

# THE RADICAL HUMANIST



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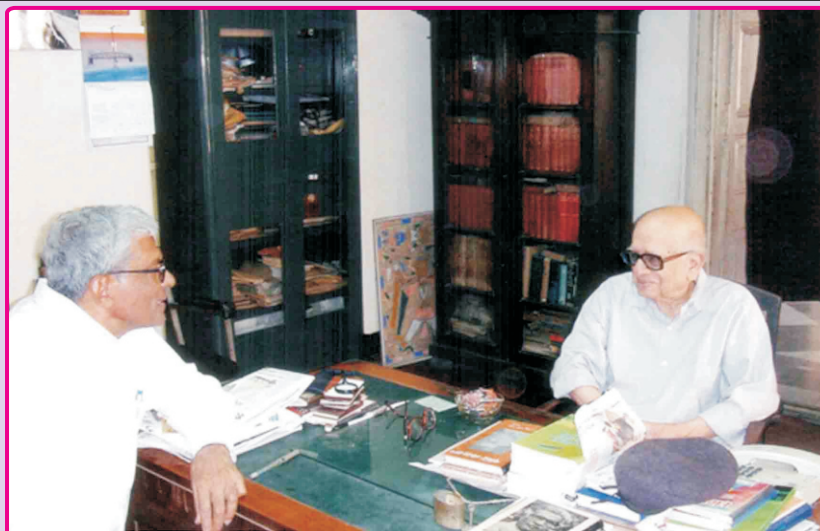
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**Samaren Roy, the author of 'Restless Brahmin', in  
Kolkata with Narisetti Innaiah on left**

**The Specter of Emergency Continues to Haunt the Country**

**Mahi Pal Singh**

**Supreme Court owes an apology**

**Kuldip Nayar**

**How can Kashmiri Muslims love India?**

**Prabhakar Sinha**

**Excessive Judicial Intervention – dangerous to Judicial Independence**

**K. Pratap Reddy**

**555**

# THE RADICAL HUMANIST

**Vol. 80 Number 3, June 2016**

## **Monthly Journal of the Indian Renaissance Institute**

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# The Specter of Emergency Continues to Haunt the Country

Mahi Pal Singh

Forty one years ago this country witnessed the darkest chapter in the history of independent and democratic India when the state of emergency was proclaimed on the midnight of 25th-26th June 1975 by Indira Gandhi, the then Prime Minister of the country, only to satisfy her lust for power. The emergency was declared when Justice Jagmohanlal Sinha of the Allahabad High Court invalidated her election to the Lok Sabha in June 1975, upholding charges of electoral fraud, in the case filed by Raj Narain, her rival candidate. The logical follow up action in any democratic country should have been for the Prime Minister indicted in the case to resign. Instead, she chose to impose emergency in the country, suspend fundamental rights of the people, impose unprecedented censorship on newspapers and put all the opposition leaders and thousands of political workers behind the bars, including the ailing Jayaprakash Narayan, most of whom remained in jails for 19 months. During the emergency period the people who were not put into the jails felt that the whole country had been turned into an open jail because they could not speak a word against Indira Gandhi or her infamous son, Sanjay Gandhi, who had acquired an illegal and unconstitutional position as the ruler of the country. He ran a campaign of forced sterilization in the country and with the help of the goon force which the Youth Congress headed by him had become at that time which looted shopkeepers and businessmen without any fear of law because at that time whatever Sanjay Gandhi said was the law and every government servant, including the highest police officers, was supposed to follow his dictates, obviously with the connivance of Indira Gandhi, who wanted him to hold the reins of power after her.

In an atmosphere where a large number of

people had been detained without trial under the repressive Maintenance of Internal Security Act (MISA), several high courts had given relief to the detainees by accepting their right to life and personal liberty granted under Article 21 and accepting their writs for habeas corpus as per powers granted to them under Article 226 of the Indian constitution. This issue was at the heart of the case of the Additional District Magistrate of Jabalpur v. Shiv Kant Shukla, popularly known as the Habeas Corpus case, which came up for hearing in front of the Supreme Court in December 1975. Given the important nature of the case, a bench comprising the five senior-most judges was convened to hear the case.

During the arguments, Justice H.R. Khanna at one point asked the Attorney General Niren De: "Life is also mentioned in Article 21 and would Government argument extend to it also?" He answered, "Even if life was taken away illegally, courts are helpless."

The bench opined in April 1976, with the majority deciding against habeas corpus, permitting unrestricted powers of detention during emergency. Justices A. N. Ray, P. N. Bhagwati, Y. V. Chandrachud, and M.H. Beg, stated in the majority decision:

In view of the Presidential Order [declaring emergency] no person has any locus to move any writ petition under Art. 226 before a High Court for habeas corpus or any other writ or order or direction to challenge the legality of an order of detention.

With this majority order the Supreme Court abdicated its duty to protect the fundamental rights of the people, which was most needed at a time when they were under the gravest threat. With this order the highest judiciary also succumbed under the pressure of the government

and its prestige as an independent judiciary received an irreparable loss. There was, however, an honourable exception. Justice H.R. Khanna, the senior-most judge, resisted the pressure to concur with this majority view and gave a dissenting opinion:

The Constitution and the laws of India do not permit life and liberty to be at the mercy of the absolute power of the Executive . . . . What is at stake is the rule of law. The question is whether the law speaking through the authority of the court shall be absolutely silenced and rendered mute... detention without trial is an anathema to all those who love personal liberty.

Before delivering this opinion, Justice Khanna mentioned to his sister: I have prepared my judgment, which is going to cost me the Chief Justice-ship of India. True to his apprehensions, his junior, M. H. Beg, was appointed Chief Justice in January 1977. This was against legal tradition and was widely protested by bar associations and the legal community. Justice Khanna resigned on the same day. However, all the remaining three judges who had given the order in favour of the executive also went on to become the Chief Justice of India. The concept of 'committed judiciary' was playing its role.

After the judgement, the New York Times wrote:

"If India ever finds its way back to the freedom and democracy that were proud hallmarks of its first eighteen years as an independent nation, someone will surely erect a monument to Justice H. R. Khanna of the Supreme Court. It was Justice Khanna who spoke out fearlessly and eloquently for freedom this week in dissenting from the Court's decision upholding the right of Prime Minister Indira Gandhi's Government to imprison political opponents at will and without court hearings... The submission of an inde-

pendent judiciary to absolutist government is virtually the last step in the destruction of a democratic society; and the Indian Supreme Court's decision appears close to utter surrender."

The imposition of the emergency, like the emergency of 1975-77, has now become almost impossible as it requires the prior approval of Parliament, the provision added after the 42nd constitutional amendment of 1977. But it is naïve to think that now the life and personal liberty of the people are safe. Without resorting to the proclamation of emergency, the central and many state governments have been resorting to fake encounters and arrests of innocent people under other black laws passed by both the governments under special security acts, AFSPA and the outdated and equally draconian sedition law under Section 124 (A) of the IPC. Rationalists, writers, thinkers, those who do not agree with the ideology of the ruling party or the policies of the government and those who try to expose the corruption and ill-governance through RTI are targeted, harassed, arrested and even killed. Students of institutions of higher learning like the JNU and Hyderabad University are being implicated in politically motivated and baseless charges and even physically attacked by the Hindutva outfits with the tacit support of the BJP and the RSS. Those who are prosecuted after being implicated in baseless charges and survive long periods of incarceration because of the failure of the prosecution to produce any evidence of guilt, are mostly left a broken lot – physically, mentally and financially. Emergency-like conditions still haunt the country – from Kashmir to Chhattisgarh and Jharkhand, U.P and Bihar to Rajasthan and Madhya Pradesh etc.

