, is punished. Third, the rationale of the clause 18 is not clear, which does not allow the courts to take cognizance of any offence under this Act, committed by any institution or persons, except on the complaint in writing of such person authorized by the Central Government or the State Government in that behalf or any such person authorised by the concerned appropriate statutory authority, as may be prescribed. After all, often it is not the government action, but an action of an individual or a civil society that helps in such contexts.

In short, the Bill, though well-intended, seems to be highly inadequate to tackle the host of corrupt and unfair practices being adopted by many of our institutions of higher education. Many doubt whether such a Bill helps to curb malpractices in educational institutions.

The Educational Tribunals Bill

The Educational Tribunals Bill, which also deals with unfair practices, has to be examined in this context.

The Bill recognises the rapid growth in litigations involving students, teachers, other employees, and managements of institutions, universities, statutory bodies and even the union and state governments on matters relating to education and the need for speedy resolution of the disputes for efficient functioning of higher education system. Many of these litigations relate to private education, though public institutions are not completely free from such litigations. Hence, the Bill essentially aims at the private institutions, though it is not explicitly stated anywhere in the Bill. Given the plethora of private institutions of higher education and the rapid growth of consequent disputes, many of which are pending in large numbers in civil courts for years, one would welcome such a Bill, as a significant piece of legislation, even though the experience with respect to tribunals in other areas in India does not seem to be very much encouraging. After all, it was promised in the National Policy on Education (1986); and it was also recommended by the Supreme Court while delivering the judgment in the T.M.A. Pai case (vs. Government of Karnataka in 2002), the Law Commission and recently by the Yashpal Committee. The promise made 24 years ago in the National Policy on Education was

forgotten all these years. Now the urgency is probably realized, as the Tribunals are also considered a prerequisite for promoting trade in higher education under the framework of the GATS.

The Bill provides establishment of a two-tier judicial structure at national and state levels — National Educational Tribunal and also State Educational Tribunals.¹³ The provision for setting up State Tribunals is made in the Bill prepared by the union government without any prior consultation with the state governments, not to speak of wider public consultation with the existing public bodies and higher education institutions! The states, like Punjab, which already have State Educational Tribunals, may have to make necessary changes in their legislation, as the National Act, when passed, shall have overriding effect on all existing laws.

The National Tribunal shall have appellate jurisdiction on orders of the state tribunals. The orders of the Tribunals are equivalent to the decree of a civil court. If the orders of the tribunals are not complied with, there are provisions in the Bill for punishments — imprisonment for a maximum of three years and/or with fine of upto Rs 10 lakh. The tribunals are expected to act as forums for fast-track and speedy resolution of issues in higher education, and reducing the burden on the courts.

The National Educational Tribunal entertains disputes between higher education institutions and statutory regulatory bodies, any reference made to it by any statutory regulatory authorities, and the disputes between the constituent or affiliated units (e.g., colleges) and the affiliating unit (e.g., university). It will also consider matters involving institutes located in two or more states. It seems the National Tribunal does not consider any disputes between students or staff and the managements or statutory authorities or the governments, which seem to be of the most predominant category of all disputes in higher education institutions. The State Educational Tribunals do take up such disputes, though students are not explicitly referred to. Clause 15 refers only to service matters of teachers and other employees of higher education institutions, matters relating to affiliation, matters relating to unfair practices and other matters as may be assigned by any other law for the time being in force. It is not exactly clear whether students can go to the Tribunals against unfair practices of the institutions or the governments, or other statutory authorities. One can only assume that they can, if only the concerned issue is recognised as unfair practice. Secondly, it is also not clear what happens to the disputes between the students or staff and say a central university or a central statutory authority. Thirdly, neither this Bill on Educational Tribunals, nor the Bill on Unfair Practices, as already mentioned, defines the scope and nature of unfair practices. Neither of them lists exhaustively such practices. In a sense, the gamut of disputes that the tribunals will adjudicate is not clearly defined.

The Bill excludes institutions of higher education engaged in agricultural education and research. The Bill also shall not apply to minority institutions relating to those aspects which conflict with the provisions of the Minority Educational Institutions Act 2004.

The Bill provides for prevention of civil courts to entertain any suit relating to any issue which comes under the purview of the Educational Tribunals. No court can take cognizance of an offence except on the complaint of an officer authorised by the national or state tribunals. The civil courts are also prevented from intervening in the proceedings of the Tribunals. “[N]o injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act” (Clause 47.) However, there is a provision for appeal against the decisions of the National Educational Tribunal in the Supreme Court; but such a provision is not provided at the State level, i.e., no appeal can be made in the High Courts against the order of the State Educational Tribunal. Only the National Educational Tribunal can be approached. The exclusion

of the jurisdiction of the civil courts may not necessarily be desirable, given that the efficacy of the Tribunals is yet to be tested.

While the chairperson of the Tribunals is necessarily a judge of the Supreme/High court, all the other members of Tribunals are not necessarily those with any experience in judiciary. The State Tribunal will have only two members and they are: an academic member (who is or has been a Vice-Chancellor) and an administrative member (who is or has been a Secretary). In case of the National Educational Tribunal, two shall be judicial members, three academic and three administrative members. In all, non-judicial members are in a majority in both State and National Tribunals. More importantly, the non-judicial members can be those who are quite likely involved in making those policies or in implementing those very policies before they joined the Tribunal that led to the litigations. Further, as per the Bill, even if there is a vacancy in the chairperson's (or other posts), the Tribunals can continue their work, which means that a case can be heard even in the absence of a judicial member, particularly in case of State Tribunals.

To conclude, the Educational Tribunal Bill is an important one for speedy and cheaper adjudication of litigations in higher education. But given the features of the Tribunals, as given in the Bill, one may doubt whether the Tribunals will do what the judiciary is not able to do efficiently so far. The narrow and restrictive definition of unfair practices undermines to a great extent the usefulness of the Bill. After all, despite clear judgments of the Supreme Court and High Courts, vulgar commercialisation of higher education is already taking place at a rapid pace, in addition to the growth of different kinds of problems. It is doubtful whether the Educational Tribunals will be able to tackle these issues that the courts could not do. Moreover, the judiciary, with its somewhat frequent conflicting judgments created much confusion in public policy making in higher education, if not failed altogether in undoing the injustice done to the students, academic community and the society at large.

Universities for Innovation Bill

'The Universities for Innovation Bill, 2010' is yet another important Bill that the government of India has prepared. This is not completely new, as it has been promised that in the eleventh five year plan that fourteen innovation universities would be set up. The Bill is to facilitate setting up of such universities.

While the draft Bill does not define what is meant by 'innovation university,' some salient features of the universities are clear from the several provisions of the Bill. Universities for innovation will be 'institutions of national importance.' So they are intended to be very special universities, different from 'world class universities,' 'national universities' and of course the existing normal – central and state universities; but the several objects of the university as mentioned in the Bill do not convey anything special. Yashpal Committee has recently outlined what an ideal university should be. The draft bill does not refer to any of those aspects. The stated objective of the draft Bill is "to provide for the establishment of Universities for Innovation which would be at the fount of making India the global knowledge hub and set benchmarks for excellence for other institutions of higher learning through path-breaking research and promoting synergies between teaching and research to create institutions universally recognized for quality teaching, learning and research, and to provide for matters connected therewith or incidental thereto."

An innovation university is one which, according to the draft Bill, enjoys a fair degree of, in fact full autonomy in all respects – academic, administrative and financial. It can decide on its own, curriculum; branches of learning in which instruction is to be provided and research is to be conducted;

and it can also determine the nomenclature of degrees and other academic distinctions to be awarded by it. It can institute teaching, research other academic positions, and administrative and other posts, make appointments of persons working in any other university or organisation as adjunct, guest or visiting teachers, and determine emoluments and perks to be paid to them; it can establish chairs of studies, set up study centres overseas, network with other organisations, etc. They can frame their own rules on academics and the qualifications needed for teaching and other positions and rules for their appointment. Thirdly, it can determine and receive payment of fees and other charges that the university may deem fit; it can receive benefactions, donations and gifts and acquire, hold, invest, manage and even dispose of any moveable property of the university. Thus the university enjoys full unrestricted freedom with respect to the core academic, administrative and financial aspects. The Board of Governors that governs the university may not have any member from the government or government nominees, unless it is so mentioned in the memorandum of agreement. At least half the members will be 'independent persons' and at least one-third will be the teachers or officers of the concerned university. Thus, there will be no government control on the university in any respect. As the Concept note drawn up by the MHRD (2009)¹⁴ on the innovation universities stated, they will be autonomous entities, with no "regulation from outside". In a sense, the university will be free from any kind of government or social control. Normally it is stated that just autonomy is dangerous, unless it is autonomy with accountability. But the innovation universities will be completely autonomous and least accountable to the government or to the society at large. The jurisdiction of the university extends to the whole of India. It can establish campuses in foreign countries in accordance with the provisions of the laws of such foreign country.

The university shall focus on areas of study, which are not pure discipline based, but on areas with problems of significance, and search for 'solutions that are globally valid.' Global solutions and global needs seem to outweigh the national problems and needs. The perceived need is to make India a global knowledge hub. Apart from other faculties that the university may establish, a Faculty of Knowledge Manpower Assessment will have to be established by each innovation university. It is not clear what does this Faculty mean in terms of its objectives and nature of functions. While the general feeling, including the recommendation of the Yashpal Committee is to make every university, including the Indian Institutes Technology (IITs) a multi-disciplinary university, innovation universities are conceived as a single discipline university, focusing on a particular area or at best a few select areas.

There are very few restrictions on the innovation universities in their operations: the academic standards to be set by the innovation university will have to be equivalent to or higher than those set by the statutory bodies and any dispute arising between the innovation university and the statutory authority in this respect will be referred, not to the National Educational Tribunal, on which another Bill is already introduced in the Parliament, but to a special three-member committee, specially constituted in each case. So it is likely that innovation universities do not come under the jurisdiction of the Educational Tribunals! Secondly, at least half the students admitted to pursue any programme in the innovation university shall be citizens of India. The remaining half can be from overseas. Can a university of normal size attract fifty per cent of its students from abroad? After all, the number of foreign students is above 1,000 only in three universities in India, viz., Pune, Manipal and Delhi, apart from Indira Gandhi National Open University.¹⁵ Further, there are no provisions for any kind of reservations in admissions of students, except what the university may decide on its own, based upon its own criteria to account for disparities in educational attainment between different social, economic and any other class of students. Thirdly, the university shall have to be a not-for-profit legal entity, distinct from its promoter(s) for all intents and purposes. Other features of the university

are: while the chancellor of the university will be appointed by the promoter, names for the vice-chancellor's post will have to come from the Collegium of the National Commission for Higher Education Research, a draft Bill of which is also ready. The Board of Governors may recommend names to the Collegium in this regard.

Is an innovation university completely financed on its own? No, it can receive grants from the central government for supporting research, and promotion and development of higher education. It can also receive grants to meet the expenditures on scholarships or fellowships instituted by the university, including scholarships for students from socially and educationally backward classes of citizens enrolled in the university. Each university will have an endowment fund, with an initial corpus and donations, contributions from the alumni and other sources. Eighty per cent of the incomes received annually into the endowment fund may be used for the purposes of development of its research infrastructure.

An audited statement for the grants the university receives from the government has to be submitted to the government, which shall be laid before the house of Parliament; but there is no requirement for the submission of a full financial statement to the government or any public body, nor is it to be publicized. Only such grants shall be subjected to assessment and audit by the Comptroller and Auditor General of India that too on such outcome based parameters as may be prescribed with the concurrence of the Comptroller and Auditor General of India. Earlier it was intended, as per the Concept note, that funds spent on research or teaching will be kept "out of the purview of audit scrutiny envisaged under the Constitution by the Comptroller." The Annual Report is to be published on the website of the university, but this is also not required to be submitted to any public body.

It appears that innovation universities are conceived mainly as private universities, though in principle they can also be entirely publicly funded. It is not stated that government will set up any innovation university.¹⁶ Though it is not mentioned explicitly, it is clear that they will be essentially private universities, whether they are partially or entirely funded by the union government, except that those which are entirely funded by the union government will be subject to a limited degree of government control – the President of India will be the visitor of the university, who will appoint the Chancellor of the university. There is no much difference between entirely publicly funded and other universities with respect to most other aspects, including admission, recruitment and financial management.

The promoter, i.e., one who establishes such a university, can be an organisation – a company registered under Section 25 of the Companies Act, or a trust, or even a foreign university – established or incorporated outside India which has been functioning for at least 50 years. There are two important issues involved. First, since, currently it is not possible for nonprofit companies or trusts or societies under Article 25 of the Companies Registration Act — like industry associations — to set up a university, the provision in the Bill actually means that 'for-profit' companies will also be allowed to set up universities, though some other condition in the Bill requires that each university to be a not-for-profit legal entity. Second, the Bill allows, independent of the Foreign Educational Institutions Bill, entry of foreign universities.¹⁷ The Bill also allows, of course, for the innovation universities to establish its own centres overseas.

The main point of the innovation universities is autonomy in general and autonomy to innovate. In fact, all universities and other institutions of higher education in India, not just innovation universities, require a fair degree of autonomy, particularly a high degree of academic autonomy and

a fair degree of administrative autonomy and financial autonomy in some aspects. Also all institutions of higher education are expected to be innovative in their academic endeavour, that too as an everlasting process. But this Bill creates a group of universities with autonomy that can innovate, meaning others – new and existing have to be neither to be autonomous nor innovative.

In short, this is yet another Bill that shows government's reluctance to look at whole higher education as an integrated holistic system, and its unwillingness to take active role and responsibility in the development of higher education in India and reiterates its unflinching faith in the unregulated private sector.

The Draft Bill for the NCHER

Recently two very high level bodies have examined the problems being faced by our higher education system and have recommended, inter alia, constitution of a single apex body for development of higher education. The NKC has recommended the constitution of an Independent Regulatory Authority for Higher Education (IRAHE) and within a couple of years, the Yashpal Committee has made a similar recommendation and pleaded for a similar body – a central statutory body through a constitutional amendment, but under a different name, viz., National Commission for Higher Education and Research (NCHER) for rejuvenation of the higher education system. Both have criticised the opaque functioning of the exiting multiple regulatory bodies and implicitly assumed that they cannot be reformed. They felt that there are too many bodies, too much regulation and too little governance. Like many, both these committees seemed to believe that it is easy to set up a new institution rather than reforming an existing one. It is important to note that though there are some similarities in their recommendations, both committees have advanced altogether different reasons. The NKC has felt that there are too many regulatory bodies in higher education such as the UGC, AICTE, National Council for Teacher Education (NCTE), Medical Council, Bar Council, the Council of Architecture, the Pharmacy Council of India etc., creating tough entry barriers and a cumbersome system of authorizing entry. Hence, it is felt that it is important to replace all the 13 regulatory bodies that have been set up by Parliament at various points in time, by a single overarching regulatory Authority (like Telecom Authority), as a single window, that will facilitate, inter alia, easy setting up of new universities or colleges by the private sector or foreign actors or in principle by the public bodies in India. This will avoid approaching several bodies for permissions, approvals, etc., to found a new institution, to start a new academic programme, to go abroad, for a foreign institution to come to India, etc. Such a move would help rapid growth of private sector in higher education, and can facilitate entry of foreign institutions into India. The NKC was very clear in its approach of favouring privatisation and internationalisation of higher education in India. The Yashpal Committee was not highly favourable to the idea of privatisation as many private universities were a “mere business entities dispensing very poor quality education” or to internationalisation of higher education, as already mentioned. But it has recommended setting up of NCHER, which will subsume all the existing regulatory bodies, and assume all their responsibilities, so that academic synergy takes place between different branches of study. The Yashpal Committee was worried about fragmentation of knowledge and cubicalisation of knowledge and even compartmentalization of education into under graduate, post graduate and research levels and argued that a single body like the NCHER would check all these phenomena.