The ideological Hindutva bandwagon of the RSS and the BJP is a greater threat to the people today who hold a differing ideology or views because a mental slavery is even more danger-

ous than physical assault or incarceration. It was one goon force during the emergency. It is another goon force which is doing it now. Besides the hoodlums of the Bajrang Dal, the Sanatan Sanstha, the Ram Sene etc., the good-for-nothing brigade of the saffron-clad uneducated trouble-makers who are always doing what they know best to do – spreading hatred against the biggest minority in the country – the Muslims – in an attempt to communalise even the slightest and insignificant incidents. And the purpose is the same – to hold on the reins of State power by intimidation and divisive tactics. They do not know, and neither do their mentors, that in a democratic society the most respected and sacred book is the Constitution and the highest education is how to live in harmony democratically, respecting the faiths and views of others. The irony is that those who were victimized during the emergency earlier including the Jan Sanghis of that time, who are ruling the country with a different nomenclature today, are creating the same kind of conditions of intolerance and terror today that were experienced during the emergency.

The fight for democratic freedoms is not yet over; the specter of emergency still haunts the country, though in a different garb – the national-

ist garb. Hitler did it in Germany earlier. Now the BJP is doing it in India. If you have a political backing and are booked even under the anti-terror laws because there is evidence against you, you have only to wait for a favourable government to come to power to influence the prosecution and get you acquitted, as many have got bail and clean chit recently. But if you are an ordinary person and dare to oppose those in power in anything and become an irritant to them, or hounding you can politically benefit them in any way, you get labeled as ‘anti-national’ and then get ready to be prosecuted under anti-terror or sedition law. And mind you, even the courts will not examine the evidence against you at the first instance and send you into judicial, if not in police, custody. That will just be the beginning of a long ordeal from jail to the courtroom and back, for how long – nobody knows. It may take several years even if not even an iota of evidence existed against you. By that time you would have lost the prime years of your life as many, who have been acquitted of serious charges by higher courts recently, have done. Are civil liberties any less at the mercy of the political masters of the country today than they were during the emergency? The question may be uncomfortable for many in power today but it begs of serious examination and answer.

## **The Radical Humanist on Website**

*February 2015 onwards ‘The Radical Humanist’ is available at <http://www.lohiatoday.com/> on Periodicals page, thanks to Manohar Ravela who administers the site on Ram Manohar Lohia, the great socialist leader of India.*

*Now the books by M.N. Roy are available at this website under the section ‘Socialist Movement’ and subsection ‘Other Prominent Contributors’. They may be downloaded from there and read.*

**Mahi Pal Singh**



# SAMAREN ROY

## A Radical Humanist: Short sketch of his life and deeds

Anjali Chakraborty

Samaren Roy (1919—2006) was one of the close associates of M.N. Roy after Roy's return to India, a devoted radical humanist, a prolific writer, translator in both English and Bengali, and above all a good human being in all respects. He wrote some valuable books on Roy which includes a beautiful biography named '**Restless Brahmin**' where the author depicted the inner struggle of this patriot, the restless Brahmin and stages of his transformation from an adventurist militant nationalist to a socialist leader and an international figure. He translated many books of Roy into Bengali. The Bengalis are indebted to Samaren Roy because of his sincere effort to make M.N. Roy and his thought reachable to the Bengali readers. He was convinced in Roy's thought of the need of a prior philosophical revolution in India and a need for this movement. With the death of Samaren Roy on August 6, 2006, the flow of renaissance movement desired by Roy has stepped back by miles of distance.

Samaren did his school education at Behala High School and B.Sc. Degree from the Presidency College, Kolkata. He got introduced with Manabendranath Roy (M.N. Roy) in 1939 and his politics in 1940 when Roy was engaged in building up an alternative leadership in the Congress. When Samaren was merely a student, he joined the League of Congressmen and later Radical Democratic Party. In 1945 he took responsibility of managing and publishing the JANATA, which was the Banlga political journal of the Radical Democratic Party. By preparing the Bengali translation of Roy's speeches, he published two books- DARSHAN O BIPLAB and MARXBAD. Later he contributed articles to national and international journals. His keen

observation of Indian political and cultural scene was documented in his publications like '**Indian thought: A Critical Survey**' and '**The Roots of Bengali Culture**'.

**Family**—He was born on October 13, 1919 in a renowned enlightened 'Roy family' of Behala, Kolkata. A road was named after his father's name as 'Sourin Roy Road' in recognition of the family's various contributions to the locality. He was the youngest son among four of his parents. Father Sourin Roy and mother Shyamasundari Devi had education and more progressive outlook than their time. They were not *zamindars* in the literal sense, but Sourin Roy purchased property of a Zamindar in an auction in 1930s. Before this, Sourin was employed in the Secretariat under the British government. The uncles of Samaren Roy were educated and well established. In this connection, the name of some famous persons is linked with this family. **Rajendra Prasad**, the President of India, stayed in the house of Gopal Roy, cousin of Sourin in his early life for college education. **Sarat Chandra**, the famous Bengali novelist used to visit the house of Manindra Roy - another cousin of Sourin. Samaren was **brother** of famous **Biren Roy**, who was a well-known friend of M.N. Roy. Roy used to stay with his family when he came to Calcutta. Other two brothers of Samaren —Sachin Roy and Ramen Roy were engineers. Sachin Roy led a journal of international standard on Ceramic science. Biren Roy was a brilliant student and he loved to do social work and politics from the beginning. Thus he became the 'youngest' member of the Municipal Corporation at that time. He was elected to Lok Sabha as an independent candidate supported by the CPI in 1957. Again he became an M P of Rajya Sabha

in 1962. He established a Public Auditorium and a Library in the name of his only son, Ranjan after his death at young age. In the local hospital, a block, namely RANJAN BLOCK was contributed by him. He died in 1993 and left a considerable amount of property in the hands of a **Trustee** for development of education and health. The Trustee has been looking after a charitable dispensary providing free medicine worth Rs 500/ per head per month, one tailoring shop and so on. Samaren was close to his elder brother Biren because of their similarities but not blind to him. Samaren was the **husband** of Chhaya Roy who was a good informal singer. M.N. Roy loved her songs very much. Samaren used to make fun of him for this. Once Roy did not want to move away leaving her song even to hear the speech of Subhas Chandra Bose from Azad Hind Radio station, and Samaren made fun of it! She died in 1995. Samaren was the **father** of three children— Amit Roy alias Bulbul, B.E engineer and Ashim Roy, Professor at Arizona University in USA, Aditi alias Pampa, PhD in Physics and working presently in a school at Allahabad.

In the early life, he did many things—mainly social work and politics. He took pain of travelling through the villages of South 24 Parganas — Dimond Harbour to Baruipur where there was some influence of Roy, and encouraged people for the formation of **Co-operatives, People's Committees** etc. Once, he rendered his services for canvassing votes in favour of an independent candidate named Ramesh Chandra. Majumdar, the famous historian of Bengal. During the 1971 Bangladesh War for liberation, he was entrusted with the responsibility of distribution of relief material in his area. He had a printing press and published a Bengali journal 'ARONI'. He spent quite a long time at Banaras during his student life. The Roy family had a house there. At that time he was involved in politics and

social work. He along with his friends and seniors organized several meetings in Banaras for the speech of Professor Santibrata Sen and others. There is an interesting story. While Samaren and his friends went to meet Jamshed Tata to offer him M.N. Roy's books, they did not have to wait like other visitors. Jamsed Ji called them upstairs. He told them that he was keenly interested in read M.N. Roy, but he did not want to purchase the books because Roy wrote against the Indian capitalists!

Samaren worked permanently as political correspondent in the American Consulate in Calcutta from 1956-1983 till his retirement. His colleague Mr. Hitabrata Roy, though junior to him, became his friend. Samaren loved to listen to songs of Hitabrata who was grandson of famous Rajni Kanta Sen and who promoted Folksongs and the artists even by taking them to USA. During his job in the American Consulate, Samaren travelled to USA frequently, gathered a lot of experiences of world politics and understood the politics of Indian society. He met great leaders and politicians of the world and wrote his experiences in a book, which is now going to be reprinted by his younger son and grandson in USA. He used to go to North Carolina State of America where his elder son was in job. He also toured European countries.

He used to arrange Seminars, discussion, especially on the days of birth and death Anniversary of M.N. Roy. Many famous people in Bengal came to participate in them. They are Ashok Mitra, poets like Naresh Guha, Narendranath Chakraborty, Hitabrata Roy, C.M Siddhartha Shankar Ray who was his classmate in Presidency college and also Sibnarayan Ray. He entertained his guests with good music and songs. He was the initiator and founder of **Behala Book Fare** at Behala, Kolkata. He had some like-minded friends with the help of whom he succeeded and still the 'Boi-Mela' is organized in every year. He loved and promoted

cultural functions and sports in his locality.

He felt very near to the radicals and those who knew Roy personally or through study. Dr. Narisetti Innaiah, one of the south Indian radicals and practicing humanist met Samaren Roy in 2005 and wrote about him. Samaren sent his own books to a petty college teacher whom he had not seen and also used to talk over telephone and to write letters to her only because she belonged to the radical group.

**For his social** and friendly nature, he was loved and accompanied by many friends. His contemporary friends were late Gour kishore Ghosh-the famous journalist, late Pratap Roy, Pabitra Adhikari, Arun Sen, Arun Kr. Sarkar, Tridiv Ghosh, Shivsankar Mitra (the I.G. of Police), Alak Ghosh (manager and director of CEST), Badal Basu (journalist of Anandabazar patrica) and others; many of them are not alive. Pratap Roy was his best and long time friend from college life 1936-2006. Pratap worked in the News paper as Times of India, Amrita Bazar and lastly joined Aajkal. The relation between two families of Samaren and Pratap was intimate. They spent many time in the house of Samaren at Santiniketan. They did fun together and lunch together when Pratap left Bombay for Kolkata permanently in 1944. Ms Ruma, daughter of Pratap Roy, has a loving memory of her 'runu kaka'. Samaren would make friendship with the young very easily. The cine director Mr.Tapan Sinha, Kolkata and his wife Arundhuti were his friends. They joined RHA, West Bengal Branch, and many others joined there only because of him. Gopal Banerjee, retired teacher at Behala was his neighbor and close to him and after the death of Samaren, he helped to prepare the entire list of huge books.

**As a man**, he was very nice and colorful person—very broad minded, very open minded person, jolly and fond of fun; he was a little gullible and a flexible in decisions. This is

commented by Mr. Pranab Biswas, a retired teacher, who accompanied Samaren long days at Behala as well as Santi niketan and regarded Samaren as one of the best man, he saw in his life. Mr. Roy was deceived by other people because of his simplicity and innocent nature. He knew to respect others as friends irrespective of their ages. He used to become very happy if he saw someone successful. This happened when Saurav Ganguly performed Century at Lords. Samaren went to his house and congratulated him with Gifts. He did not hesitate to visit the house of a man of worth, as it happened when he went to met Hiren Mukherjee who was not personally known to him. He visited Subhash Chandra Bose's house and met his family members. Samaren like M.N. Roy preferred Sarat Chandra rather than Rabindranath. Later he realized the versatile genius of Tagore. He presented a good lecture on the poet and leftist politician like Subash Mukhapadhaya after his demise.

Being radical he never participated in the *puja* festival but entertained people in the by sumptuous feast. His nephew Mr. Partha Roy says that his '*chhoto kaka*' was very sympathetic in behavior and preferred to interaction rather than intervene with others. He was very fond of Gardening, Cultural functions, and Sports. Amit Roy, his elder son says that his father was liberal but careful. He had done all his responsibility. He was very friendly with 'Bubu' or Dipen Banerjee, the son of his sister, and very loving to Partha Roy, son of his elder brother.

Many of his wishes remained unfulfilled:

- i. he wished to meet the want of a public auditorium at Behala;
- ii. he wished to donate Rs. One lakh every year for M.N. Roy Memorial Lecture at Bangla Academy, West Bengal. Accordingly, permission was granted by the



authority, but at last, he kept silence;

iii. he wished to establish an Art Gallery at his Shantiniketan house. But that was also stopped.

iv. he wished to publish Bengali version of some letters of M.N. Roy addressed to Samaren

v. In the last part of his life, Samaren wished for a Research Institute in the name of M.N. Roy

His credit lies in his **books** on M.N. Roy which are as follows:

1. The Restless Brahmin-Early Life of M.N. Roy, Allied ..... 1970
2. First Political Essay of M.N. Roy—The Way to Durable Peace in 1986
3. Twice Born Heretic—M.N. Roy and Comintern, 1986,....An important Biographic Study Firma KLM Private Ltd, Calcutta-12
4. M.N. Roy and Mahatma Gandhi, 1987, Minerva, Kolkata- 29
5. India's First Communist in 1988, Minerva, Kolkata- 29
6. Unpublished Letters of M.N. Roy, 1996, Writers Guild
7. DARSHAN O BIPLAB- Bengali version of M.N. Roy's Thought, January, 1946
8. MANABENDRANATH O ANTARJATIC COMMUNISM, 1984, Ananda Publishers
9. ASHANTA BRAHMAN, 1985, Bengali version of 'The Restless Brahmin',
10. JAILER CITHI – Bengali Translation of Roy's letter to Ellen Gottschalk, 1987, Ananda Publishers.

11. PRITHIVI AAMAR DESH, Bengali version of M.N. Roy's Memoirs, 1998, Ananda Publishers Pvt. Ltd., Kolkata-9

12. ETHIHASHER SAKSKHI, 1996, Ananda Publishers

13. EVELYN TRENT-  
M A N A B E N D R A N A T H E R  
PRATHAMA STREE, 1995, Writers Guild

Samaren wrote more books as given below:

14. The Roots of Bengali Culture, 1981, Firma KLM

15. The Story of the Vedic People, 1987, Center for Social Research

16. Calcutta-Society and Change, 1991, Rupa, Kolkata

17. One A Hot Summer Day- (a collection of short stories), 1994

18. VEDA –BICHARA- in Bengali

19. LOLA (collection of short stories) in Bengali

An overview of the list of books shows his varied interests on Indian philosophy and culture. His first Bengali translation of Roy's lecture on Materialism, and Practical Idealism, History of Revolution etc was read by Roy himself and obviously appreciated. Samaren's genuine interest was to introduce Roy with the Bengali readers who knew him very little.