The Government of India has accepted the recommendations of both the committees and decided to set up a single body in place of all the existing organisations, as the solution to all kinds of problems in higher education in the country and prepared a draft Bill (available in April 2010)¹⁸ for setting up

a commission called NCHER for placement in Parliament, which was subject to somewhat extensive consultation and a new draft (available since June 2010) has been prepared, which is still not available on any website.

Since the response of the Government came after the recommendation of the Yashpal Committee and since it was announced that the report of the Yashpal Committee will be implemented in 100 days, and also since the proposed body is named as NCHER, as suggested by the Yashpal Committee, most people might feel that the government's proposal to set up NCHER is in line with Yashpal Committee's recommendation. But it will be wrong to conclude so. A close examination of the proposed Bill and the overall context in which the Bill for the same is being finalised, might suggest that the government is more favourable to the NKC's recommendation than Yashpal Committee's recommendation, as one finds very little reference to academic aspects in the role and functions of the NCHER, except a couple of statements that the NCHER should promote joint and cross-disciplinary research, promote synergy of research, and develop national curriculum framework etc. Rather the government seemed to have accepted NKC's arguments for such a body and Yashpal Committee's recommendation for the name of the body.

Responding to the need to have the voice of state governments on the concurrent subject of higher education, as expressed by many while criticising the earlier draft, the revised draft Bill (June 2010) provides for constitution of a General Council that includes all members of the Commission, representatives/nominees of union and state governments, heads of the 14 professional bodies like the Medical Council of India, Bar Council, etc., 13 research councils like the Council for Scientific and Industrial Research and the Indian Council of Social Science Research heads of central universities, Indian Institutes of Management, IITs, etc., on rotation, and notably representatives of ten industry associations like the Associated Chamber of Commerce and Industry of India, Confederation of Indian Industry, Federation of Indian Export Organisations, All-India Manufacturers Association etc. Three members of the Council are from the corporate sector to be nominated by the corporate sector and two members to be nominated by the Commission for amongst heads of civil society or non-governmental organisations. The General Council is an advisory body that makes recommendations to the Commission on a number of issues. The Council, can by two-third majority propose amendments to the recommendations of the Commission.

The Bill meant for setting up of the NCHER not only outlines how to set up the NCHER and appoint its chairperson, members, the Collegium, the Governing Council, but also it prescribes in detail how the NCHER will work on each issue. Of the several functions, the NCHER has an important role in advising and facilitating establishment of a university, in the appointment of vice-chancellors and heads of central universities and central educational institutions, and in the commencement of academic operations by the institutions of higher education and research. According to the Bill, the Commission lays down standards for leadership positions, and norms and regulations for a university to commence its academic operations.

Erosion of academic autonomy of the universities and politicisation of the higher education institutions, the two major concerns of the NKC and Yashpal Committee met a different kind of treatment in the Bill. Many of the problems of the universities, including autonomy and politicization probably lie with the leadership. The process of appointment of vice chancellors has become of late a serious issue of suspicion all over with manipulation and corruption being predominant. So far the vice-chancellors of state universities are appointed by the state governments, the governor normally being the Chancellor or Visitor of the University. Both the NKC and the Yashpal Committee have noted all this. The Bill

proposes preparation of the Directory of academics for appointment as vice chancellors in central universities, and only lays eligibility conditions for appointment of the same in the state universities. State governments have an option to approach to Commission for nominations. Besides the Collegium of the Commission, union and state governments, universities and other higher education institutions may propose names for consideration by the Commission for inclusion in the Directory.

Promotion of autonomy is an important objective of setting up the NCHER. The main aim of setting up the Commission is “to promote autonomy of higher educational institutions for the free pursuit of knowledge and innovation...to facilitate access, inclusion and opportunities to all and to provide for comprehensive and integrated growth of higher education and research keeping in view the global paradigms of education and research practices and achievements...” Though the NCHER is meant, thus, to promote the autonomy of higher educational institutions, the Bill does not care much for university autonomy – academic or administrative. The powers and functions of the NCHER are so vast and so over-riding that little is left to the universities. Besides preparing a statement on the state of higher education every five years, the NCHER may specify norms and make regulations relating to minimum conditions, norms and standards on almost every aspect of the university. The Commission has the power to make regulations in every aspect. They cover not only issues relating to establishing and winding up of universities, and their funding, but they also include issues relating to all academic operations, such as award of degrees and diplomas, development of national curriculum framework, workload of the universities, quality, measures for accreditation, processes of interaction between students and teachers, and so on. Thus it takes away all the autonomy of the universities, while at the same time it proclaims that it will promote autonomy of higher education institutions. The Bill recognises that autonomy is important “for free pursuit of knowledge and innovation,” but does not give any scope for innovation by the universities themselves. Perhaps the NCHER will itself develop and provide to the universities the norms, terms and conditions for innovation. The Yashpal Committee felt that there is no need for regulation of the universities, as universities in an ideal, if not in a utopian world, will be self-regulating and self-governing. But with an overarching regulatory body of this kind with a enormous range of powers, it is difficult to imagine that any scope exists for self-governance. The powers and functions of the Commission cover not only issues relating to establishing and winding up of universities, their funding, but they also include issues relating to all academic operations, such as award of degrees and diplomas, development of national curriculum framework, workload of the universities, quality, measures for accreditation, processes of interaction between students and teachers, and so on. After listing more than 32 powers and functions of the Commission, to cover the omissions and commissions, there is another clause in the Bill in defining the power and functions of the NCHER: “it will discharge such other functions in relation to the determination, coordination and maintenance of standards in higher education and research” (Clause 25-m). In addition, the Draft Bill lists the powers of the Commission to make regulations in almost all areas, covering not only the functioning of the Commission but also higher education institutions (Clause 61).

Since the NCHER will assume powers of all other bodies in higher education, it also performs its functions relating to technical education, teacher education, medical education, agricultural education, legal education and so on. NCHER is first conceived as one that will replace all the existing regulatory professional bodies in higher education; but the revised draft provides for repealing of the UGC, AICTE and the NCTE only and with respect to others, the provisions of this Bill shall supersede the provisions of other Acts such as the Medical Council Act, the Nursing Council Act, Architects Act, Advocates Act, and the Pharmacy Act.

There was initially only UGC responsible for higher education as a whole. Partly overburdened by the number, and partly constrained by the exploding knowledge in various branches of higher education such as technical, medical, engineering, legal, teacher education, etc., the role of the UGC also got confined largely to higher general education and other bodies like the AICTE and NCTE were set up. They were also expected to take care of the special needs of the specialised areas of higher education and research. Many of the bodies which the NCHER is expected to subsume were also set up through Acts of Parliament; they were also set up as autonomous statutory bodies with lofty goals and objectives. But except for a short time, during the last several decades they were not allowed to function autonomously, some of them were practically treated as sub-ordinate departments of the government; they were not provided sufficient funds, and not sufficient professional staff either. As a result, they became defunct. The Bill does not recognise all this. Certainly it does not recognise the size factor of the higher education system and the need for specialised bodies. It wishes to turn the wheel back and have only one body for higher education. While we need holistic development of higher education, it may be necessary to have specialised organisations for development of specialised branches of study.

But the draft Bill proposes NCHER as a single body, replacing some and/or serving as an overall arch for other existing bodies in higher education. The advantages of having a single body are not clear, while the possible losses are clearer. It is interesting to note that the Ministries of Law and Health have proposed similar Bills to set up Commissions or Authorities in their respective areas of higher education.

While the existing bodies will be either wound up or superseded by the Commission, the Commission itself will set up a few bodies. The Commission, according to the Bill will set up a Board or Research Promotion and Facilitation — largely an advisory body for the Commission, which will recommend measures to the Commission to promote and facilitate research in fields of knowledge in higher educational institutions. It will also recommend to the Commission grant funding for competitive research proposals. The Commission will establish Qualifications Advisory Councils in Vocational Education for each specific skill, another advisory body, which will advise and make recommendations to the Commission on qualifications framework.

Perhaps a more important one refers to setting up of Higher Education Financial Services Corporation. According to the draft Bill, the Commission will establish a Higher Education Financial Services Corporation under Section 25 of the Companies Act 1956. The sole function of the Corporation to be managed by a Board of Directors headed by a Managing Director, is disbursement of grants to higher educational institutions. The rationale for a Corporation to be set up under the Companies Act that will receive funds from the union government through the Commission to disburse them to the universities – public and private, following the instructions of the Commission, is not clear. The proposed Bill is also to have ‘overriding effect’ on all the existing laws that essentially relate to public bodies, but surprisingly it will not have such an effect on the Companies Act 1956 (Clause 56).

All powers and functions are centralised and are vested in the NCHER. With such a high degree of concentration of powers, there is a danger that the new body can become a powerful controlling body in higher education. While the UGC has been accountable to the Parliament, the NCHER is not. Such a high degree of concentration of powers itself may not be desirable. Further, it might also get so overburdened with responsibilities that it may not perform any function efficiently. After all, overburdened by responsibilities, UGC ended being primarily a fund allocating agency, though it is

also expected to provide academic leadership, providing directions for development to the higher education institutions in the country. There is a danger that NCHER might end up in a similar state as the UGC in a few years. The only provision that is made in the Bill is for the review of the performance of the NCHER. The review is to be conducted every five years by a committee to be appointed by the President. The Collegium of the Commission will recommend names to the President for such a review committee.

Many scholars have argued in the recent past for revamping of the UGC and the UGC Act. But it is doubtful whether those scholars will be pleased with the new body now proposed. As some have recently observed, the solution seems to be worse than the disease.

Higher education system has been characterised with a big policy vacuum for a long period. Now it is a period of reforms on fast-track mode. Reforms are intended to be brought through legislative action. The Bills are also formulated as independent pieces of reform, without a comprehensive policy framework on higher education. Broadly, they lack an overall long term holistic vision for development of higher education. The flurry of Bills would drastically alter the nature, structure and academic focus of higher education system in India and mark a significant shift in the development paradigm in higher education. It is doubtful whether these Bills would actually help to reform or deform higher education in India.

(This article is an expanded version of the address given at the Convention on Neo-Liberal Assault on Higher Education, held in New Delhi on August 22, 2010)

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When in 2003 he received the Malcolm Adiseshiah Award, the citation said "Professor Tilak has furthered our understanding of the beneficial effects of investment in education and has demonstrated that a sustained focus on the weaker sections-Scheduled Castes and Tribes, Backward Castes and women-is as justifiable from a strictly efficiency point of view as from a moral perspective."

THE ROLE OF JUDGES IN DELIVERING EQUITABLE AND SPEEDY JUSTICE

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The precise role of the judiciary and its relation with the law on the one hand, and with the other two wings of governance – the executive and the legislature – on the other – has given rise to some of the most fertile debates in Indian constitutional and legal history. Is the role of judges merely to take the law as they find it, and apply it in a literal and textual manner to only the facts of the legal problem before them? Or should the judges interpret the law in a manner that is consonant with certain commonly agreed values and purposes, even though this would lead into the dangerous territory of “law making”? And if so, what role do considerations of equity and ensuring speedy justice play in the activities of judges? These are some of the questions that will be addressed in the following pages.

EQUITABLE JUSTICE:

When dealing with the concept of “equitable justice”, one of the most important things that comes to mind is the issue of access to justice. It is an undeniable truth that in India, a large proportion of the population is not in a position where it can approach the Courts to seek remedies for even the most blatant violations of fundamental rights. Lack of money and lack of awareness are just two of the factors that contribute to this deplorable state.

It is in the context of ensuring equitable access to justice that the Indian Supreme Court, in the late 1970s and the 1980s expanded the scope of its jurisdiction immensely, and relaxed the traditional common law rules of standing by developing the concept of “public interest litigation”. Through a series of famous cases such as *PUDR v. Union of India*, and *Bandhua Mukti Morcha*, the apex Court developed a doctrine in accordance with which, a petitioner could approach the Court on behalf of other parties by demonstrating three things: first, that he was approaching the Court in a bonafide manner; secondly, that the person(s) on whose behalf he was approaching were unable themselves to approach the Court; and thirdly, that the suit was filed in the general public interest. Using this technique, the Court ensured the justice was given to, for instance, bonded labourers (in *Bandhua Mukti Morcha*), and the construction workers at the Asian Games Complex (*PUDR*) – both comprising groups of vulnerable sections of the society who, for obvious reasons were unable to approach the Court without an interlocutor on their behalf.

For example, in *PUDR*, Justice Bhagwati observed that public interest litigation was a strategic arm of the legal aid movement, and was intended to bring justice within the reach of the poor masses, who constituted the low visibility area of humanity. He further observed that civil and political rights, for all their value, simply did not exist for the vast masses of Indian people. For those who lived in a sub-human existence in conditions of abject poverty, it was absurd to even ask the question : what civil and political rights could they enforce? Therefore, he observed that given the peculiar socio-economic conditions prevailing in India, and the presence of considerable poverty, illiteracy and ignorance obstructing and impeding accessibility to the judicial process, it would result in clear injustice if the traditional rule, namely that only he who was wrong could seek redressed, was applied in every situation. This was the basic rationale for the evolution of public interest litigation. The Court therefore rejected the objection on *locus standi*, adjudicated the case upon merits, and directed the State to ensure that labour laws were complied with.

The expansion of the procedural right to approach the Court through the mechanism of public interest litigation was only one limb of the quest for ensuring equitable justice. Side by side with the development of public interest litigation, judges were also at work expanding the substantive side of the equation. In 1950, the Supreme Court had famously held in *A.K. Gopalan v. State of Madras* that the term “law” in Article 21 referred to *lex*, and not and consequently, there was no requirement of “due process” within the meaning of Article 21. This position was steadily eroded over the next twenty years, and in 1978, the famous *Maneka Gandhi v. Union of India* case relied upon the 11-judge bench decision in *R.C. Cooper* to hold that Articles 14, 19 and 21 formed a complete code, and must be read together. Consequently, the standards of reasonableness and non-arbitrariness that formed part of Articles 14 and 19 were read into Article 21, and the due process requirement was now considered to be part of the right to life.

The impact of the *Maneka Gandhi* case was immediate and long lasting. Over the last thirty years, there have been a host of judicial decisions which have expanded the meaning of the word “life” and the scope of Article 21 beyond recognition. Almost all these cases have been based on equitable considerations. For example, in *Kharak Singh v. State of U.P.*, *Govind v. State of MP* and *Peoples’ Union for Civil Liberties v. Union of India*, the concept of a right to privacy was brought into the ambit of the right to life. These cases involved surveillance measures taken by the police against citizens.

In the cases of *Paramanand Kataria v. Union of India* and *Paschim Mazdoor Samiti v. State of West Bengal*, it was held that the right to life included the right to receive medical care and attention. Further expansions were made in *Vishaka v. State of Rajasthan* and *Apparel Export Promotion v. A.K. Chopra*, where the right to life was held to include a right against sexual harassment at the workplace. The right to life has also been held to include the right to shelter, as in the cases of *Olga Tellis v. Bombay Municipal Corporation* and *Chameli Singh v. State of UP*. These cases dealt with the rights of street dwellers, especially against municipal corporations and development agencies. Lastly, we must include also the right to a clean environment, especially against polluting agencies, as held in the cases of *M.C. Mehta v. Union of India* and *Indian Council for Enviro-Legal Action v. Union of India*.

What is most striking about the Court’s development however, from the perspective of enforcing equitable justice, is its decisions with respect to the rights of hawkers, street vendors and slum dwellers in urban areas. It is here that the iniquitous balance of wealth and power is exacerbated to its greatest degree, and where the Court’s role as the guardian of equity becomes most important. The rights of slum-dwellers under Article 21 can be best illustrated through three decisions which deal with different facets of their rights.