Samaren has preserved M.N. Roy's first literary work or first political essay, the precious documents on contemporary history —**The Way to Durable Peace**. It was first published in English from New York by the Indian National Party in 1917. The revised Spanish version of this essay has been collected and published by the initiative of Samaren Roy in 1986. He recognized his debt to Elliot Einzig porter for providing the valuable documents about the life

and activities of M.N. Roy in America and Mexico. Professor Robi Chakraborty of California State University helped by procuring the Xerox copy of the Spanish and Mrs. Virginia translated the essay into English for him. He translated into Bengali as well as published M.N. Roy's 38 letters out of 62 written during in jail—JAILER CITHI. He said his indebt to Mr. Hamdibey in selection of letters and assisted by Ms Minakshi Datta in 1987. An outstanding political biography of M.N. Roy was depicted in **The Twice-Born Heretic**. Prof. Agehananda Bharati commented on this book as that 'the volume would suffice for at least a dozen Ph. D. dissertations both in the west and in India...' The book '**M.N. Roy and**

**Mahatma Gandhi**' is a comparative study

of political, social and philosophical ideas of two great leaders of modern India in addition to mentioning M.N. Roy's appreciation and assessment of Gandhi's role. The subject of '**India's First Communist**' deals with his Indian phase from 1930 to till his retirement from active politics in 1948. In the book 'Ethihaser Saksakhi' was a memoir of only a part of his own life.

Samaren Roy was a tireless researcher on M.N. Roy and also a keen observer of Indian Tradition, Culture and Politics. His collection and preservation of many rare books and records need to be cared immediately.

Acknowledgement to - Amit Roy, Partha Roy, Ruma Roy, Pranab Biswas and Books of Samaren Roy

### An Appeal to the Readers

Indian Renaissance Institute has been receiving regular requests from readers, research scholars, Rationalists and Radical Humanists for complete sets of books written by M.N. Roy. It was not possible to fulfil their demands as most of Roy's writings are out of print. IRI has now decided to publish them but will need financial assistance from friends and well-wishers as the expenses will be enormous running into lakhs. IRI being a non-profit organization will not be able to meet the entire expenses on its own. Initially, following 15 books have ordered for print: New Humanism; Beyond Communism; Politics, Power and Parties; Historical Role of Islam; India's Message; Men I Met; New Orientation; Materialism; Science & Philosophy; Revolution and Counter-revolution in China; India in Transition; Reason, Romanticism and Revolution; Russian Revolution; Selected Works – Four Volumes; Memoirs (Covers period 1915-1923).

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We make an earnest appeal to you to please donate liberally for the cause of the spirit of renaissance and scientific thinking being promoted in the writings of M.N. Roy.

Thanking you.

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## Supreme Court owes an apology

THE judiciary in India has a long way to go to retrieve its reputation. One judgment by the Allahabad High Court which said that dissent should be “protected” cannot rub off the stigma it acquired during the emergency. This is still beyond my comprehension, even after some 35 years since the judgment was pronounced.

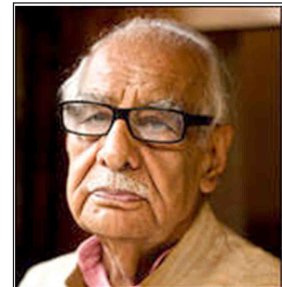
The judiciary caved in and upheld that Parliament could suspend the fundamental rights enshrined in the constitution. Even the imposition of the emergency was justified. Only one judge, Justice H.R. Khanna, gave the dissenting judgment but he was superseded. It is another matter that the country punished the then Prime Minister, Indira Gandhi, when she was ousted from power, lock, stock and barrel, after elections were held. Similar was the fate of her son, Sanjay Gandhi, an extra-constitutional authority.

What disappoints me is that the Supreme Court has never passed a resolution or done anything to register its criticism against the judgment which gave the judiciary a bad name. Even now it is not too late. The Supreme Court has liberal judges on the bench. They can still dilute the situation by passing a resolution that its predecessor bench was wrong in endorsing the emergency.

At least the Narendra Modi cabinet, with a liberal Law Minister in Arun Jaitley, should say sorry for the excesses committed by the earlier government during the emergency. At that time, Indira Gandhi had detained one hundred thousand people without trial. The then Attorney General, Niren De, had argued in the court that even the right to live was forfeited during the dark days of the emergency.

There was so much fear that practically all lawyers in Delhi dared not to speak. A lawyer like Soli Sorabjee from Mumbai and V.M.

Tharkunde from Delhi argued the habeas corpus petitions. My petition was argued by both and they had me released after three months in jail.



**Kuldip Nayar**

The two judges, Justice S. Rangarajan and Justice R.N. Aggarwal were punished for having given the verdict. The first was transferred to Guwahati where people still remember him for his impartiality. The second was demoted and sent back to the Sessions Court. But this did not deter them and they carried on their work independently.

Probably, the pressure on the judges has lessened in recent years because of a vigilant media. But the worse is happening. Appointments to the benches are being made according to the wishes of rulers. It began with the Congress government at the centre and has continued even during the Bhartiya Janata Party government.

The process was really started by Indira Gandhi. She superseded three judges—Justices J.M. Shelat, K.S. Hegde and A.N. Grover—to appoint Justice A.N. Ray as the Chief Justice. She was unseated from parliament and disqualified for poll malpractices for six years. Instead of accepting the verdict, she imposed the emergency and amended the law itself.

The excesses she and Sanjay Gandhi committed during the emergency may be a part of history and it is still remembered by not only those who suffered but also those who support democracy. It was the Janata Party which came to power after defeating Mrs Gandhi that changed the constitution to make the imposition

of the emergency impossible. And Justice Khanna's dissenting judgment that the basic structure of the constitution cannot be changed was accepted as the norm. This has ensured the parliamentary system of governance and has deterred every ruler since then not to tinker with the judiciary.

Ultimately, the independence of the judiciary depends upon the quality of judges and this is where I have begun to develop doubts. In the US, the biggest democracy, the Supreme Court is divided between the Republican judges and Democrats'. But since the tenure of the judges is for lifetime, the appointees of one party have risen above their old loyalties and become independent and impartial.

In India, we had the best of judges when the government appointed them. But now the party politics is creeping in and at least in High Courts it is seen that the party in power has not appointed the best of lawyers but those who had owed allegiance to it. Even in the Supreme Court, some appointments come under the shadow of doubts.

Take the case of former Solicitor General Gopal Subramaniam whose appointment to the Supreme Court was stalled by the Narendra Modi government. Blaming the government for blocking his appointment, Subramaniam said his "independence as a lawyer is causing apprehensions that I will not toe the line of the government. This factor has been decisive in refusing to appoint me." He subsequently withdrew from the race.

In fact, it was at his instance that the Gujarat police were forced to book a murder case in

the Sohrabuddin fake encounter matter. Then when the prime witness, Tulsiram Prajapati, was liquidated under suspicious circumstances, Subramaniam had recommended the transfer of the case to the CBI. Significantly, Subramaniam also admitted that it was on his suggestion that the Supreme Court, while granting bail to accused Amit Shah, now the BJP president, had barred him from entering Gujarat.

When the story of Ishrat Jahan's encounter case comes to light fully it would be apparent that politics had got mixed with criminality. I do not want to apportion blame on one political party or the other but there is an increasing tendency to politicize certain issues where a party member is arraigned before the court. The remark by the Allahabad High Court Chief Justice is telling. Justice C.J. Chandrachud, during the High Court's anniversary function, said: "Law tends to follow precedents. But it must be kept in mind that administration of justice also necessarily involves interpretation of laws that may have been laid down ages ago, in accordance with contemporary needs and challenges."

Ironically, things start from the Allahabad High Court. It changed the legal history when Indira Gandhi was unseated by it and it has now given a new lead to the judiciary. Probably, this is the time when Prime Minister Modi's statement that outdated laws should be done away with is given legal shape.

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***"I have cherished the ideal of a democratic and free society in which all persons live together in harmony and with equal opportunities. It is an ideal which I hope to live for and to achieve. But if it needs to be, it is an ideal for which I am prepared to die."***  
***– Nelson Mandela***

# How can Kashmiri Muslims love India?

**Prabhakar Sinha**

Kashmir has become an emotional issue and we respond irrationally to any opinion other than the popular view of the problem. Despite this, it is unpatriotic and abdication of responsibility to not express one's opinion if it is in the national interest. Hence, this post.

Unlike us, Kashmiris were not Indians before 1947 and had no reason to feel attachment to India. Their Hindu ruler Hari Singh (who had the right to decide) was not in favour of merging with India and was negotiating terms with Jinnah to merge with Pakistan. But Pakistan was not willing to accept his terms and instigated tribals backed by it to attack Kashmir to capture and annex it. The Muslims, who constituted the majority, were not in favour of Pakistan and did not support the invaders. It was due to the invasion by Pakistan that Raja Hari Singh signed the instrument of accession to India to provide a legal basis for India to go to his rescue with her armed forces. Kashmir became part of India because the ruler of Kashmir Hari Singh decided to merge with India under duress. In contrast, Sheikh Abdulla and the Muslims of J & K wanted to join India and not Pakistan. Kashmir remained peaceful despite a succession of corrupt Congress governments from 1947 to 1989 and rigged elections. During this period, India and Pakistan fought two wars in 1965 and 1971, but Kashmiris did not create any problem for India to aid Pakistan. In 1980s, there was terrorism in Punjab, but Kashmiris remained peaceful. Terrorism raised its head in Kashmir in 1989. The first major incident was the abduction of the daughter of late Mufti Saheb (who was then the Home Minister of India) and release of some prisoners in exchange for the release of the Home Minister's daughter.

The people of Kashmir gave us 47 years to

endear India to them and make them love India, but our corrupt governments and rigged elections not only alienated them but also destroyed their faith in our democratic credentials. When ballot is fraudulently made ineffective as an instrument of change, some people are bound to turn to bullet in hopelessness and desperation. Kashmir is an example. Bangala Desh (former East Pakistan) is an example of how a nation can alienate her own people by dealing with them unfairly. The Punjabi dominated West Pakistan refused to allow Mujeebur Rahman to become the Prime Minister of Pakistan even though his party had won a majority of seats in Parliament which led to their war of independence. They won their freedom because India intervened and defeated the Pakistan there. Pakistan cannot win a war against India and snatch Kashmir from her, but do we want to remain in Kashmir as Pakistan in East Pakistan (now Bangala Desh)? A democratic and civilized India must follow policies not only in J & K but also in the rest of India to win back the affection of the Kashmiris who have been alienated by our conduct, by making them believe that remaining in India is in their best interest.

This objective would not be achieved if they find that in India Muslims are treated as internal enemies and are constantly under suspicion. What is the message we give to them by declaring that by a certain date India would not have a single Muslim or Christian? Or by exhorting Hindu women to produce at least four children to increase Hindu population or raising a false alarm at a slight rise in Muslim population that it poses a threat to the Hindus? What would a Kashmiri feel at finding that any Muslim expressing a view not liked by the Sangh-BJP is greeted with the howl of being a terrorist, a



Pakistani agent or advised to go to Pakistan? What would be the reaction of Kashmiri Muslims if Muslims are lynched in the country on suspicion of being in possession of beef? Would not they expect them to be punished according to the law instead of being murdered by a mob even if they had beef in their possession? Would they be enamoured of an India where Muslims are always asked to prove their loyalty to India and prove their love for her? Would they love an India where a Muslim M.L.A. is suspended from the Assembly for taking a principled stand that he would not say

Bharat Mata ki Jai (which is not required under any law) under threat?

We ourselves hated the emergency (and Indira Gandhi, who declared it) for taking away our freedom as citizens but expect the Kashmiris, who are new entrants to India as citizens, to love to live in an India as 'suspect citizens'. If we do not want to further alienate the Kashmiris, we must mend our ways and make India attractive for them and present it as their natural choice..

***Prabhakar Sinha** is the national President of PUCL*

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# Poisonous Roots - The vacuity and deceit of “Bharat Mata ki jai”

Hartosh Singh Bal

Across the country, it seems, among people with a small-minded definition of the Indian republic, the readiness to chant “*Bharat Mata ki jai*”—Victory to Mother India—is the new test of patriotism. In early February, the host of a panel show on the television channel India News shouted down two of his invitees—Kanhaiya Kumar, the head of the Jawaharlal Nehru University Students Union, and Dinesh Varshney, a leader of the Communist Party of India—demanding that they recite the slogan. On 16 March, Waris Yusuf Pathan, an elected MLA from the All India Majlis-e-Ittehadul Muslimeen, was suspended from the Maharashtra state assembly for refusing to parrot the words. In the weeks afterwards, the entrepreneur and yoga teacher Baba Ramdev called for a law that would force everyone in India to say “Bharat Mata ki jai,” and also declared that, were it not illegal, he would gladly decapitate those who didn’t.

This is a subterfuge—an attempt to smuggle in a particular notion of patriotism and make it common currency. No one is being asked to chant “Bharat ki jai”—Victory to India. The crux of the issue is the term “Bharat Mata,” or Mother India, which suggests a certain kind of deification of the nation—one that many Indians are uncomfortable with, and many Muslims and Christians believe clashes with the tenets of their faiths. It is precisely this deification which has rallied the Rashtriya Swayamsevak Sangh and its associates behind it. But even some others who would not identify themselves with the Sangh Parivar have, wittingly or unwittingly, jumped onboard. For instance, even MLAs of the avowedly secular Congress demanded Pathan’s suspension from the assembly. As a

caution to them, and as a reminder for the rest of us watching the sophistry unfold, a lesson on the deep inanity and prejudice at the root of the notion of Bharat Mata seems in order.

That notion connects directly to the RSS’s vision of India as a Hindu Rashtra—a sacred motherland of the Hindus—and has very little to do with the Republic of India as it is envisaged in the constitution. Every meeting of the RSS involves the singing of a prayer, “*Namaste Sada Vatsale*,” whose text is in Sanskrit except for a closing line in Hindi: “Bharat Mata ki jai.” The text makes it clear that Bharat Mata is synonymous with the term “*Hindubhumi*,” or the land of the Hindus, and states that members of the RSS bow before the motherland. “Bharat Mata ki jai,” then, is an invocation of the RSS’s fundamental beliefs. At the core of these is the organisation’s definition of a Hindu Rashtra, which stems from its definition of a Hindu—both of which exclude particular minorities from its idea of India.

In 1922, VD Savarkar completed *Essentials of Hindutva*, the work that largely defined the philosophy of the Hindu right as we know it today. Savarkar appropriated the idea of nationalism, prevalent in Europe for over a century by then, and attempted to define a community in keeping with it. Like European nationalism, Hindutva was steeped in blood and geography. The constituent of the community it defined was the Hindu, who, according to Savarkar, was

he who feels attachment to the land that extends from Sindhu to Sindhu as the land of his forefathers—as his Fatherland; who inherits the blood of the great race whose first and discernible source could be traced from the

Himalayan altitudes of the Vedic Saptasindhus and which assimilating all that was incorporated and ennobling all that was assimilated has grown into and come to be known as the Hindu people; and who, as a consequence of the foregoing attributes, has inherited and claims as his own the Hindu Sanskriti, the Hindu civilization, as represented in a common history, common heroes, a common literature, common art, a common law and a common jurisprudence, common fairs and festivals, rites and rituals, ceremonies and sacraments.