1. *Olga Tellis v. Bombay Municipal Corporation* – In this case, a number of writ petitions were filed against an order of the Bombay Municipal Corporation mandating forcible eviction of all pavement dwellers. The petitioners contended that under Article 21, they had a right to life. The right to life could not be exercised without a right to livelihood. The only way they could eke out a livelihood was by staying close to their place of work, whether it was upon pavements or anywhere else. Hence, the Municipal Corporation’s order of eviction was a violation of their right to livelihood, and therefore of their right to life under Article 21.

On behalf of the Corporation, on the other hand, it was contended that it was in the public interest that there be no encroachments upon pavements and sidewalks. The Court held that the sweep of the phrase “right to life” was wide and far reaching, and the right to livelihood was an integral part of the right to life, as it was difficult to see how it was possible to live without having a source of livelihood. The Court reasoned that if such was not the case, then it would be very easy for

the State to deprive a segment of the population of its right to life by simply denying it the right to work, or to earn its livelihood.

Therefore, the Court held that under Article 21, the right to life encompassed the right to livelihood. Despite this holding, the Court also found that on the facts of the case, the petitioners had no right to continue living on the footpaths. Nevertheless, the Court also directed the Corporation to relocate the slum dwellers in appropriate places.

2. *Bombay Hawkers' Union v. Bombay Municipal Corporation* – In this case, a number of petitions were filed by hawkers and squatters in Greater Bombay, complaining that the actions of the Bombay Municipal Corporation in arbitrarily refusing them licenses, causing them to be liable to be removed, was violative of their right to freedom of trade and commerce under Article 19(1)(g) of the Constitution. With specific regard to this challenge, the Court rejected it, holding that under Article 19(2), reasonable restrictions could be placed upon the right in public interest. The court then observed that as public streets were meant for use by the general public, it could not be said that anyone had a right to carry on business in a manner that would inconvenience, or cause nuisance to the general public. Therefore, the restrictions in the Bombay Municipal Corporation Act were clearly reasonable.

Despite this holding, the Court had nevertheless, during the hearing of the case, directed the Municipal Commissioner to frame a scheme for regulating the grant of licenses to hawkers and for creating hawkers' zones. In the final judgment, the Court analysed the scheme in question, struck down or modified provisions that were unfair or unjust towards the hawkers, and directed the Commissioner to frame a new scheme incorporating the suggestions made by the Court.

3. *Saudan Singh v. N.D.M.C.* – In a series of judgments by the name *Saudan Singh v. N.D.M.C.*, and followed by *Gainda Ram v. M.C.D.* and as recently as 2007, *SudhirMadan v. M.C.D.*, the Supreme Court has been faced with the issue of street-dwellers and pavement-traders in Delhi. In *Saudan Singh*, although the Court rejected the Article 21 challenge, it nevertheless held that street trading was a fundamental right under Article 19(1)(g), and that the State could curtail it only by means of reasonable restrictions, as provided for under Article 19(6). Pursuant to the decision, N.D.M.C. came up with an unsatisfactory scheme for integrating hawkers and squatters into the city plan; and when this scheme was challenged, the Court took upon itself the responsibility of issuing guidelines to the N.D.M.C. to ensure effective and equitable implementation of the scheme, and to ensure that the needy were truly benefited. The scheme was modified once more in *SudhirMadan's* case, where the Court dealt with certain aspects such as the timing of the activities, the amount of space that was necessary to provide each street vendor and the identification of hawking zones and hawking spaces.

A few conclusions about the role of judges in promoting equitable justice emerge from the above analysis. First, the Court has gradually shifted from a formalist, positivist and literalist approach to interpreting the Constitution, to a more liberal approach that keeps in mind the social context and the changing needs of the Indian people. Secondly, the Court has found a way around the problem of the DPSPs being made unenforceable by incorporating a number of social, economic and other first-generation rights into the ostensibly civil "right to life". With regard to slum dwellers, this approach was most clearly visible in *Olga Tellis*, where the right to life was interpreted to include the right to livelihood. Furthermore, even in cases where it has rejected an Article 21 challenge, the Court has read other rights such as the right to trade and commerce broadly. Thirdly, the Court has also taken a serious view of the implementation aspect of these rights, going as far as to frame and modify policies and guidelines in order to ensure that the rights it has read into Article 21 do not remain anything more than pious declarations. All this points to a strongly activist stance taken by the Court towards the rights of the poorer sections of the society.

Another aspect of the role of the Court in ensuring equitable justice may now be analysed. Part IV of the Indian Constitution encapsulates the Directive Principles of State Policy. These principles are framed in positive language, and appear to be placing positive obligations upon the State to provide certain economic and social rights to the citizens. Article 37, however, clearly states that “the provisions contained in this Part shall not be enforceable by any Court”, although nevertheless goes on to state that “the principles therein laid down are nevertheless fundamental in the governance of the country, and it shall be the duty of the State to apply these principles in making laws”. The wording of Article 37 has led many to conclude that the Directive Principles of State Policy are merely aspirational standards which the States must strive to meet, but that at the same time, they cannot be held accountable for their failure to meet them. The common justification for this is that securing economic and social rights to citizens is almost always a function of the resources available to the State in question (unlike civil and political rights, which are comparatively easier to secure through State action). Hence, it is argued, holding States judicially accountable for a failure to implement the Directive Principles will serve no purpose, as the States may be simply unable to do the same.

For the first twenty years of its jurisprudence, the Supreme Court held the consistent stance that the Directive Principles were subservient to fundamental rights; and therefore, following logically, civil and political rights occupied a higher pedestal than economic and social rights. It is important to note that this stance was adopted despite the existence of the First Amendment, which inserted Articles 31A and 31B into the Constitution. The impact of Article 31A was to make fundamental rights inapplicable to certain social land reform measures. Despite the validity of Article 31A being challenged, and the challenge being rejected, the Court nevertheless maintained its position that the Directive Principles occupied a rung below fundamental rights.

This stance was, however, reversed in the famous case of *KesavanandaBharati v. State of Kerala*. A bench of thirteen judges heard, among a multitude of other things, a challenge to the Constitutional validity of Article 31C, which provided that in order to secure the provisions of Articles 39(b) and (c) of the Constitution, fundamental rights such as those listed in Articles 14 and 19 could not be used as a ground for challenge. The Court held that fundamental rights and the Directive Principles had to be construed harmoniously; that neither of them was to be placed above the other, but that both were to be read together and as a whole. This position of the Court was further crystallized in *Minerva Mills v. Union of India*, where the Supreme Court held that the balance between Parts III and IV of the Constitution was itself part of the basic structure of the Constitution. In this context, it must also be noted that in the case of *WamanRao v. Union of India*, Article 31A, which provides for certain land reform measures being beyond the scope of an Article 14 and 19 challenge, was impugned as being violative of the basic structure of the Constitution. Rejecting this challenge, the Court made it very clear that social reform and social justice were integral parts of the Constitutional philosophy, and could not be subverted to give effect to a formal or doctrinaire view of equality before the laws.

The immediate impact of these decisions is evident. Under the upheld Article 31C, the State can take steps to secure the rights under Articles 39(b) and (c) without an accompanying fundamental rights challenge. Further, the Court’s decisions raise an interesting question: by placing the Directive Principles on par with fundamental rights, and by widening the scope of both, it is now possible to argue that the Directive Principles have been made enforceable against the State?

Against this, however, some doubts yet remain. First, under Article 31C, there have been few cases that have actually dealt with basic social and economic rights. Most of the cases have been restricted to broad policy issues, such as the nationalization of coal mines in the case of *Sanjeev Coke v. Bharathi Cocking Coal*.

Secondly, the Supreme Court has still stopped short of expressly holding Directive Principles of State Policy to be enforceable against the State. Although it may be argued that the Court is bound

by the express provisions of the Constitution, it nevertheless may have little impact to declare that Part IV is as important as Part III, without at least providing some means of implementation. In terms of efficacy and enforcement therefore, the net benefit of the Supreme Court's approach may be open to doubt.

SPEEDY JUSTICE:

It is well-known that the Hon'ble Supreme Court has held that the right to speedy trial (and therefore, by extension, speedy justice) forms part of the right to life under Article 21 of the Constitution. "Justice delayed is justice denied" is a common, albeit true adage. In a significant number of cases, the time taken to deliver judgments, and the number of years spent in going through the entire hierarchy of courts before finality is attained ensures that by the end of it, the original suit and the original cause of action have themselves become infructuous. This is a problem especially given the size of India's population, and the lack of personnel in the judiciary.

Consequently, judges have an active role to play in ensuring that this right of the citizens is not violated by unnecessary delays, judicial backlogs, etc. One of the major problems, as highlighted by the Law Commission in its Report No. 221, is the mounting of arrears in the High Court and District Courts. Statistics bear out this view. As of July 31, 2005, there were 20,948 pending cases in the Supreme Court. In 2004, the institution of new cases increased by 17% and the disposal rate by 16% leaving a gap of fully 1%. Moving down the hierarchy, the situation was worse. As of March 31, 2005, there were 34.85 lakh pending cases in the High Courts, and more than 2.48 crore pending cases in the lower courts. There is a clear backlog of almost a million cases per year.

Consequently, even though the focus of the report is an amendment to various provisions of the Civil Procedure Code (CPC), the Report makes the important point that "Quite often, frivolous, vexatious and luxurious litigations also come up and add to the mounting arrears. Such type of litigation has to be controlled, rather stopped. Efforts should be made to decide cases, particularly miscellaneous matters (excluding the matters, which require evidence of witnesses), at the admission stage after affording opportunity to the concerned parties". In the context of the Supreme Court, a similar point was made by Mr. Rajeev Dhavan in his magisterial work, *Litigation Explosion in India*, where he argued that a major reason for the steadily increasing arrears was the hearing of Special Leave Petitions with respect to their admissibility. Prof. UpendraBaxi, in his work entitled "*The Crisis of the Indian Legal System*", makes precisely the same observation. This is exactly where the judiciary can step in and make a difference, as has been suggested by the Law Commission in the passage quoted above. To this it may be added that the ease with which adjournments are granted, and the number and frequency of such adjournments, have also been touted as major reasons for the delays and backlogs plaguing the Indian judicial system. Greater caution in awarding adjournments would thus be seen as a welcome step towards improving efficiency.

Another source of stretched Court time, is the number of cases that are filed before the Courts under the guise of the overboard term, "public interest litigation". Quite often now, this umbrella term is an excuse for nothing but frivolous and vexatious litigation, so much so, that Justice MarkandeyKatju was forced to remark/observe that the Courts would do well to treat suits under the guise of PILs with great caution in order to preserve their judicial function, and avoid unnecessary conflicts with the legislature and the executive.

It is in this context that guidelines for hearing Public Interest Litigation cases have been mooted. In *State of Uttaranchal v. Balwant Singh Chaufal*, for instance, it was stated that the High Courts must develop uniform guidelines for dealing with PILs, in the interests of consistency and certainty. Further, certain concrete steps were proposed: e.g., inter alia, verifying the antecedents of the petitioner, prima facie satisfaction of the validity of the claim, presence of a substantial public interest, requirement

of redressal of genuine public harm, and very importantly, exemplary costs in cases of frivolous suits. It is submitted that rigorously following such guidelines will go a long way towards ensuring that the time of the Court is not wasted in lengthy proceedings involving frivolous claims. The requirement of exemplary costs, indeed, should be imposed upon all frivolous suits, whether in the form of public interest litigation or not, since it is the only thing that can act as a sufficient deterrent, and increase efficiency in the disposal of cases – and hence ensure speedy justice.

PILs are but, however, a small part of the problem. Even for other cases, the backlog and pendency is increasing at an alarming proportion. It was keeping this in mind that Justice B.N. Aggarwal suggested that a time limit be placed on oral arguments to ensure speedy disposal of all matters. While the proposal is debatable, what must be noted is that the judges' role in ensuring speedy justice cannot be viewed in isolation. While judges can take steps open to them such as impose punitive costs in cases of frivolous litigation, ensure a high threshold level for admitting SLPs, and perhaps regulate the time spent in oral arguments in each case, the problem of delays in justice is clearly a systemic one. Therefore, until other aspects are taken care of – e.g. increase in qualified manpower, setting up of effective extra-judicial institutions (such as arbitral tribunals) for specific cases, the State agencies performing their functions better so as to preempt a large number of administrative suits, etc. (the list is endless), the actual impact that judges can play is rather limited – although, of course, very important and significant. A positive step by the judiciary in this regard will also have a very powerful symbolic value, and send out a clear message to the other branches of governance.

CONCLUSION:

It is therefore evident that judges have a crucial and fundamental role to play in insuring equitable and speedy justice. In terms of equity, three important concepts evolved by the judiciary were analysed: the procedural aspects of ensuring access to justice by relaxing the rules of standing in cases of public interest litigation; and, substantively, expanding the scope of the constitutional right to life under Article 21 of the Constitution and inserting a due process requirement into the term “procedure established by law”; and secondly, enforcing socio-economic rights through the mechanism of the Directive Principles of State Policy. These are all laudable initiatives, but must also be enforced with due caution. With respect to the issue of speedy justice, once again it was seen that judges have an important role to play. Limiting the admissibility of SLPs, imposing prohibitive costs for vexatious and frivolous litigation, setting time limits for cases etc., are all steps that can be taken, with considerable impact.

(Lecture delivered at the 10th Anniversary Celebrations of Bodhraj Sawhny Memorial Trust on 10th December, 2010 in Delhi)

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MEDICAL NEGLIGENCE : *STANDARD OF CARE*

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Sri D.V. Subba Rao, doyen of the Bar and my mentor, Professor A. Prasanna Kumar, Dr. Adinarayana Rao, Dr. Sasi Prabha, Dr. G. Bhagya Rao and Dr. Somayajulu other distinguished doctors, Ladies & Gentlemen.

I feel privileged to address the 17th .Dr. Vyaghreswarudu Memorial Oration on the subject' - Medical Negligence Standard of Care. Earlier speakers have said that Medicine and Law are noble professions. I am in respectful agreement. However, Society has been more kind to Doctors than Lawyers. Few novels in fiction have Lawyers as their heroes, Doctors have grateful patients but Lawyers seldom have grateful clients! While errors committed by Lawyers go up in appeals, mistakes of Doctors are generally buried! On a more serious note I would say that the service rendered by men of medicine to society is unequalled. I grudgingly accept that India boasts of world famous Doctors but there are no world famous Lawyers.

I will now proceed to deal with subject for discussion.

In recent times Indian society is experiencing a growing awareness regarding patient's rights. This trend is clearly discernible from the spurt in litigation concerning medical liability, professional / establishment, claiming redressal for the suffering caused due to medical negligence, vitiated consent and breach of confidentiality arising out of the doctor-patient relationship. The recent trend is required to be appreciated in the economic context of decline of State spending and massive private investment in the sphere of the health care system, and the Indian Supreme Court's painstaking efforts to constitutionalize the right to health as a fundamental right.

Simple negligence may result in Civil liability, whereas gross negligence or recklessness may also result in criminal liability. Since cases both civil and criminal as well as in Consumer Fora, are often filed against medical practitioners and hospitals complaining of medical negligence against doctors, hospitals, or nursing homes, the courts started evolving the principles determining their liability. However frivolous complaints against Doctors have also increased with alarming alacrity consequent on medical profession being brought under the purview of the Consumer Protection Act by reason of the judgement of the Supreme Court in the case of Indian Medical Association Vs. V.P. Shantha (1995 (6) SCC 615).