As a definition, this one commits the cardinal sin of being circular, invoking the very term—"Hindu"—that it seeks to define. Today, this definition is commonly expressed in shorthand, to say that a Hindu is someone who thinks of Bharat as his fatherland and holy land. (Savarkar's emphasis on "the blood of the great race" is often omitted from this compression. This is easy to understand, as today the existence of the "great race" he refers to—that is, the Aryan race—is questionable.) But that shorthand conceals that defining a holy land just geographically is not enough, since religious believers of myriad persuasions could view the same land as sacred in their own ways. It is also necessary to specify the belief system under which the land must be considered holy—in this case Hinduism, "the system of religious beliefs found common amongst the Hindu people." So the shorthand definition, when completed, reads: a Hindu is someone for whom Bharat is rendered holy through the system of religious beliefs found common among the Hindu people. Again, the circularity is evident. Quite clearly, Savarkar faced many of the same problems that have often bedevilled anyone trying to make sense of just who is a Hindu and who is not. His answer amounts to no more than saying that a Hindu is a Hindu.

Later commentators on Hindutva have largely

overlooked the failings of Savarkar's definition of a Hindu. One who did not was MS Golwalkar—the second *sarsanghchalak*, or supreme leader, of the RSS, who shaped much of what the organisation is today, and the man Narendra Modi has described as his guru.

In his book *Bunch of Thoughts*, first published in 1966, Golwalkar describes the difficulty of defining a Hindu. "All the sects, the various castes in the Hindu fold, can be defined," he writes, "but the term 'Hindu' cannot be defined because it comprises all." Upon greater reflection, Golwalkar comes to the conclusion that a Hindu recognises that the "innate Spark of Divinity, the Reality in him—which alone takes man to the state of everlasting supreme bliss, is the one great aim before him." But the Hindu, Golwalkar continues, recognises that he cannot reach this "supreme stage" within just one lifetime. Therefore, it is "the Hindu alone, in the vast mass of humanity," who accepts that "the theory of rebirth for the realisation of our oneness with that Ultimate Reality is the one great hope for the human soul."

For Golwalkar, a Hindu is anyone who believes in rebirth. This has the great disadvantage of leaving out many groups, such as the Charvakas, as well as almost anyone who is a rigorous student of modern science. Savarkar was an atheist, and hence unlikely to qualify as a Hindu under Golwalkar's definition, which is perhaps why he kept away from any prescriptive definition of Hindutva.

As *Essentials of Hindutva* makes clear, Savarkar's definition was motivated less by logic than by the need to arrive at certain conclusions. Like many colonised people, he wanted to prove that he belonged to a group superior to his colonisers. He writes,

The ideal conditions, therefore, under which a nation can attain perfect solidarity and

cohesion would, other things being equal, be found in the case of those people who inhabit the land they adore, the land of whose forefathers is also the land of their Gods and Angels, of Seers and Prophets; the scenes of whose history are also the scenes of their mythology. The Hindus are about the only people who are blessed with these ideal conditions that are at the same time incentive to national solidarity, cohesion and greatness.

But it was not enough to feel superior to those who colonised his people. Savarkar also needed to distance himself from those who were responsible for the degradation of his mythic nation of Hindus in the first place.

That is why in the case of some of our Mohammedan or Christian countrymen who had originally been forcibly converted to a non-Hindu religion and who consequently have inherited along with Hindus, a common Fatherland and a greater part of the wealth of a common culture—language, law, customs, folklore and history—are not and cannot be recognised as Hindus. For though Hindusthan to them is Fatherland as to any other Hindu yet it is not to

them a Holyland too. Their holyland is far off in Arabia or Palestine. Their mythology and Godmen, ideas and heroes are not the children of this soil. Consequently their names and their outlook smack of a foreign origin. Their love is divided. Nay, if some of them be really believing what they profess to do, then there can be no choice—they must, to a man, set their Holyland above their Fatherland in their love and allegiance. That is but natural. We are not condemning nor are we lamenting. We are simply telling facts as they stand.

The recurrent need to target Muslims and Christians, directly through violence or indirectly through the rhetoric of exclusion, is located here. Despite the RSS's prevarications since then, from the very time the Hindu Rashtra was envisaged it was clear that Muslims and Christians were not equal citizens of it.

Courtesy **The Caravan**, 1 May 2016.

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## Anti-fascism and a free society

*We stand for a thorough reconstruction of the national life. Our political objective is the establishment of democratic freedom which will mean effective political power for the people. We strive not only for national freedom, but also for the social emancipation of the toiling masses. Our task is to spread enlightenment which will dispel obscurantism in the political and the spiritual life of the country. We advocate modernism in every walk of life against revivalism. We want the disinherited to come to their own and enjoy the richness and fullness of life on this earth. We want man to be the master of the world and the maker of his destiny.*

*This is why we radicals favour India's active participation in the war against Fascism. Fascism stands for the destruction of the political, social and cultural ideals of democracy...The war against Fascism can be won only by rousing in the people their urge for freer and fuller life. The supreme task of our movement is to develop that urge, and thus while defeating Fascism, to lay securely the foundations of a free society which is not only free of foreign rule, but also free of native tyranny, exploitation and injustice. - M.N. Roy*

*(The above statement was issued during the Second World War 1939-1945)*

# The Anticlimax of Indian Spiritualism

**The well known parable of the learned priest and the boatman is appropriate and rightly deserves repetition in the present Indian situation.**

**P.A.S. Prasad**

Once a learned priest was crossing a river in a boat. Only the two, the priest and the boatman were in the boat. While crossing, the priest queried the boatman whether he had read a particular scripture or some other ancient text. When he received a negative reply as to the ignorance of the boatman in all such matters, the priest pronounced that half of the boatman's life was lost. The boatman could do nothing, but keep quiet. After a while a storm suddenly started brewing. The boat started tossing. As it became worse, there was no alternative but to abandon the boat as it would sink. Then the boatman asked the priest whether he knew how to swim. The priest said that he never learnt to swim. Then the boatman exclaimed before he jumped into the swirling waters that the priest's whole life was lost.

The above situation aptly fits the present Indian over-saturated and over-dosed spurious spirituality. This unholy water has reached our nostrils and if there is a little more we will drown. Instead of making us spirited, our spirituality has rendered us effete and turned us into a tranquilized bull frog, or better still something like moss on slippery stones on a river bank.

Our Spirituality has made us spineless. India in spite of its enormity has never displayed the quiet strength of an Elephant. We have earned the name of a soft state. Our tolerance is euphemism for timidity and docility.

The teachings of various sages, saints, priests, hermits, godmen and gurus coming in various garbs and hair styles down the ages pushed down through our throats, have damaged our psyche and genes. We are now born with inbuilt

LSD. Now we are addicted to all the spiritual vomit and cannot survive without it. We wallow that our valour, chivalry, great qualities of head and heart and heights of human, almost divine like achievements, lie embedded and encrypted in our ancient texts and other tomes. There can be nothing more for us to learn. We are in a position to be the beacon light to the materialistic world.

Henceforth the word 'Guru' will be used as an all inclusive term for priests, sages, saints, godmen etc. and their like.