As a result, the Doctors can no longer practice their profession without undue worry of facing litigation for alleged medical negligence. Many Doctors have stopped giving first aid to accident patients, advising them to proceed to Hospitals by which time patients develop other complications. Doctors have started adopting a practice known as defensive medicine. No diagnosis is ventured without subjecting the patients to several tests. Defensive medicine takes two main forms, "assurance behaviour and avoidance behaviour". Assurance behaviour involves the charging of additional, unnecessary services in order to a) reduce adverse outcomes, b) deter patients from filing medical malpractice claims, or c) provide documented evidence that the practitioner is practicing according to the standard of care, so that if, in the future, legal action is initiated, liability can be pre-empted.

Avoidance behaviour occurs when providers refuse to participate in high risk procedures or circumstances. Theoretical arguments based on utilitarianism conclude that defensive medicine is, on average, harmful to patients.

In this context it is desirable to identify the minimum reasonable standards in the light of the Indian social, economical, and cultural context that would facilitate the adjudicators to decide issues of professional liability on an objective basis. Such identification will also enable the medical professional to internalize such standards in their day-to-day discharge of professional duties. Further such a basic knowledge of how medical negligence is adjudicated in the various judicial fora will help a doctor to practice his profession without undue worry about facing litigation for alleged medical negligence.

MEDICAL NEGLIGENCE - DEFINITIONAL ASPECTS :

Negligence is simply the failure to exercise due care. The three ingredients of negligence are as follows:

- 1) The defendant owes a duty of care to the plaintiff.
- 2) The defendant has breached this duty of care.
- 3) The plaintiff has suffered an injury due to this breach.

Medical negligence is no different. It is only that in a medical negligence case, most often, the doctor is the defendant.

WHEN DOES A DUTY ARISE?

A doctor owes a duty of care to his patient. The duty of a medical practitioner arises from the fact that he treats the human body and that is likely to cause physical damage unless it is done with proper care and skill. This duty can either be a contractual duty or a duty arising out of tort law. In some cases, though a doctor-patient relationship is not established, courts have imposed a duty upon the doctor. In the words of the Supreme Court 'every doctor' at the governmental hospital or elsewhere, has a professional obligation to extend his services with due expertise for protecting life' (Parmanand Kataria v. Union of India -AIR 1989 SC 2039). These cases are however, clearly restricted to situations where there is danger to the life of the person. Impliedly, therefore, in other circumstances the doctor does not owe a duty.

WHAT IS THE DUTY OWED?

GENERAL PRINCIPLES

The duty owed by a doctor towards his patient normally is to 'bring to his task a reasonable degree of skill and knowledge' and to exercise 'a reasonable degree of care'. The doctor, in other words, does not have to adhere to the highest "degree of care and competence in the light of the circumstances. A doctor, does not have to ensure that every patient who comes to him is cured. He has only to ensure that he exercises a reasonable degree of care and competence.

ENGLISH LAW

A brief overview of the English Law on the subject is furnished hereunder.

Under English Law also the medical practitioner is not obliged to achieve success in every case that he treats. His duty, like that of other professional men, is to exercise reasonable care and skill. The standard of care required is the ordinary skill of a man professing to have the subject skill of a medical practitioner; a medical practitioner is not negligent if he or she acts in accordance with the practice accepted at the time as proper by a responsible body of medical opinion, notwithstanding that other practitioners adopt different practices; this is the test formulated in the case of Bolam v.

Friem Hospital Management Committee and affirmed by the House of Lords in *Sidaway v. Board of Governors of*

Bethlem Royal Hospital. Justice Me Nair in *Bolam v. Friem Hospital Management Committee* (1957) 2 AH ER 118, wherein a patient suffering from mental illness was advised to undergo electro-convulsive - therapy though the therapy has a risk of fracture, had observed :

“In the case of a medical man negligence means failure to act in accordance with the standards of reasonably competent medical men at the time. This is a perfectly accurate statement, as long as it is remembered that there may be one or more perfectly proper standards, and if a medical man conforms to one of those proper standards then he is not, negligent”.

The court held that the test is not one of the man on the top of Clapham omnibus, because he has not the special skill. Lord Denning, one of the greatest Jurists of the Century was of the view that as a matter of policy, medical negligence claims ought to be discouraged. He was firm on the requirement of a higher standard of proof in medical negligence cases than in other civil matters. He strongly advocated the requirement of “gross negligence” for making a professional liable. This policy of his, primarily based on the need to protect the profession of the Doctor, which he said ‘is as dear to him as his body, perhaps more so an action for negligence can wound his reputation as severely as a dagger can his body’.

In *Roe and wolley v. The Minister of Health and an Anaesthetist*, (1954) 2 A11 ER 131: he observed and I quote.

Further in the *White House* case Lord Denning had emphatically opined that - ‘we must say, and say firmly, that in a professional man an error of judgement is not negligence’. He had also observed in *Hucksv. Cole* that- ‘A Doctor is not to be held negligent simply because something goes wrong. He is not liable for mischance or misadventure. Nor is he liable for an error of judgement’.

However, there were certain dissenting opinions in the subsequent cases by other Law Lords of England. Lord Edmund Davies had once observed - ‘to say that a Surgeon committed an error of clinical judgement is wholly ambiguous, for, while some such errors may be completely consistent with the due exercise of professional skill, other acts and omissions in the course of exercising ‘clinical judgement’ may be so glaringly below proper standards as to make a finding of negligence inevitable’.

INDIAN LAW

The Supreme Court of India in the case of *Jacob Mathew Vs. State of Punjab* laid down the board and general principles of medical negligence. The same are :

- (a) The practitioner must bring to his tasks a reasonable degree of skill and knowledge, and
- (b) Must exercise a reasonable degree of care.

The Supreme Court held that neither the very highest nor the very lowest degree of care and competence is what the law requires, They further observed :

“A medical practitioner faced with an emergency ordinarily tries his best to redeem the patient out of his suffering. He does not gain anything by acting with negligence or by omitting to do an act. Obviously, therefore, it will be for the complainant to clearly make out a case of negligence before a medical practitioner is charged with or proceeded against criminally. A surgeon with shaky hands under fear of legal action cannot perform a successful operation and a quivering physician cannot

administer the end- dose of medicine to his patient. If the hands be trembling with the dangling fear of facing a criminal prosecution in the event of failure for whatsoever reason - whether attributable to himself or not, neither can a surgeon successfully wield his life-saving scalpel to perform an essential surgery, nor can a physician successfully administer the life - saving dosage of medicine. Discretion being the better advised to leave a terminal patient to his own fate in the case of emergency where the risk of making a last ditch effort towards saving the subject and facing a criminal prosecution if his effort fails. Such timidity forced upon a doctor would be a disservice to society”.

CHARGE OF MEDICAL NEGLIGENCE

The Supreme Court in the case of Malay Kumar Ganguly v. Dr. Sukumar Mukerjee (2009) 9 SCC 221) has redefined medical negligence to include overdose of medicines, not informing patients about side-effects of drugs, not taking extra care in case of diseases having high mortality rate and hospitals not providing amenities that are fundamental for the patients. Rejecting the argument that the disease with which the patient was suffering had a higher mortality rate, he observed :

“We would assume the mortality rate is very high. If that be so, we feel that the doctors should have been more careful. They should have treated the patient upon exercise of more care and caution”.

It has been held in several judgements that a charge of professional negligence against the medical professional stood on a different footing from a charge of negligence against the driver of a motor car. The burden of proof is correspondingly greater on the person who alleges negligence against a doctor. It is a known fact that with the best skill in the world, things sometimes go wrong in medical treatment or surgical operation. A doctor was not to be held negligent simply because something went wrong. The National Commission as well as the Supreme Court in catena of decisions has held that the doctor is not liable for negligence because of someone else of better skill or knowledge would have prescribed a different treatment or operated in a different way. He is not guilty of negligence, ‘if’ he has acted in accordance with the practice accepted as proper by a reasonable body of medical professionals. The Supreme Court in the case of Dr. Laxman Balkrishna Vs. Dr. Trimbak -AIR 1969 SC 128, has held the above view that is still considered to be a landmark judgement for deciding a case of negligence.

It is common to implicate doctors in Criminal cases alleging negligence in the death of a patient under treatment. In the case of Dr. Suresh Gupta (2004) 6 SCC 42, a bench of the Supreme Court consisting of Chief Justice R.C. Lahoti, Justice G.P. Mathur, and Justice P.K. Balasubrahmanyam declared that extreme care and caution should be exercised while initiating criminal proceedings against medical practitioners for alleged medical negligence. The apex court felt that bonafide medical practitioners should not be put through unnecessary harassment. The court said that doctors would not be able to save lives if they were to tremble with the fear of facing criminal prosecution. The Apex court found cases of doctors being subjected to criminal prosecution are on the increase. The criminal process once initiated subjects the medical professionals to serious embarrassment and sometimes harassment. Statutory rules or executive instructions incorporating certain guidelines are to be framed and issued by the Central or State Government in consultation with the Medical Council of India. A private complaint may not be entertained unless the complaint produces prima facie evidence before the court in the form of credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor.

Further the Supreme Court through (Markandeya Katju J), in Martin F D Souza Vs. Mohd.

Ishfaq delivered on 17.2.2009 reported in (2009) 2 SCC that whenever a complaint is received against a doctor or hospital by the Consumer Fora (whether District, State or National) or by the Criminal Court, before issuing notice to the doctor or hospital against whom the complaint was made the Consumer Fora or Criminal Court should first refer the matter to a competent doctor or committee of doctors specialized in the field relating to which the medical negligence is attributed. Only after that doctor or committee reports that there is a prima facie case of medical negligence should a notice be issued to the concerned doctor/hospital. This is necessary to avoid harassment to doctors who may not be ultimately found to be negligent. The Supreme Court had further warned the police officials on arresting or harassing doctors on the basis of frivolous complaints.

STANDARD OF CARE

The general principles on this subject have been lucidly and elaborately explained in the three Judge Bench decision of this Court in *Jacob Mathew Vs. State of Punjab* (2005) 6SCC 1 Further the judgement pronounced in *Martin F. D'Souza Vs. Mohd. Ishfaq* (2009 [2] SCC 40) by the Hon'ble Supreme Court of India (Markandeya Katju) quite explicitly addresses the concerns of medical professionals regarding the adjudicatory process that is to be adopted by Courts and Fora in cases of alleged medical negligence filed against Doctors.

A doctor cannot be liable for negligence because someone else of better skill or knowledge would have prescribed a different method of operation in different way. The Supreme Court in the case of *Dr. Laxman Balakrishna Vs. Dr. Triambak* -AIR 1969 SC 128 has held the above view and this view has been further confirmed in the case of the *Indian Medical Association Vs. Santha*.

It is now a settled principle of Indian Law that a medical practitioner will bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor the very lowest degree of care and competence judged in the light of circumstances in each case is what the law requires.

However taking note of the legitimate expectations of patients / family members the Supreme Court had recently observed.

"The standard of duty to care in medical services may also be inferred after factoring in the position and stature of the doctors concerned as also the hospital. The premium standard of services available to the patient certainly raises a legitimate expectation".

This means, the better the hospital and more the specialization, the more the degree of care.

However, difficulties arise in the application of these general principles to specific cases. For instance, what is reasonable and what is unreasonable is a matter on which even experts may disagree. Also, they may disagree on what is a high level of care and what is a lower level of care.

REASONABLE DEGREE OF CARE

Reasonable degree of care and skill means the degree of care and competence. That an 'ordinary competent member of the profession who professes to have those skills would exercise in the circumstance in question'. It is necessary to note the distinction between the standard of care and the degree of care. The standard of care is a constant and remains the same in all cases. It is the requirement, that the conduct of the doctor be reasonable and need not necessarily conform to the highest degree of care or the lowest degree of care possible. The degree of care is a variable and depends on the circumstance. It is used to refer to what actually amounts to reasonableness in a given situation.

Thus, though the same standard of care is expected from a generalist and a specialist, the degree of

care would be different. In other words both are expected to take reasonable care but what amounts to reasonable care with regard to the specialist differs from that amount of reasonable care for the generalist. In fact the law expects the specialist to exercise the ordinary skill of his speciality and not of any ordinary doctor. Though the courts have accepted the need to impose a higher degree of duty on a specialist, they have refused to lower it in the case of a novice.

Another question that arises is, with regard to the knowledge that is expected from a doctor. Should it include the latest developments in the field, hence requires constant updating or is it enough to follow what has been traditionally followed? It has been recognized by the courts what amounts to reasonableness changes with time. The standard, as stated clearly requires that the doctor possesses reasonable knowledge. Hence, we can conclude that a doctor has to constantly update his knowledge to meet the standard expected of him. The Supreme Court also observed that.

“The law on medical negligence also has to keep up with the advances in the medical science as to treatment and also diagnostics”.

However judging from the yardstick of reasonableness it has been held in certain cases that post-operative infections or shortening of the leg etc., was not due to any negligence or deficiency in service on the part the doctors.

In a case that led to visual impairment allegedly as a side effect of over dosage of Lariago (drug used for treating Malaria), the following observations were made in *Ajay Kumar v. Dr. Devendra Nath* (II [2004] CPJ 482).

“The literature with regard to Lariago clearly mentioned that the side effect of this medicine if taken for a longer duration can effect eyesight but this is not a fact in this case. Besides, there is no expert evidence on record to show that use of this medicine caused damage to the patient’s eyesight. If the Respondent-doctor is one who has advised his patient to use this medicine after an examination in which he found the patient to be suffering from malaria, in that case as well the doctor-Respondent cannot be held guilty of negligence or deficient in his service. However, as stated above in this case the medicine has been used by the patient in low doses for a few days and there is no expert evidence to show that the use of medicine has affected his eyesight. Therefore, the Complainant-Appellant has failed to prove that the Respondent was negligent and deficient in his duty as a doctor.”

PROOF OF MEDICAL NEGLIGENCE

In order to decide whether negligence is established in any particular case, the alleged act, omission or cause conduct of that is the subject of the complaint must be judged not by ideal standards or in the abstract but against the background of the circumstances in which the treatment in question was given.

Negligence has to be established and cannot be presumed. It is for the Complainant to prove the negligence or deficiency in service by adducing expert evidence or opinion and this fact is to be proved beyond all reasonable doubt. Mere allegation of negligence will be of no help to the Complainant.

Moreover, as the testimony of an expert is relied upon by the judiciary to decide whether there was negligence in a given case, it would be prudent for us to follow a set of principles for the proposed testimony to meet a certain criteria for reliability. In the United States, a

common method used by the courts is the “gatekeeper model”, a test formulated by the U.S. Supreme Court in the case of *Daubert v. Merrell Dow Pharmaceuticals* (509 U.S. 579 [1993]). This

approach is somewhat similar to the approach adopted in the case of Martin F. D'Souza, wherein the complaint is first referred to a competent doctor or committee of doctors specialized in the field.

However, we can limit the time consumed by the deliberations of such a committee by restricting the scope of enquiry to 4 questions, which have been propounded in the Daubert case, namely.

Whether a "theory or technique..... can be (and has been) tested.

Whether it "has been subject to peer review and publication" error

Whether, in respect to a particular technique, there is a high "know how or potential rate of

Whether there are "standards controlling the technique's operation.

INFORMED CONSENT

There are cases of negligence for failing to provide information to the patient even though there might not be any negligence in the treatment provided. Doctors are, thus, imposed with a duty to take the consent of a person / patient before performing acts like surgical operations and in some cases treating as well. To summarize, any act that requires contact with the patient has to be consented by the patients. A duty of care is imposed on the doctors in taking the patient's consent. A question arises as to what is this duty of care. As per the judicial pronouncements, this duty is to disclose all such information as would be relevant or necessary for the patient to make a decision. The standard of care required of a doctor while obtaining consent is again that of a reasonable doctor, as in other cases.

Assuming that the unintentional failure on the part of the Doctor to provide to his patient sufficient information to allow that patient's consent 'to be informed', can amount to negligently infringing the legally protected right to proper disclosure of risks, the question necessarily arises as to the standard by which the sufficiency of information given is to be the standard. In the USA where the discussion of this question has reached the heights of frenzy and emotional dogma ever achieved by American Lawyers, there are two standards to which the Courts adhere to. The first and more established view is that the standard of disclosure is a professional standard in that each physician is judged by the standards adopted by his peers. The second standard is based not on the physician's view of what it is reasonable to disclose but on the much more subjective concept of the 'need to know'. The second standard is based on the patient's 'right to self-determination'.

CASE LAW

In Pt. Parmanand Katara v. Union of India and ors., the petitioner referred to a report published in the newspaper "The Hindustan Times" in which it was mentioned that a scooterist was knocked down by a speeding car. Seeing the profusely bleeding scooterist, a person who was on the road, picked up the injured and took him to the nearest hospital. The doctors refused to attend told the man that he should take the patient to another hospital located 207 kilometers away authorized to handle medico-legal cases. The injured was then taken to that hospital but by the time he could reach, the victim succumbed to his injuries.

The Supreme Court referred to the Code of Medical Ethics drawn up with the approval of the Central Government under section 33 of the Indian Medical Council Act and observed "Every doctor whether at a Government Hospital or otherwise has the professional obligation to extend his services for protecting life. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise cannot be sustained and, therefore, must give way."

The Supreme Court held that it is the duty of the doctor in an emergency to begin treatment of the patient and he should not await the arrival of the police or to complete the legal formalities. The life of a person is far more important than legal formalities. This view is in accordance with the Hippocratic oath of doctors.

Although this decision has laid down that it is the duty of a doctor to attend to a patient who is brought to him in an emergency, it does not state what penalty will be imposed on a doctor who refuses to attend the said patient. Consequently it will depend on the facts and circumstances of the case. However, this case is important because nowadays health care has often become a business, as is mentioned in George Bernard Shaw's play "The Doctor's Dilemma". The medical profession is a noble profession and it should not be brought down to the level of a simple business or commerce. The truth of the matter, sadly, is that today in India many doctors (though not all) have become totally money-minded, and have forgotten their Hippocratic oath. Since most people in India are poor the consequence is that for them proper medical treatment is next to impossible, and hence they have to rely on quacks. This is a disgrace to a noble profession.

In Paschim Banga Khet Mazdoor Samity and Ors. v. State of West Bengal and Anr.

The Supreme Court held that the denial of emergency aid to the petitioner due to the non availability of bed in the Government Hospital amounts to the violation of the right to life under Article 21 of the Constitution. The Court went on to say that the Constitutional obligation imposed on the State by Article 21 cannot be negated on the ground of financial constraint.

In Md. Suleman Ansari (D.M.S.) v. Shankar Bhandari

The respondent suffered a fracture of his hand. He went to the appellant who held himself out to be a qualified medical practitioner. The appellant bandaged the respondent's hand and prescribed certain medicines. He was ultimately taken to another doctor but by this time the damage to his hand was permanent. It was found that the appellant was not a qualified doctor to give treatment to the respondent. The Supreme Court had directed him to pay Rs. 80,000/- as compensation to the respondent.

In Surendra Chauhan v. State of M.P.

The appellant was having a degree of Bachelor of Medicine in Electrohomoeopathy from the Board of Electrohomoeopathy Systems of Medicines, Jabalpur (MP). He did not possess any recognized medical qualification as defined in the Indian Medical Concil Act. 1956. Yet he performed an operation to terminate the three month pregnancy in a woman, who died in the clinic due to shock due to non application of anesthesia. The Supreme Court confirmed his sentence but reduced it to one and a half years rigorous imprisonment under section 314/34 IPC and a fine of Rs. 25,000/- payable to the mother of the deceased.

In P.N. Rao v. G. Jayaprakas

The plaintiff was a brilliant young boy who had passed the pre-University course securing 100% marks in Mathematics and 93.5% in physical sciences. He was also getting a monthly scholarship. He was offered a seat in B.E. Degree course in four Engineering Colleges. He had a minor ailment - chronic nasal discharge - for which his mother took him to a doctor for consultation who diagnosed the disease as Nasal Allergy and suggested operation for removal of tonsils. He was admitted in the Government General Hospital, Guntur and the operation was performed. He did not regain consciousness even after three days and thereafter for another 15 days he was not able to speak coherently. When he was discharged from hospital, he could only utter a few words and could not read or

write and lost all his knowledge and learning. His father took him to Vellore where he was examined by a Professor of Neuro Surgery and it was found that his brain had suffered due to cerebral anoxia, which was a result of improper induction of anesthetics and failure to take immediate steps to reduce anesthesia. The court after examining the witnesses including the Professor of Anesthesiology held that defendants were clearly negligent in discharging their duties and the State Government was vicariously liable.

In Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Bapu Godbole and Anr.

A patient had suffering from fracture of the femur. The accused doctor while putting the leg in plaster used manual traction and used excessive force for this purpose, with the help of three men, although such traction is never done under morphia alone but done under proper general anesthesia. This gave a tremendous shock causing the death of the boy. On these facts the Supreme Court held that the doctor was liable to pay damages to the parents of the boy.

In Dr. Suresh Gupta v. Government of N.C.T. of Delhi and Anr.

The appellant was a doctor accused under section 304A IPC for causing death of his patient. The operation performed by him was for removing his nasal deformity. The Magistrate who charged the appellant stated in his judgement that the appellant while conducting the operation for removal of the nasal deformity gave incision in a wrong part and due to that blood seeped into the respiratory passage and because of that the patient collapsed and died. The High Court upheld the order of the Magistrate observing that adequate care was not taken to prevent seepage of blood resulting in asphyxia. The Supreme Court held that from the medical opinions adduced by the prosecution the cause of death was stated to be 'not introducing a cuffed endotraheal tube of proper size as to prevent aspiration of blood from the wound in the respiratory passage.' The Supreme Court held that this act attributed to the doctor, even if accepted to be true, can be described as a negligent act as there was a lack in a civil case but it cannot be described to be so reckless or grossly negligent as to make him liable in a criminal case. For conviction in a criminal case the negligence and rashness should be of such a high degree which can be described as to tally apathetic towards the patient.

In Spring Medown Hospital and Anr. v Harjot Ahluwalia thr' K.S. Ahluwalia and Anr.

A minor child was admitted by his parents to a nursing home as he was suffering from fever. The patient was admitted and the doctor diagnosed typhoid and gave medicines for typhoid fever. A nurse asked the father of the patient to get an injection Lariago which was administered by the nurse to the patient who immediately collapsed. The doctor was examined and testified that the child suffered a cardiac arrest on account of the medicine having been 'injected' which led to brain damage. The National Commission held that the cause of cardiac arrest was intravenous injection of Lariago of such a high dose. The doctor was negligent in performing his duty because instead of administering the injection himself he permitted the nurse to give the injection. There was clear dereliction of duty on the part of the nurse who was not even a qualified nurse and was not registered with any nursing council of any State. Both the doctor and nurse and the hospital were found liable and Rs. 12.5 lakhs was awarded as compensation to the parents.

In Consumer Protection Council and Ors. v. Dr. M. Sundaram and Anr.

The facts were that one Mrs. Rajalaxmi was admitted to a nursing home which diagnosed the ailment as Hodgkin's Lymphoma. She was administered Endoxan injection five doses in five days. She was referred to another doctor who was an ENT specialist, who after examination opined that no lymph glands were seen. A sample of her bone marrow was sent to an Oncologist who opined that

the picture does not fit with Hodgkin's disease but the patient had magaloblastic anemia in the bone marrow. Subsequently she was discharged from the nursing home and was advised to visit CMC Vellore for treatment. The patient consulted another doctor who diagnosed the same as renal failure. The complainant alleged that the first doctor failed and neglected to refer the matter to a Cancer Specialist but wrongly diagnosed the ailment of the patient as Hodgkin's Lymphoma and had unnecessarily administered injection of Endoxan and because of the toxicity of that drug the kidney cells of the patient got destroyed resulting in renal failure for which she had to undergo kidney transplantation which led her death. The National Commission, upholding the State Commission, held that there was no negligence on the part of the doctor who had consulted a pathologist, and in the light of discussion with him and on inspection of some more slides of bone marrow specimens which also revealed same finding, namely, existence of deposits of Hodgkin's Lymphoma, proceed to administer the patient injections of Endoxan. It was held on the basis of medical opinion that any prudent consultant physician would not delay the commencement of chemotherapy where repeated examination of the bone marrow slides had yielded the report that the Hodgkin's deposits were present. Endoxan is a drug of choice in the treatment of Hodgkin's Lymphoma and there was no negligence on the part of the doctor.

In Sethuraman Subramaniam Iyer v. Triveni Nursing Home and Anr.

The complainant's wife suffered from Sinusitis and was advised surgery by the doctor. She had suffered a massive heart attack while in the operation theatre. The State Commission found that necessary precautions and effective measures were taken to save the deceased and dismissed the complaint. The State Commission relied on the affidavits of four doctors who opined that there was no negligence. The complainant had not given any expert evidence to support his allegation and in these circumstances it was held that no case was made out against the doctor.

In A.S. Mittal and Anr. v. State of U.P. and Ors.

A free eye camp was organized for ophthalmic surgical treatment to patients. However, the eyes of several patients after operation were irreversibly damaged, owing to post-operative infection of the intra ocular cavities of the eyes, caused by normal saline used at the time of surgery. The Supreme Court directed the State Government to pay Rs. 12,500/- as compensation to each victim as there was a clear negligence.

In Indian Medical Association v. V.P. Shanthan

It has been held that the following acts are clearly due to negligence.

Removal of the wrong limb.

Performance of an operation on the wrong patient.

Giving injection of a drug to which patient is allergic without looking into the out-patient card containing the warning.

Use of wrong gas during the course of an anesthesia etc.

From the aforementioned principles and decisions relating to medical negligence, it is evident that doctors and nursing homes / hospitals need not be unduly worried about the performance of their functions. The law is a watchdog, and not a bloodhound, and as long as doctors do their duty with reasonable care they will not be held liable even if their treatment was unsuccessful.

Conclusion

In the matter of professional liability medical profession differs from other occupations for the reason that profession operates in spheres where success cannot be achieved in every case and very often success or failure depends upon factors beyond the professional person's control. Thus a balance has to be struck in such cases. While doctors who cause death or agony due to medical negligence should certainly be penalized, it must also be remembered that like all professionals doctors too can make errors of judgement but if they are punished for this no doctor can practice his vocation with equanimity. Indiscriminate proceeding and decisions against doctors will be counter productive and are no good for society they inhibit the free exercise of judgement by a professional in a particular situation.

The Supreme Court by its judgements on medical negligence has done yeoman service for society setting at rest the speculative nature of our judicial adjudication of medical medical negligence liability and abundantly clarifying that unless there is a prima facie evidence indicating medical negligence, notice either to a doctor or hospital cannot be issued. At the same time, the core essence of the judgements makes it very clear that there cannot be an assumption that doctors cannot be negligent while rendering care and treatment. I wish and hope Supreme Court's guidelines are disseminated at a popular level so that the mandated Supreme Court's prescription will be observed more in practice than in breach.

However insted of burdening the patient by resorting to the practice of defensive medicine I hope that the Indian medical institutions adopt the American practice of holding Morbidity and Mortality Conferences (M&M) for peer reviews of mistakes occurring during care of patients, with the object of learning from previous complications and errors, and to prevent repetition of errors leading to complications. These conferences have been proved to be successful in identifying areas of improvement for doctors involved in the case and we would also do well to adopt the same and improve our health care.

(Dr. C.Vyaghreswarudu Memorial Oration delivered on Nov 15, 2009 at Visakhapatnam, under the auspices of Prema Hospital founded & managed by Dr.S.V.Adinarayana Rao)

Dr C.Vyaghreswarudu, the first Professor of Orthopedics in King George Hospital, Visakhapatnam was a pioneer and trend-setter in the field of orthopedics. The internationally renowned orthopedic surgeon was above all a humanist who performed over a lakh of operations free of cost, all over the country with the assistance of his disciple and inheritor of the skill and values, Dr S.V. Adinarayana Rao, Founder-Director General of Prema hospitals. Dr B.C. Roy awardee and well known neurosurgeon and elder brother of Dr Adinarayana Rao Dr S.Balaparameswara Rao and eminent cardiologist Padma Bhushan Prof P. Venugopal are among those who delivered the oration. The Dr Vyaghreswarudu Memorial Trust Dr Adinarayana Rao established has been organising in November every year the Vyaghreswarudu Memorial Oration since 1993. Walking in the footsteps of his master and mentor Dr Adinarayana Rao continues to conduct free polio treatment camps and surgeries everyday in his hospital.

Hailing from a family of lawyers, Shri.D.V.Sitha Ram Murthy is a nephew of the late.Shri.D.Narasaraju, the first Advocate General of Andhra Pradesh. An alumnus of Andhra University Sitha Ram Murthy enrolled as advocate in 1976 and worked as junior to former Chairman Bar Council of India, Shri.D.V.Subbarao till 1980. Moving to Hyderabad in 1980 Shri Murthy rose to become a legal advisor for many public and private organisations and panel lawyer for the Consulates of USA and Canada in Chennai. He was Advocate General for Andhra Pradesh from 2009 to 2011. He is an honorary member of several academic bodies.

THE PLEASURES OF LITERATURE

Dr. Mrs. Prema Nandakumar

Mr. Vice-Chancellor, eminent scholars and academicians, students of this distinguished University, ladies and gentlemen :

At the outset, I would like to express my grateful thanks to the Vice-Chancellor Dr. Ramanathan, to the Registrar Dr. Rathinasabapathi and to the Dean, Faculty of Arts for having invited me to your University. I have always cherished my earlier visits to this institution and I deem it a privilege and pleasure to be speaking to you on this day marking the importance of Social Sciences and Humanities in a world that has become increasingly technological and science-oriented. You may remember that as early as 1959, the British novelist and scientist C.P.Snow had pointed out in his Rede Lecture that the humanities and the sciences were not interacting enough; and unless that were done and the two cultures came together, it would not be easy to solve the problems faced by humanity.

Appropriately the day is to commemorate the hallowed memory of Dr. Malcolm Adiseshiaiah and this too makes this occasion a privileged one for me. Dr. Adiseshiaiah was a friend of my father, Prof. K.R. Srinivasa Iyengar and my brother, Dr. Ambirajan. My father used to say that Dr. Adiseshiaiah was a power-dynamo. His creative facets were many, both as a teacher and as an administrator. He was an ideal teacher who encouraged his students to fan out into the nearby villages, as he had imbibed the call when he worked in Calcutta and knew Sriniketan and Santiniketan in person. He was never frightened of the unknown as his career and achievements at the UNESCO and other institutions testify; My brother would often refer to the MIDS Library funded by Dr. Adiseshiaiah's trust as one of the best for social sciences in India. Dr. Adiseshiaiah's gargantuan appetite for books is another facet that I had always admired. He was a great reader and this was reflected in his brilliant penmanship.

I have a connection with Dr. Adiseshiaiah too. He was a lover of Tamil literature and obtained UNESCO assistance to the programmes of translation of Tamil classics into English. The series began in 1961 with Rajaji's *The Ayodhya Canto of the Ramayana* as told by Kamban. A.K. Ramanujan's *The Interior Landscape: Love Poems from a Classical Tamil Anthology* came out next in 1967. My Poems of Subramania Bharati followed in 1977. I must also point out with gratitude that he initiated Jeanine Auboyer's research work on Sri Ranganathaswami Temple at my native place, Srirangam. His pointed foreword is a delight wherein he writes:

"Out of India's vast artistic heritage, the temples of South India present to the traveller, to the student of Hindu architecture and its evolution in South India, as well as to the pilgrim – in fact, to all men – a many faceted interest. They are anchored firmly in India's long history and yet soar upwards to emphasise the limitlessness of man's dreams and aspirations. Some gigantic and massive, almost brutally imposing, others light and airy, with delicate towers, columns and elegant porches, collectively they reflect the pageant of the development of one of man's oldest cultures, and individually, through the hundreds of sculptures and paintings which adorn their surfaces, they depict the struggles, failures and successes of the men who made them the centre of their lives. More than that, the South Indian temples are today as much a part of life of those who live at their feet as they were when they were built. They continue to be used daily by hundreds of pilgrims and visitors as religious shrines, cultural centres and places of repose and meditation."