Right from the beginning of the Discovery of India the Guru has been playing a pivotal role in our lives.

He taught us to propitiate the natural elements of fire, earthquake, floods and other pestilence as the acts of Gods and that satisfying them by ritual and sacrifices would lessen the fury. These Vedic rituals are followed even today from the mighty to the laity – and we obey, from cradle to cremation. The Guru has a prescription of a ritual for every event whether joyful or sorrowful, right from the rulers to the ruled. Every house has a Guru to direct the observance of a particular worship or ritual and the Guru gets a share according to the capacity or according to the fear of consequences instilled by the Guru for non-observance of his advice.

In the process we have lost the capacity for full-fledged human endeavour. We have failed to strike a balance between the over-powering spiritual dominance of the Guru and a comfortable dignified human existence – as it happened elsewhere in the world. In other



countries each of the two factors has its place, no over-lapping. Hence most of them are materially so well off. Our Guru does not allow any such tendencies lest he should lose his prosperity and prominence.

The Guru was and is very clever. He thought of an ingenious plan to make people dependent upon him perpetually from birth to death. He innovated the fear of death and life after death and thereafter rebirth, till the achievement of salvation. People like to believe the thought of perpetuity for the souls even after death and cannot bear the thought of total extinction – just as a clock stops. Added to this Lord Krishna's lofty declaration in the Gita that He would be incarnating time and time again to punish the evil and protect the pious.

The above two factors have made the people imbecile and rendered them as mere spectators to the evil around them – however menacing. They believe that when the evil progresses to a point the Lord would come and eradicate the evil and protect the people. Hence we lost the capacity to rebel against unjust rulers and evil exploitation around us.

Our apathy and unfeeling towards fellow creatures in distress and bearing the injustices in the system stem from this attitude that the Lord will take care of these matters. It is their fate to suffer for their past actions and the consequences could be mitigated on the advice of the Guru by performing certain rituals and conferring sufficient endowments on the Guru. Kings and commoners constructed temples, unproductive of course, to fulfill cinematic dreams of the Guru or even commoners.

The only legacy we have inherited from our ancestors is in the form of great Temple architecture, dance, music and other fine arts and nothing more except plenty of quotations which come in handy from various ancient texts in Sanskrit for being quoted conveniently to suit

the occasion for the exploitative argument of the politician.

This 'quoting' is indulged in even today to stifle dissent and show off the scholarship as a speaker or writer. This malady mostly grips people in power, the Gurus in turbans and other garbs and down to learned Professors/ Teachers.

In this Historical process the mankind of this country has lost its vigour, spirit and courage and the ability to rebel. We have become used to the wheelchair and clutches of spurious spirituality. When we look around the post-war reconstruction of Europe and Japan we do not feel ashamed of our backwardness. We blame the British. This morass is deepening into a dreadful abyss.

It is important to note that the people listen only to the Guru and others of his ilk who we have made us immune to reason and rationality and compassion and the powerful will to progress. The ruler also prefers this characteristic of the people, i.e., a capacity to endure any amount of oppression, injustice and exploitation.

Even though the greatest in this land from time to time have advocated rationality and reason in our daily lives, people are never inclined to follow. They follow even today what the Guru tells, however irrational and absurd.

To quote:

1. Lord Krishna in one stroke absolved himself of all the pontification made to Arjuna in the Gita (Sloka in 18.63). He tells that what all He said need not be accepted by Arjuna. Arjuna is free to decide for himself the best course of action according to reason and rationale.

2. Then came the Supreme Rationalist of all times, the Buddha. He axed every system followed hitherto including God

and exhorted and insisted on rightful conduct in word, deed and thought. He also told his disciples that they should not take him for granted. They should reason out their conduct.

3. Adishankara described the Supreme rationalist Buddha as the Yoginam Chakravarthi – King of all Yogis.

In his Bhajagovindam he cautions people to beware of the ochre robed with matted hair or shaved heads assuming many attires for their livelihood.

Both Lord Krishna (Gita) and Shankara advised people to eschew ritual, pilgrimages, Yajanas and offerings etc as not necessary for salvation. Vivekananda is said to have observed that India committed spiritual suicide when it drove away Buddhism from this country.

He had a very low opinion about Priests. When he was in the Amarnath shrine, he could pray peacefully because he was not disturbed by the thief priests. Mahatma Gandhi observed that trying to reach God through a Guru is like learning to swim with a stone around your neck. Gandhiji swore (Autobiography) never to visit the Kashi Vishwanath Temple as he felt aghast at the mean and rude behaviour of the priests. Gandhiji was very rational in his approach – only his idiom was religious. He found that it was the means to make people understand him and be motivated. He also observed that we cannot imagine how much humbug passes in the name of religion.

This is the only way he could take the religion permeated people of this country along to fight the British. He succeeded tremendously. Only during this time the people of this country were put on oxygen and he woke them up from their slumber. Gandhiji moulded the people amazingly to his way of thinking. Very ordinary people felt proud to give up their gold and possessions and

go to jail and suffer *lathi* blows cheerfully. In the entire history of mankind there is no other parallel to the phenomenon of Gandhiji. People became selfless, they had an identity and self-respect, and wearing *khadi* itself made them feel proud. They could look the British in the eye without flinching. With Gandhiji gone, the people of India lapsed into their usual slothful slumber. The momentum created by Gandhiji could not be kept up by his followers and succumbed to their old follies and greater zeal to corruption and religious irrationality. All this happened because our psyche has been very badly maimed. We are not prepared to learn from our neighbours. Our people go by what the Gurus and politicians tell us, never by the guidance given by the greatest of the land. The politicians, and following their foot-steps the commoners, pay homage to the Gurus. The rulers set up a bad example by following the principles of *vaastu*, and consultation with priests for auspicious time for even Government functions.

We know that Bajirao lost the third battle of Panipat because he was delayed by 6 hours on the advice of his royal priest for an auspicious time to go to the battle. We must have lost any number of battles against the invaders throughout the History for that reason. The only war we won was in 1971 against Pakistan.

During the freedom struggle we never heard of our leaders run after Gurus and Priests and *havans* and rituals now so much in vogue. Our leaders in those days led us by their personal example and sacrifice. They attained great stature much bigger and grander than the present heads of states/governments. The present rulers are nothing without their position. Our politicians are strong on precept and nothing by example and more by negative life-style both in public and private.

The bottom line emphatically stated is that our

Vedic culture and the epics are good lectures, topics and bedtime stories. They never make us better citizens. Our depravity is matchless and so shocking that even three year old are reportedly brutally raped and killed. Corruption has gone into the tissue and fibre of our being. Our legacy has no MOTIVATIONAL MOMENTUM. Can we ever dream of becoming like the Japanese and the Germans and other disciplined self-made countries? They too have their spiritual values but not with overwhelmingly heavy baggage like ours. The people of those countries have made themselves what they are today and not by any supernatural force. They imbibed the best which motivated them for dynamic action. Our rulers from their guilt complex feel insecure because of their rampant corruption; hence, running after Gurus to save them by some miracle.

In short, our legacy has not helped us

- a) To become rational human beings;
- b) It could not motivate the ruling politicians, let alone the people, to show to the people by personal example the way to bring us up on a par with other developed countries – surprisingly none of them had the benefit of such a huge spiritual legacy like the one we are now burdened with;

- c) Could our legacy show us who the people are who are motivated by the spiritual approach of our legacy to make us a dynamic, spirited and progressive people.

Enough of this overdose of stifling legacy we are now witnessing an anticlimax of our heritage.