Such fine, meaningful writing! This is what makes me very happy to be with you to speak about the pleasures of literature which gave us a stylist like Dr. Adiseshiaiah. Before I proceed, I would like to add

my thanks to Dr. Ramgopal who got in touch with me and gave the welcome suggestion that I speak on the pleasures of literature.

Literature was born when man learned “to connect”. Two disparate entities were brought together in a double-vision that coalesced into a single seeing as when a lover saw his beloved’s eyes as pools of lotuses or watched a baby at home as lovely as a little parrot.

How is this possible? But then that is the secret of creation. As I wrote more than four decades ago while seeking to do a comparative study of Sri Aurobindo and Dante, there is no repetition in nature’s infinite variety:

“On the other hand, the universe being certainly a cosmos, and not a chaos of contraries and contradictories, not only is there the ground of transcendent unity, there are also infinite gradations of intermediate unity and similarity, and it could be both an interesting and rewarding adventure to observe these and make recordings.”

These recordings achieved unconsciously in moments of self-lost inspirations become great literature offering shoreless Ananda to generations. This Ananda is also ethical in its deepest sense, a point caught effortlessly by John Keats when he exclaimed:

“Beauty is truth, truth beauty,” - that is all

Ye know on earth, and all ye need to know.

Literature is a question of word-combinations, for sure. A dictionary is not literature. But surprisingly, literature seems to cover all the rest! Economics, politics, science, spirituality, religion: all become great literature in the hands of the genius. Hence, the world of literature has appropriated *The Origin of Species*, *Das Kapital*, *Social Contract*, *The Decline and Fall of the Roman Empire* and the rest. Science, philosophy, history, social studies, even grammar! Dare anyone of us say that the Tamil work on grammar and poetics, *Tolkappiyam* is not literature? I remember my father asking my brother and me to read carefully the two huge volumes of Holmes-Laski Letters that had been published in 1953 to learn how to use the English language!

All writers use their language as a catalytic agent to convey their thoughts. Their success depends on their mastery over the medium. De Quincey gives us a clue to distinguish literature from what is not. He says: “All that is literature seeks to communicate power; all that is not literature, to communicate knowledge.” How does this happen? The eminent literary critic, R.A. Scott-James has a clue:

“The eager scientist is constantly trembling with the excitement and imagination of the artist. The historian is compelled to lift his story above bare fact, to recreate and dramatize incident, reclothe his persons and shape the setting in which he places them.”

Books of power or books of knowledge: my life has been inextricably woven with books since I was born more than seventy years ago. I grew up literally in my father’s sumptuous personal library. There were no luxuries in our lower middle class home, but one never felt the lack of them. What if there was no fridge nor radio nor a car? My brother and me always had books and we simply travelled in fairy lands forlorn. We were also encouraged to have “our own” library for father believed only in books as gifts. I started mine in 1944 when father gave me P.Sri’s *Andal*. This is a book in Tamil and remains the proudest possession of my library.

It also helped that we were multilingual in our household. There were books in Sanskrit, Tamil,

Telugu, Hindi, Kannada and English. Never a dull moment! I just cannot think of any time in my life when I have felt “bored” with life. And even all those moments of sorrow, loss, frustration, depression and anger just melted away in a trice when I curled up with a book. Literature has a way of siphoning of all these attacks of unhappy forces in one’s life, such has been my experience. Yes, even old age that has been creeping upon me as a tiger in the forests, gets effectively halted when I take down my Globe edition of Wordsworth and open it at random:

“Our birth is but a sleep and a forgetting :
The Soul that rises with us, our life’s Star,
Hath had elsewhere its setting,
And cometh from afar :
Not in entire forgetfulness,
And not in utter nakedness,
But trailing clouds of glory do we come
From God, who is our home:
Heaven lies about us in our infancy!”

In a trice I am back in my childhood reciting Telugu nursery rhymes with my brother. “*Kothi puttinadbendukuraa?*” Where have the wrinkles gone? Such is the gift of literature.

So, what are the pleasures of literature? In fact, John Cowper Powys has published a book, *The Pleasures of Literature* (1938). This is yet another of my prized possessions. The Powys brothers and sisters were my father’s friends. John’s brother Llewelyn used to correspond with father in the ‘Thirties and when my father went to Great Britain in 1951, he visited the Powys sisters, Gertrude and Philippa. Both Llewelyn and John were great writers. In his introduction to the book, John points out how literature can hold you in a vice-like grip once you have surrendered to its pleasures. I can understand when he writes about libraries and second-hand book shops (another of my weaknesses):

“Though books, as Milton says, may be the embalming of mighty spirits, they are also the resurrection of rebellious, reactionary, fantastical and wicked spirits! In books dwell all the demons and all the angels of the human mind. It is for this reason that a book-shop –especially a second-hand bookshop – is an arsenal of explosives, an armoury of revolutions, an opium-den of reactions.”

True enough. You never know what you are in for when you take up a book just on hearsay. But then, great literature has a way of making us slip out of the present and travel in unknown pathways, experiencing strange new adventures of the spirit. Mere imagination cannot give this pleasure. It is when imagination is woven with sublimity of utterance that we remain in this brave new world for a while. This is just not pleasure nor profit but a terrifying wonderment that a series of murders can become almost a scripture for the lover of literature. Lady Macbeth is dead. The murders and other evils that Macbeth has perpetrated seem to mock him now. What was the purpose of it all, this corruption of the flesh, of the mind and of the atmosphere? Is it not a warning to the megalomaniacs in India today who prefer the rosy pathways of corruption?

“To-morrow, and to-morrow, and to-morrow,
Creeps in this petty pace from day to day,
To the last syllable of recorded time;
And all our yesterdays have lighted fools
The way to dusty death. Out, out, brief candle!
Life’s but a walking shadow, a poor player,

That struts and frets his hour upon the stage,
And then is heard no more. It is a tale
Told by an idiot, full of sound and fury,
Signifying nothing.”

Or just a crow! Can you weave an unforgettable scenario with a crow that can be terrifying to the soul? And yet, after reading Edgar Allan Poe’s poem, ‘*The Raven*’ several decades ago, the scene has returned to me, whenever I sit alone, deep into the night, reading Aeschylus or Euripides:

“Open here I flung the shutter, when, with many a flirt and flutter,
In there stepped a stately raven of the saintly days of yore;
Not the least obeisance made he; not a minute stopped or stayed he;
But, with mien of lord or lady, perched above my chamber door -
Perched upon a bust of Pallas just above my chamber door -
Perched, and sat, and nothing more.
Then this ebony bird beguiling my sad fancy into smiling,
By the grave and stern decorum of the countenance it wore.

“Though thy crest be shorn and shaven, thou,” I said, “art sure no craven,
Ghastly grim and ancient raven wandering from the Nightly shore -
Tell me what thy lordly name is on the Night’s Plutonian shore!”
Quoth the Raven, “Nevermore.”

In the hands of a great artist, the blood-spattered guillotine of the French Revolution becomes a lesson in that constitutes love, pity and self-sacrifice: all that we hold beautiful, holy, divine. One learns what exactly literature does to our psyche when reading *A Tale of Two Cities* by Charles Dickens when Sydney Carton muses a few moments before he is to be cut down by the guillotine’s blade:

“I see a beautiful city and a brilliant people rising from this abyss, and, in their struggles to be truly free, in their triumphs and defeats, through long years to come, I see the evil of this time and of the previous time of which this is the natural birth, gradually making expiation for itself and wearing out. . .

I see that child who lay upon her bosom and who bore my name, a man winning his way up in that path of life which once was mine. I see him winning it so well, that my name is made illustrious there by the light of his.

It is a far, far better thing that I do, than I have ever done; it is a far, far better rest I go to than I have ever known.”

This is how the novel concludes. And here is the unforgettable beginning of the novel:

“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—in short, the period was so far like the present period, that some of its noisiest authorities insisted on its being received, for good or for evil, in the superlative degree of comparison only.”

Whenever I look upon the scenario in our motherland, or read what is happening in Egypt or Afghanistan or Behrein or Japan, I am reminded of this passage and take the book down to read it again.

Such is the vision of the great writer, a Seer, a *Dhrashtaa* as the Vedas call him. Each time one reads the passage new significances swirl around our thoughts, a point well made by Tiruvalluvar:

“Wise men’s friendship is like reading classics:
One derives more and more good.”

The *nava-rasas* that come upon us wave after wave when we read our favourite books cannot be explained in verbal terms. It is something so close to our soul-affinities. There are favourites too even among the classics. I never tire of reading Sherlock Holmes stories but I have no turn for Hercule Poirot. St. Paul’s dithyramb on charity is a favourite at any time of day:

“Though I speak with the tongues of men and of angels, but have not love, I have become sounding brass or a clanging cymbal. And though I have the gift of prophecy, and understand all mysteries and all knowledge, and though I have all faith, so that I could remove mountains, but have not love, I am nothing. And though I bestow all my goods to feed the poor, and though I give my body to be burned, but have not love, it profits me nothing. Love suffers long and is kind; love does not envy; love does not parade itself, is not puffed up; does not behave rudely, does not seek its own, is not provoked, thinks no evil; does not rejoice in iniquity, but rejoices in the truth; bears all things, believes all things, hopes all things, endures all things. Love never fails”.

Apart from my father who was a bibliophile, I was also able to come into contact with some great men when I accompanied him to their houses. I cannot forget the day I went with father to the house of Chakravarti Rajagopalachari in his Bazlullah Road house on 15th April, 1958. He had just then given up the Chief Ministership. When we entered his room, he looked up from the book he was reading and welcomed us. “Iyengar, you have come at the right time. I am reading Shakespeare”. As I sat silently listening to them, for one hour I was transported to the Shakespearian world where much of their conversation was punctuated with Shakespearian quotes! That is another gift of great literature. One or two lines and an entire world opens before us! For these lines were written when the author was somewhere far above the mere questioning, mental level. Sri Aurobindo calls this level of consciousness, the Overmind. For instance, the entire Ayodhya Canto in the Ramayana, with its epic-sized dramatic irony, is unveiled before us in a moment when we hear Sumitra tell Lakshmana:

*Ramam Dasaratham viddhi maam viddhi janakaathmajaam
Ayodhyaam ataveem viddhi gachcha thatha yathaa sukham*

Indeed, a love of reading great works in any language, cultivated from one’s childhood is the best fixed deposit for a purposive and happy life as the uses of literature are indeed innumerable. The sheer joy of word combinations like the line, “beaded bubbles winking at the brim” (which I made the subject of a classroom lecture by an English Professor in my Tamil novel, *Oru Naal Pozhudu*); the sense of pride at being able to tell others how we are no strangers to the Russian Dostoevsky, the German Goethe, the French novels of Alexander Dumas or the Hindi novels of Premchand, thanks to English literature which has a vast amount of translated works from the world’s languages; the fulfillment we gain by knowing the story-patterns of classics like *The Count of Monte Cristo* and *The Hunchback of Notre Dame* cannot be verbalised. I was a little girl when I read Hugo’s classic, *The Hunchback of Notre-Dame* for the first time. When I read it years later, I was older, and I could enter the whirlpools of passion raised by the lust of the Archdeacon and the selfless love of the hunchback Quasimodo for the gypsy girl Esmeralda. There were so many descriptions of the famous cathedral of Our Lady of Paris in the novel that I imagined walking around it myself! Wherever I could (Encyclopaedia Britannica, travel books) I read about it and gazed at the photographs, all the time the heroic hunchback a presence. I never knew that a day would

indeed come to me to actually step inside the Cathedral which forms the background for the novel. It is a beautiful representative of Gothic architecture. And when I did enter the Cathedral, it was 2001. I had become quite old. But then, the Cathedral had been restored just then through a period of ten years. The place just glowed and it was fantastic when I went into it at 9 A.M.

With guidebook in hand, it was easy enough to see what I wanted. The stained glass windows, the figures of various saints, the gargoyles and of course Pieta. "Overwhelming", says my diary. The history of the cathedral speaks of great works of art and also immense destruction. Hugo's novel had given me plentiful descriptions and made it all familiar, since the entire action of the novel takes place in and around this Cathedral. As I looked up I could remember Hugo's description of Quasimodo:

"Many a time had he climbed up the façade composed of several elevations, assisted only by the asperities of the sculpture. Often might he have been seen crawling up the outside of the towers, like a lizard up a perpendicular wall: those two giants, so tall, so threatening, so formidable."

The *Pieta* sculpted by Guillaume Coustou held my attention almost totally. The Virgin seated with Jesus Christ on her hands, gazing intently at the face of her Son, the mother's heart bleeding as the Saviour had on the Cross. As I stood there looking up at the stained glass windows in the background, a riot of yellow, marine blue and red, I found that people were coming in and settling down. Prayer time? Let me not disturb them, was the first thought. So I went out only to see that more groups were coming and standing in rows, as it was filled up inside. What is going on?

I was told that there was to be a Requiem Mass for those who had lost their lives in the terrorist attack on the Twin Towers in New York on September the 11th, just two days earlier. This was the third day. There were some strains of a choir from somewhere at the back. And then the rituals of the Mass. There was deep silence as we stood outside the cathedral, people from ever so many nations, almost all of us strangers in Paris. There were two speeches which we heard with absorption. Both the speakers were priests, one white, one black. They spoke in measured accents, never giving way to anger or raising their voice. They called for patience and courage to bear the tragedy; and they invoked the Virgin's Grace for global peace. There was not a single wrong note as they referred to Jesus Christ's sacrifice for mankind.

Now there came to us music from the organ. Not familiar with the words in the verses used for a Requiem, I just told myself in English: "Jesus Lord, grant them everlasting rest." Somehow the dark romance of *The Hunchback of Notre-Dame*, the terrible end of Esmeralda and Quasimodo, the calm that comes upon us as we close the novel after all the terror and the fury, seemed to be in tune with the somber mood of the people around me. The kindly heart of Esmeralda, the pure love of Quasimodo and the Passion of Jesus would never have been in vain for mankind. They spread the life-giving nectar of compassion as subterranean springs to create on this earth a divine life. Such are the sublime moments gifted to us by our love of literature.

After the Mass, I walked towards the *Seine* river and sat on a bench for a while, watching the boats moving on its quiet waters. The many times I had read the novel, my father explaining some of the passages to me long, long ago, the tragedy of Esmeralda and Quasimodo in the novel and the Twin Towers in America were all churning within me as I sat for quite sometime in that alien land, sorrowing for the lot of mankind. The heart sought for a word of comfort. That came from another great poem of our times, *Savitri* by Sri Aurobindo, my constant companion.

"The Son of God born as the Son of man
Has drunk the bitter cup, owned Godhead's debt,

The debt the Eternal owes to the fallen kind
His will has bound to death and struggling life
That yearns in vain for rest and endless peace.
Now is the debt paid, wiped off the original score.
The Eternal suffers in a human form,
He has signed salvation's testament with his blood:
He has opened the doors of his undying peace."

Literature remains the secret of remaining intellectually rich all one's life. In my own library I have several series (each with several volumes), from the *Encyclopaedia Britannica* to Penguins, Pelicans, the Gita Press, the ISCON library, Narmada Pathippakam, Writers Workshop, Collected works of Sri Aurobindo, T.V. Kapali Sastri and so on, the latest entrant being the 12-volume Collected Works of Kavya Kantha Ganapati Muni in Sanskrit. And the many volumes on Siddha poetry, and ancient Tamil (like *Kuruntokai*) published by your (Annamalai) University. Most of them have some motto. The one I love most belongs to the Everyman's Library which has, among other volumes, the six volumes of *The Decline and Fall of the Roman Empire* and Macaulay's *History of England*. The motto describes best what I have received from literature: "Everyman, I will go with thee and be thy guide, in thy most need to go by thy side".

The lines are from the medieval morality play, *Everyman*. Here the hero *Everyman* (who represents all of us) is comforted by another character, *Knowledge*.

They are both starting on a journey which promises to be full of difficulties and unknown terrors. But *Knowledge* assures *Everyman* that as long as he is with the hero, all will be well. As long as these books are with us, as long as literature is loved by us and as long as we cherish our classics, all will yet be well for the future of humanity. And this would also be our tribute to one of the greatest Indians of our times, Dr. Malcolm Adiseshiaiah.

(Social Science & Humanities Day Address delivered at Annamalai University on 18th April, 2011)

(CPS thanks Dr. Mrs. Prema Nandakumar, an outstanding scholar and writer in English, Tamil, Telugu and Sanskrit and a powerful speaker too, for sending the Address for publication in the CPS Bulletin)

(CPS Bulletin June 2, 2011)

Daughter of the renowned Professor of English and pioneer in the study of Indo-Anglian Literature, Dr. K.R.Srinivasa Iyengar, Prema Nandakumar studied for the Master's degree in English when her illustrious father was Professor & Head of the Department of English at Andhra University. She obtained her Ph.D *summa cum laude* in 1961, at the age of 22, for her study of Sri Aurobindo's epic poem *Savitri* which was followed by post-doctoral research work comparing Dante and Sri Aurobindo. Dr.Mrs.Nandakumar is a well-known resource person and speaker at various national and international conferences. Dr.Mrs.Nandakumar is an eloquent keynote speaker and draws her inspiration from sources as varied as the Vedas, ancient Hindu, Buddhist and Jain epics, Indian and international literature. She has several published books in the field of criticism, biography, translation, commentary and fiction.

Prof. Granville Austin's gracious reply to CPS Bulletin Editorial

‘CORNERSTONE’ AND CONSCIENCE

“Perhaps the greatest political venture since that originated at Philadelphia in 1787” wrote Granville Austin, the celebrated American author of two scholarly works on India’s Constitution and democratic experience. His first book *Indian Constitution : Cornerstone of a Nation* was followed by *Working a Democratic Constitution—The Indian Experience*. The skill and speed with which the Constituent Assembly of India drafted the Constitution, a record-breaking document in both volume and length, in the midst of tragedy and turmoil, amazed Austin whose own country had taken much longer time to draft a very much shorter document. B.R. Ambedkar exulted with justifiable pride: “This Assembly may well congratulate itself for having accomplished so formidable a task in so short a time.”

Beginning in December 1946, with the first of its eleven sessions, the Constituent Assembly consisting of over 300 members representing almost all shades of public opinion met for nearly three years to produce the historic document of 395 articles and 8 schedules. In all the members sat for 165 days to debate and discuss in detail the articles of the draft Constitution. There were persons of luminous intellect and deep knowledge whose words of wisdom and notes of caution enhanced the quality of debate and made the task considerably easier. The oratory of celebrities like Radhakrishnan and Sarojini Naidu cast a spell on the house. The legal acumen of B.R. Ambedkar, Alladi Krishnaswami Iyer, B.N. Rau, N. Gopalaswami Ayyangar and K.M. Munshi infused clarity and profundity into the philosophy of the constitution. There were those like K. Santhanam who felt that the fiscal provisions would make the states ‘beggars at the door of the Centre.’ T.T. Krishnamachari spoke strongly against ‘the imposition of Hindi’ by making it the sole official language. The only voice, wrote a historian, heard in favour of reservation for women was that of a man R.K. Choudhuri!

Radhakrishnan made a stirring speech on the national flag and in the words of S. Gopal, “the best exposition of the symbolism of the Indian tricolor. The white band at the centre he saw as representing the sun’s rays, the path of light, the light of truth, of transparent simplicity. But one had to traverse this path to attain the goal of truth; and so in its centre stood the wheel, Ashoka’s wheel of the law. Dharma, or righteousness, was not static. The saffron band on top denoted the spirit of renunciation. Leaders, to be worthy of their responsibility, had, like Gandhi, to be disinterested, dedicated spirits. The green strip at the bottom indicated that our efforts to build a paradise had to be here, on this green earth”. Gopal narrates how Nehru and Radhakrishnan ‘matched their talents to the hour’ by agreeing to speak till the historic midnight hour in ‘an oratorical time bound relay race.’! Radhakrishnan would take the floor as per the deal and speak till the midnight hour when Nehru would rise to administer the pledge!

In the process of making the Constitution our founding fathers proclaimed certain fundamental values that would guide the nation’s future. Tolerance, peace and reconciliation were values meant for the humankind at large. The architecture of Indian democracy was ably designed and values so shrewdly set that decision making would be based on debate, discussion

and consensus. Their efforts were not wholly in vain as evidenced by events that unfolded in the years that followed. Austin described the Constitution as the cornerstone of our nation. It is also the conscience of the people of India who may fumble and falter but will not fail to live up to its ideals and goals.

Prof. Granville Austin, the renowned authority on India's Constitution, graciously replied to the letter and the CPS Bulletin mailed to him in January 2011. His letter is published below

GRANVILLE AUSTIN

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11 February 2011

Dear Sir,

I have received your
kind letter and your evocative
"Bulletin" about the Constituent
Assembly and the resulting
Constitution. It is a fine
article. I share your
sentiments.

With all good wishes
and warm regard.

Yours sincerely,
Granville Austin

CPS Bulletin's Review & Sir Mark Tully's kind reply

Non Stop India : Mark Tully

(Allen Lane An imprint of Penguin Books) 2011 pp256 Rs 499

Mark Tully reminds us of Alistair Cooke whom *The Economist* described as “a solid, though urbane, one man bridge between the two cultures” for more than half a century. When Cambridge University honoured its alumnus, Alistair Cooke, with an honorary D.Litt degree the citation read: “This side of the Atlantic he is an American, that side he is an Englishman.” To a large number of his fans and admirers Mark Tully is an Englishman in India and probably to as many in Britain he is an Indian. It is the BBC radio that has made both of them hugely popular and widely heard and respected. Alistair Cooke's broadcasting romance began when the BBC appointed him as a film critic in 1934 in the United States. After writing for *The Times* for a short while Cooke worked for the *Manchester Guardian* for 27 years till 1972. His Letter from America launched by the BBC on March 24, 1946 lasted for 58 years, the last edition being on February 20, 2004 five weeks before his death.

Mark Tully, born in Calcutta in 1935 worked for the BBC for over 22 years and like Cooke commanded respect of countless number of people for the style and substance of his broadcasts. Both were knighted by the British Queen and Mark Tully was also honoured by the President of India with Padma Bhushan.

The authenticity and analytical skills of Mark Tully's reports on India were of such quality that BBC's reputation and credibility remained higher than that of Indian media, especially during periods of crisis and turbulence. “According to the BBC” was a familiar refrain heard even in political circles in discussions on crises and tragedies, like for instance the assassination of Indira Gandhi when the government did not announce her death for almost twelve hours till the arrival of the President of India from his foreign tour. Even people in small towns who never tuned in the BBC used to quote ‘BBC reports’ in their daily discussion of political developments. Mark Tully's insightful reporting on India's endless problems and complexities of social and political issues earned for him and the profession of radio journalism a high reputation in India and abroad. His books *No Full Stops in India*, *The Heart of India*, *India in Slow Motion* (with his partner and colleague Gilian Wright) and *India's Unending Journey* bear testimony to the depth of his knowledge and genuine interest in the country, if not his ardent desire for the rapid rise of India as great nation.

The ten chapters of *Non Stop India* cover a wide spectrum from saving the tiger and protecting the environment to the ‘alarmingly growing gap between the haves and have nots, endemic corruption and incompetent administration.’ Mark Tully speaks through the numerous people he has met in cities, towns and remote villages of India in his quest to feel the pulse of Indian people. Just 2% of land is needed to save the tiger, the elephant and the rhino and, of course, trained and committed forest officials (guardians of wildlife) and political support. There were, it used to be said, 40,000 tigers at the beginning of the 20th century. By 1972 their number was recorded as 1827 according to a survey! The chapter on north east throws considerable light on the state of affairs there reminding the government of the urgent need to right the wrongs being done there.

Mark Tully seems convinced that India has moved away from 'slow motion' though not to the fast track mode as far as development is concerned. India's journey will be unending and unrewarding unless 'a new ethos is created in government departments so that people who work there think of themselves as civil servants, not relics of the Raj who see themselves as rulers. The poor of India have to realize they too must help to build just communities." Quoting Manmohan Singh 's words "You have to have inclusive government to get inclusive growth" Mark Tully adds that " inclusive government means including the people in the decision about development." He quotes Jawaharlal Nehru who aptly said: "We must judge results not by statistics or the amount spent but by the quality of human character that is evolved." Words still timely and relevant as is Mark Tully's latest book *Non Stop India*.

Sir Mark Tully's kind reply to the letter and the review of *Non Stop India* in CPS Bulletin is published below.

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Dear Shri Prasanna Kumar,
Thank you very much for sending
me a copy of the February Bulletin with a review
of *Non Stop India*. I am most encouraged by it.
With best wishes,
Yours sincerely,
Mark Tully

The UN : *RETROSPECT AND PROSPECT*

A. Prasanna Kumar

It is customary to celebrate UN Day every year and pay tributes to the world body, if not for anything else, at least for the fact that it has survived so many crises, and even threats to its existence. The UN Charter was completed on June 26, 1945 after more than 200 delegates from 50 nations worked on it at San Francisco for two months. The Charter was brought into effect, as per Article 110, when the Big Five sent in their ratifications by October and the whole process came to an end on October 24, 1945.

The UN Charter is an 8000-word document containing 111 Articles and 19 chapters. The birth of the UN took place in an atmosphere of subdued optimism, though there was world-wide relief at the defeat of the Nazi and Fascist powers. The absence of the Big Three - Roosevelt (who died a fortnight before the commencement of the San Francisco conference), Churchill, Britain's Man of Destiny, and Stalin, the mighty Russian leader - during the final deliberations provided a sombre background against which the new world body came into being. Nevertheless, the Charter held out promise of a new era of peace and security, besides pledging itself to liberate humankind not only from political bondage but from economic and social exploitation. The importance given to the latter in the Charter enhanced the prestige of the new world body. Peace and security are the primary goals, as they were for the League of Nations. But the emphasis laid on new goals like 'dignity and worth of the human person,' 'social progress' and 'better standards of life in larger freedom' is a positive commitment to strive for a new world order and universal brotherhood. Chapters 9 and 10, containing 17 articles, in addition to Article 1, elucidate the goals and the mechanism through which they are sought to be achieved.

Assumptions

The UN was established on certain assumptions that there would be great power unity, the combined strength of the great powers would be sufficient to meet all threats to peace, and that no threat to peace would come from the great powers themselves. A compromise was struck by the 50 nations at San Francisco (a follow-up of the process begun at Dumbarton Oaks in 1944) with the big powers making the Security Council their preserve, allowing the other member states to have equal status with the Big Five in the General Assembly. The 'veto' which is one of the special powers usurped by the Big Five, has come in for severe criticism as one of the major defects of the UN system. A positive feature of this negative function, according to some experts, is that by exercising the veto power the big powers have in a way 'saved' the United Nations from being forced to take up responsibility beyond its capacity. As in the case of the House of Lords, its strength lies in its weakness. The motto of the UN is "confidence at all times and conference as often as possible." The latter has been in evidence while the former has been rare.

The big powers are largely to blame for the growing ineffectiveness of the United Nations. They have failed to build up 'the international society' into 'an international community'. The manner in which they, particularly the superpowers, have been piling up arms and promoting rivalry is an illustration of their inability to live upto the ideals of the UN. As Lester Pearson said: "We prepare for war like precocious giants and for peace like retarded pygmies." Kurt Waldheim spoke on the same lines when he bemoaned that "Never before in peace time has the world witnessed such a flow of weapons of war."

Staggering figure

A staggering figure of \$ 750 billion (1630 billion in 2011) is the total annual world military expenditure. How shocking it is to be told that the UN's annual budget is just \$ one billion (5.15 billion in 2012), which works out to about one third of the value of the cat and dog food sold in the super markets in the United States! In 1914, just before the outbreak of the First World War, the world was spending only \$ three billion on arms. This amount remained almost steady for about 10 years after the Peace of Paris. It was only in the early thirties that the military expenditure curve showed an upward trend. Even then the increase was only three times by the time the world was getting ready for the Second World War. From \$ three billion in 1914 to \$ 10 billion in 25 years was practically nothing as against the \$1630 billion bill of today. And in these six decades of 'peace' there have been more than 150 small or regional wars, most of them in the poor Third World.

How can one expect the UN to act firmly when the Big Five, the 'global policemen themselves violate the Charter with impunity? The high-handed manner in which the United States has been meddling in different parts of the world, the most recent being in Latin America, the Russian occupation of Afghanistan, 'the punitive war' by China against Vietnam, the British military 'action' in Falklands, and the nonchalant way in which France explodes nuclear weapons are just a few instances of the flagrant violation of the UN Charter which the big powers had fashioned for world peace 66 years ago.

Failure

Judged thus, the UN has failed to promote the 'area of peace', or even restrict conflicts among nations. Dr. Belaunde of Peru described the helplessness of the UN in these appropriate words: "UN is a body where there is something that always disappears; when two small powers have a dispute, the dispute disappears; when a great power and a small power are in conflict the small power disappears; when two great powers have a dispute the UN disappears." Equally appropriate is the comment of Irving Whalley that the "UN stands long on promise and short on performance." As another critic put it, the UN's failure is due to the neglect shown by the big powers and the "irresponsibility of the small powers."

The UN has taken upon itself several new burdens in recent years: drug menace, violence at various levels, fight against new diseases, and threats to the environment. The North-South problem and the legitimate demand of the poorer countries for a higher share in the resources of the world have deepened the differences between the affluent nations and the Third World countries in the United Nations. Its goal "to be a centre for harmonising the actions of nations in the attainment of common ends" (Art 1) has become very hard to achieve.

All the same the General "Assembly meetings provide an opportunity for nations to come together, exchange views and even let off emotions. A Khrushchev banging the table with his shoe, a Bhutto calling Indians names or a Krishna Menon speaking for hours using harsh epithets against the Western powers are all too well known. The Assembly in particular and the UN as a whole have helped a large number of countries to attain independence and millions of people from colonial status to nationhood with few incidents of disorder. Kathleen Teltsch, in her book on the UN, has cited many interesting events and anecdotes. She quotes Adlai Stevenson to say, 'Life for the UN ambassador is a combination of protocol, alcohol and geritol.' The same Stevenson, one of the most articulate Americans of modern times, once quipped: "Why do so many people feel that to be immortal a speech must be eternal?"

Most of the speeches at the UN are undoubtedly boring and as Carlos P. Romulo, a former President of the General Assembly, said: "Anything important should go into the first ten minutes, because no one really listens after that."

With all its faults and failures, the UN deserves the respect of every human being for what it stands for and what it hopes to achieve. It is indeed laudable that so many delegates representing all parts of the world assemble every year and endeavour to lessen tensions between countries and peoples. The General Assembly is like a World Parliament and Parliaments have great utility even in these days of executive ascendancy. People speaking different languages, professing various faiths and donning different attires are all there, not kept apart by wealth, colour or creed. Belaunde of Peru as the President of the 14th Assembly used, it seems, French when he wished to be precise, English when he wished to understate, and Spanish when he wished to exaggerate. How can one ignore the courageous manner in which the successive Secretaries-General have tried to uphold the purpose of the Charter?

The need to expand the Security Council cannot be overstated. Among the contenders for a permanent seat on the Security Council are India, Brazil, Germany, Japan and South Africa. India, Brazil and South Africa (IBSA) at their recent meeting made a comprehensive declaration on important global issues which received wide attention. The credibility and stature of the United Nations would be enhanced if these three, along with Germany and Japan, are elevated to the Security Council on a permanent basis. There is, however, a suggestion that these countries can be elevated to the Security Council as permanent members without the power of veto. India is not only the world's largest democracy but also a rising economic power and software giant. Right from its inception, the UN has benefitted from India's role as a bridge-builder between the East and the West and as one of the top three troop contributing countries in peace keeping operations. India's claims for a permanent seat are impeccable and the United Nations cannot afford to ignore them for long.

Fault

The fault in a way lies not so much in the UN system as in the value system of today's world. Clement Attlee told the House of Commons in 1945 that "where there is no mutual confidence, no system will be effective." It is the atmosphere that is mainly foul and the UN is a part of it. There seem to be no alternative to it and as James Reston who described the UN as "The Paradox on The East River", put it "the more it fails, the more it is needed." The fact that 193 nations are members of the United Nations and that most of them believe in its utility lends respectability to it. The UN is mankind's last and only hope for a safer and better tomorrow.

(Indian Express, Edit Page article, Oct 1985, a few facts & figures updated and a paragraph added)

JAWAHARLAL NEHRU'S LITERARY FLAIR

A. Prasanna Kumar

Jawaharlal Nehru worked at a furious pace right from the beginning when he jumped into politics till his last breath on May 27, 1964. Probably very few in history worked for so long with such varied interests. He was a leader, an organiser, a tireless public speaker and writer of great ability and charm. His father Motilal Nehru expressed concern when he said in 1928: "If Jawahar lives for ten years he will change the face of India. But such men do not usually live long; they are consumed by the fire within them." That was the time when young Nehru was the rising star on the Indian political firmament. Jawaharlal Nehru exhorted the youth of India to first serve the country in stirring words: "What shall it profit you to get your empty degrees and your mess of pottage if the millions starve and your motherland continues in bondage? Who lives if India dies? Who dies if India lives?"

For one born with the proverbial silver spoon in the mouth getting educated abroad was never difficult, even those days. Sent to England for higher studies, young Jawaharlal showed a keen interest in the higher things of life. As Shashi Tharoor wrote in his biography published recently Jawaharlal Nehru secured a second class degree but first class English education. In 1912 before leaving England Jawahar wrote to his father thus: "To my mind education does not consist of passing examinations or knowing English or mathematics. It is a mental state." That meant in his case the mental state of an educated Englishman of culture, adds his biographer.

It is quite a daunting task to speak on the literary flair of Jawaharlal Nehru whose writings spanned over four decades, from early twenties to early sixties and who addressed hundreds of meetings including centres of learning, national and international fora. His major works began with his book on Soviet Russia in 1928, followed by *Letters from a Father to His Daughter* in 1930, *Glimpses of World History* in 1934, *An Autobiography* in 1936, *The Discovery of India* 1946 and *Bunch of Old Letters* 1958. Just before his death in 1964 he wrote a foreword to Shriman Narayan's book in which he reflected on democracy and the pace of development. Scores of articles, messages and forewords during forty five years of active public life always had a literary touch and philosophical overtones. An interesting comment on Nehru's *Autobiography* was received from the famous young artist Amrita Sher Gil who passed away prematurely. Amrita said she liked Nehru's work even though she was averse to reading autobiographies because "where others would say when the sea saw me you would write when I saw the sea." A fitting tribute to Nehru's humility as a writer.

Great men can be imprisoned but not great minds. Nehru was both a great man and a great mind. In prison where he spent years he read voraciously and wrote prolifically. Jails in India became hallowed habitats because the noblest of men and women were thrown into them by the colonial power. Nehru's letters from prison constitute a literary wealth. He wrote on a variety of subjects with amazing objectivity. His style of writing was straight and simple, never ornate or tiring to the reader. He instilled courage through his letters in his young daughter's mind exhorting her to grow up into a brave girl with books as her constant companions. Her best friends, he assured young Indira Priyadarshini, were her books and it did not matter if she had no friends in the lonely house with father being in prison and mother in far away hospital. He quotes a poem from Yeats on the meaning of life and death and explains how beautifully Virginia Woolf wrote. "The more I read her the more I like her. There is a magic about her writing, something ethereal, limpid like running water and deep like a clear mountain lake." Conceding that it was unfair to keep his only child alone Nehru explained to Indira the meaning of true happiness. It 'is more often negative than positive, an absence of pain

and suffering. And how is one to be happy if he knows and sees another in pain? A sensitive person will suffer continually on behalf of others” he wrote. Nehru advised his daughter to overcome loneliness and depression. “If you feel depressed at any time think that the next day you are sure to get over this.—it is just a passing mood,” and gave her the example of Beethoven the great musician who was stricken with deafness but who boldly declared : “ I shall seize fate by the throat. It shall never overcome me.”

There was a touch of poignancy in Nehru’s letters to his noble wife Kamala ailing in a hospital but unwilling to let her husband compromise on his stand with the British government. Wrote Nehru in his prison diary: “I was taken to her today again for three hours... How much weaker she looked—a shadow. Gone down hill since I saw her ten days ago. Will I see her again? Brave little girl. She smiled at me as I was coming away though her temperature was 103.4 and she was in a daze. And even in this condition she said: do not give an assurance to govt! How she longs to have me out and by her but not at the price of undertakings to the government. I feel both heavy and empty since my return to my barrack, so lonely and weary. I gave Kamala today Edgar Allan Poe’s lines:

Thou wast all that to me, love
For which my soul did pine
A green isle in the sea, love
A fountain and a shrine,
All wreathed with fairy fruits and flowers,
And all the flowers were mine.
And all my days are trances
And all my nightly dreams
And where thy grey eye glances, And where thy footstep gleams
In what ethereal dances,
By what eternal streams.
They seemed to represent my feelings

Nehru’s love of poetry made him quote one poet or the other as the occasion demanded. In 1935 he wrote: “I am greedy about books and I buy them rather extravagantly and many friends pamper me by sending them.” His writings are marked by lucidity and objectivity. One finds flashes of literary brilliance and a lively sense of humour in his numerous writings. On India he wrote that the country “has always seemed to me to have broadly more the feminine qualities than the masculine.” He meant feminine gentleness and grace. Ganga, he felt, ‘is linked up with tradition, mythology, art, culture and history.’ He disliked the use of Ganges for Ganga. “Ganga sounds infinitely better. A friend suggested an explanation which sounds feasible. Ganges is a corruption of Gangaji” he believed.

Who else but Jawaharlal Nehru could write such a critical article on himself, about his ‘ego’ and ‘vanity’, that too anonymously which created quite a stir in the political circles in the thirties when he became the Congress President. Nehru was amused to hear wild gossip circulating about the identity of the author of that ‘derogatory piece’ on Congress President Jawaharlal Nehru under the title *The Rashtrapati*. In it Nehru was called a ‘fascist’ and “his very face and voice tell us that private faces in public places are better and nicer than public faces in private places.” Devastating indeed. And with a hearty laugh he eventually revealed the identity to the relief of some and surprise of all.

Literary stalwarts Rabindranath Tagore and Sarojini Naidu, lavished praise on Nehru. Tagore likened him to *Rituraj* the spirit of spring and Sarojini Naidu poetically greeted Nehru on becoming the Congress president in 1928. Wrote Sarojini the Nightingale of India to Nehru: “I wonder if in the

whole of India there is a prouder heart than your father's or a heavier heart than yours." Hailing Tagore's universal outlook Nehru wrote that Tagore "showed how India might be intensely national yet at the same time international with her thought and sympathy embracing the world. In the midst of our national struggle, he created that symbol of internationalism that is Visva Bharati." Poets must look and act as poets, he observed referring to Mohammed Iqbal, a real poet but 'extraordinarily communal and narrow-minded'.

Gandhi, of course, had a special place in Nehru's heart and his tributes to Gandhiji were literary gems. Nehru's penmanship reached new heights in the portrayal of his mentor and master. Bapu was 'the perfect artist' in life as well as in death. "All his manifold activities" wrote Nehru "became progressively a symphony and every word he spoke and every gesture that he made fitted into this, and so unconsciously he became the perfect artist, for he had learned the art of living, though the way of life he had adopted was very different from the world's way. It became apparent that the pursuit of truth and goodness leads among other things to this artistry in life,". This was a refreshingly different interpretation to the Gandhian approach—a harmonious blend of ends and means, with noble and lofty ideals, pursued through artistic creativity to perfection. Nehru unveiled the real persona of 'the extraordinary paradox' that Gandhiji was. "People who do not know Gandhiji's personality and have only read his writings are apt to think that he is a priestly type, extremely puritanical, long-faced, Calvinistic, and a kill-joy, something like the priests in black gowns walking their rounds. But his writings do him an injustice, he is far greater than what he writes, and it is not quite fair to quote what he had written and criticize it. He is the very opposite of the Calvinistic priestly type. His smile is delightful, his laughter infectious, and he radiates light-heartedness. There is something childlike about him which is full of charm. When he enters a room he brings a breath of fresh air with him which lightens the atmosphere. He was an extraordinary paradox".

Nehru's concern for the Mahatma's growing infirmities of age accentuated by endless physical and mental strain was movingly described : 'As he grew older his body seemed to be just a vehicle for the mighty spirit within him. Almost one forgot the body as one listened to him or looked at him, and so where he sat became a temple and where he trod was hallowed ground.' The inevitable and the inescapable end of life's journey was ominously chasing Gandhiji after his mission of liberating India from foreign rule was completed. And when it happened shockingly and tragically on January 30, 1948 Nehru broke down and wept like a child. The emotional speech Jawaharlal Nehru made at the assassination of Mahatma Gandhi broadcast live by All India Radio, brought tears to millions of people. It was a speech as stirring as the Tryst with Destiny midnight speech. Sobbingly Nehru said, "The light has gone out, I said, and yet I was wrong. For the light that shone in this country was no ordinary light. The light that has illumined this country for these many many years will illumine this country for many more years, and a thousand years later, that light will still be seen in this country and the world will see it and it will give solace to innumerable hearts. For that light represented something more than the immediate present, it represented the living, the eternal truths, reminding us of the right path, drawing us from error, taking this ancient country to freedom." But then his master was as great in death as he had been in life. Only Nehru could write that "Even in his death there was a magnificence and complete artistry. It was from a point of view a fitting climax to the man and to the life he had lived. Indeed it heightened the lesson of his life. He died in the fullness of his powers and as he would no doubt have liked to die, at the moment of prayer".

Among the many other subjects he wrote on were *Sin and Punishment*, *Flying During the Monsoon*, *Honey*, *Horse Breeding*, *Birth and Death*, *Indian Marriages*, *Examinations*, *The Politician*, *Shirshasana*, and on several personalities. Commonsense, he once said, is common nonsense. Examinations came in for sharp comment. Nehru felt that they always added to tension. In his words: "Examinations as

they are conducted today are no real test of anything worthwhile. Often those who do well in examinations are failures subsequently in life and vice versa. So it is absurd to take them too seriously or to grow enthusiastic or depressed over them.” Nehru wrote some fascinating pieces on famous persons and their qualities of head and heart. Admiring Rajaji’s intellectual sharpness he called him one of the finest minds in India. Rajaji, he wrote, looked upon a cottage as a palace and palace as a cottage. “Yet CR is not attractive at first sight, especially with his dark glasses which make his face look harder than it is,” observed Nehru.

A touch of humour and sense of detachment always made him a different person. On his first visit to the United States of America in 1949 Nehru realised the hostility towards India and him in many circles and the comments made by the press. “One must never visit America for the first time,” he quipped. On his second visit seven years later when things did not much improve an anecdote was in circulation. When the famous cold warrior, Secretary of State John Foster Dulles, asked Nehru “Are you for or against us?” Nehru coolly replied “Yes.” Years later his daughter Indira Gandhi as Prime Minister did hit back at the American Press Club when a reporter tried to provoke her by asking “Madam Prime Minister are you tilting to the left or to the right.” To which she replied, “we are not tilting either to the left or to the right but standing straight.”

Literature, the love of it at least, lightens one’s burden. It was most true in the case of Jawaharlal Nehru who straddled the fascinating world of letters and the ‘dusty field’ of politics with equal ease and admirable skill. His literary works, like his life, are always a source of inspiration to people all over the world.

(Lecture delivered at Visakhapatnam Public Library on November 15, 2010)

(CPS Bulletin Dec 2, 2010)

SERVANT OF HUMANITY

A.Prasanna Kumar

“Let me remain what I am - a striving servant of India and through her of humanity,” wrote Gandhiji in his reply when he was likened to *rishis* by Andhra leader Ayyadevara Kaleswara Rao. “*Rishis* are made of sterner stuff,” said the Mahatma in his reply to Kaleswara Rao’s letter in 1944. This was among the many lessons in humility and civility that his disciples learnt from Gandhiji’s tours, lectures and letters. Writing to Pattabhi Sitaramayya in 1946 Gandhiji said “Whatever the case, we have to be civil in the face of incivility. This is the secret of non-violence.” It is the lack of civility and humility that leads to violence, be it the home or the society or the world at large.

Despite the world looking at him with awe and veneration, even disbelief, he did not claim to be the mythical Atlas carrying the burden of humanity on his shoulders. Instead he vowed, in utmost humility and unwavering faith, to remain the servant, a striving servant, of India and of the entire humanity. Rajmohan Gandhi saw in his grandfather the epic hero, Rama, who went into exile when he should have been crowned! Like the Buddha and Christ centuries before him Gandhi lived and died for the poor.

He never preached what he did not practise. Social and religious equality would be impossible to achieve without gender equality. To deny women equal status is to reject *ahimsa* and *abhaya* the two key concepts of Gandhian philosophy. “A woman’s intuition has often proved truer than man’s arrogant assumption of superior knowledge,” he declared and narrated instances of Kastur Ba correcting and guiding him. “Ba was in no way weaker than I;” he wrote, “in fact she was stronger. If I had not had her cooperation I would have been sunk. It was that illiterate woman who helped me to observe all my vows with the utmost strictness and kept me ever vigilant. Similarly in politics also she displayed great courage and took part in all the campaigns.” (Rajmohan Gandhi *Mohandas* p619)

History accords exaggerated importance to the exploits of conquerors and rulers and the accumulation of wealth by the rich while poets and writers consume ‘oceans of ink and forests of paper’ to flatter them in huge volumes. Governments and politicians excel them all by raising statues and memorials all over. But seers, savants, saviours and servants of humanity do not need memorials and monuments to be reverently remembered by humanity.

Gandhiji’s first fast was for Hindu-Muslim unity. His last was also for communal harmony. On his last birthday, October 2, 1947, he said: “With every breath I pray God to give me strength to quench the flames or remove me from this earth. I, who staked my life to gain India’s independence, do not wish to be a living witness to its destruction.” There seemed to be no end to his agony. On January 12, 1948 he spoke again of the only solution to “the rot that has set in beloved India”. “Death for me would be a glorious deliverance rather than that I should be a helpless witness of the destruction of India,” he felt. Only eighteen days he had to wait for the fulfillment of his wish.

Jawaharlal Nehru saw in Mahatma Gandhi the ‘greatest symbol of the India of the past and of the future’ and said that the light that shone in this country was no ordinary light, light that illumines the path of India and entire humanity, showing the way out of darkness. As Sri Aurobindo prophesied “the light which led us to freedom, though not yet to unity, will burn on till it conquers.”

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