We have examples in history of how the writings of Voltaire and Rousseau led the people of France to revolt, resulting in the French Revolution and Harriet Beecher Stowe's 'Uncle Tom' led to the American Civil War resulting in the abolition of slavery and yet again of how Carl Marx's 'Das Capital' led to the Russian Revolution.

Alas, our spiritual legacy has failed to motivate us to become Rational, Spirited and Dynamic people and hence the spiritual anti-climax we are now going through.

**P.A.S. Prasad** is a veteran Radical Humanist aged 82 years from Andhra Pradesh. He retired as Legal Manager, Coal India Ltd. and had received education from Andhra, Calcutta, Ranchi and Nagpur universities. He was influenced with M.N. Roy when he read Roy's "Fragments from a Prisoner's Diary" at a very early age and thereafter became a follower of Roy.

## Respecting others' view-point

*I have repeatedly observed that no school of thought can claim a monopoly of right judgement. We are all liable to err and are often obliged to revise our judgements. In a vast country like this, there must be room for all schools of honest thought. And the least, therefore, that we owe to*

*ourselves as to others is to try to understand the opponent's view-point and, if we cannot accept it, respect it as fully as we expect him to respect ours..*

**-Mahatma Gandhi**

# Excessive Judicial Intervention – Dangerous to Judicial Independence

**K. Pratap Reddy**

Our Constitution provides abundant measures for maintaining the Judicial Independence and confers immense powers of Judicial Review on Administrative actions and the power to examine the Constitutionality of any Legislative measure, Central or State. These powers are exclusive of the ordinary Judicial jurisdiction relating to individual disputes, disputes relating to Corporate Laws, disputes relating to Intellectual Property Rights and the ordinary Criminal Law, including the power of awarding and confirming death penalty.

While, Article 32 in Part – III of Constitution, conferring power on the Apex Court to protect the Fundamental Rights depends on a MOTION, the powers conferred on the High Courts under Article 226 DO NOT depend on any “Petition”, “Application” or a “Motion” by any person. Further, the powers of High Court under Article 226 are NOT LIMITED ONLY to protect Fundamental Rights but extend “FOR ANY OTHER PURPOSE”. This expression “FOR ANY OTHER PURPOSE” includes the power of interpretation of the provisions of the Constitution and any other LAW made either by the Central or State Legislatures and the administrative actions of the Central or any State Government in so far as such powers are purported to be exercised within the LOCAL LIMITS of such High Court. Of course, such powers of High Court are subject to the Appellate Jurisdiction of the Supreme Court.

The Constitution also confers “original jurisdiction” on the Supreme Court of India under Article 131 to resolve disputes:-

(a) Between the Government of India and one or more States;

(b) Between the Government of India, any State or States on one side, and one or more States on the other; and

(c) The power of CONSULTATION under Article 143, referred to it by the President of India.

The above review of Constitutional provisions shows a very wide spectrum of jurisdiction of the Higher Judiciary in India. But it is necessary for all of us, more particularly, Lawyers, Judges, Jurists, and Social activists, to appreciate that these powers are PROVIDED TO BE EXERCISED WITHIN THE LIMITS OF THE PROVISIONS OF THE CONSTITUTION AND NOT BEYOND THEM.

It is a matter of great concern for all of us, who are concerned with the maintenance of Independence of the Judiciary, High Courts and the APEX Court, are tending to exceed THESE LIMITS, sometimes touching upon the Exclusive Jurisdiction of Legislature and the Exclusive jurisdiction of the Executive.

A recent case of such unconstitutional INTERVENTION is the one when the Uttarakhand High Court upset the VERDICT of the Speaker of Assembly of Uttarakhand State, in regard to “majority” of the Ruling Party and the Apex Court stepping in to exercise the powers of the Speaker of the Uttarakhand Assembly. This injudicious, - Nay unconstitutional intervention by both The Uttarakhand High Court and the APEX Court had become a subject of widespread public dissention and serious comments by the Media; “electronic” and “print”.

In two Historical Judgments, (one in 1964 in

“Keshav Singh’s Case” and the other in 1994 in “Bommai’s case”), “Constitution Bench” of the Supreme Court had, categorically declared that the proceedings of Legislative Assembly and more Particularly the Ruling of the Speaker of the Assembly ARE OUTSIDE AND BEYOND the Jurisdiction of any Court, including the Apex Court. The recent actions of the High court of Uttarakhand and the Supreme Court amount to violation of the very law laid down by the APEX Court of the country. Is this not violation of one of the BASICS of the Constitution, viz., RULE OF LAW declared by the APEX Court itself.

Again on 11.05.2016 “in a Scathing 53 page verdict on the Lack of will shown by the Centre and States in combating drought and saving lives....And washing its hands off National Disaster” (Quotation from Front Page Headlines of “The Hindu”, dated 12.05.2016), the Apex Court purported to intervene in the EXCLUSIVE EXECUTIVE powers of the Central and State Governments. With ALL DUE RESPECT and HUMILITY, I submit that this “ VERDICT” of the Apex Court on 11.05.2016 is a totally unwarranted and unconstitutional intervention in the EXCLUSIVELY EXECUTIVE POWERS of the Central and State Governments.

Once again, recently, the Bombay High Court had passed an order directing Cricket Board NOT TO CONDUCT ANY CRICKET MATCHES in Bombay City with the ostensible reason of “SHORTAGE” of drinking water in Bombay. Any person familiar with the Provisions of the constitution would fail to understand, much less comprehend, under which Provision of the Constitution, the High Court purported to exercise this power. It is ABSOLUTELY and TOTALLY within the EXCLUSIVE EXECUTIVE Powers of the State Government. Even if, the concept of

“JUDICIAL REVIEW OF EXECUTIVE POWER” is extended to its broadest limits, this order of the Bombay High Court is totally INJUDICIOUS, UNWARRENTED AND BEYOND any Provision of the Constitution. The Bombay High Court should have ADVISEDLY AVOIDED the situation created by this Judgment/Order, and left it to the Government of Maharashtra and authorities under it to solve the issue by themselves.

In this context, we may also refer to the Constitution Bench Judgment of the Supreme Court striking down the Articles.124A, 124B and 124C of the Constitution purporting to appoint a National Judicial Appointments Commission as “unconstitutional” claiming it to be affecting the “Independence of Judiciary” as one of the basic features of the Constitution. While, it is, no doubt true that this Judgment of the APEX Court striking down Articles 124A, 124B and 124C requires a separate and a detailed Article, in my humble opinion, it is also necessary to make a mention of the same here.

The controversy in the appointment of Judges started from the year 1993, when the Supreme Court wrongly interpreted the expression “recommendation” in clause (2) of Article 124 of the Constitution as a COMPULSION AND as a MANDATE on the President of India. It is a matter of common knowledge that after a continuous debate over a period of two decades, Parliament unanimously passed this Ninety Ninth Constitutional Amendment Act, 2014 introducing Articles 124A, 124B and 124C appointing a National Judicial Appointments Commission and the procedure required there for.

While, under Article 124A, Parliament purported to constitute the National Judicial Appointments Commission comprising of (i) Chief Justice of India as a chairperson, (ii) Two senior most Judges of Supreme Court next to the Chief Justice (iii) Union Law Minister (iv)



Two eminent persons to be nominated by a committee consisting of the Prime Minister, the Chief Justice of India and the Leader of the opposition in Lok Sabha. A reading of Article 124 A would show that among SIX members of the National Judicial Appointments Commission, three are Judges of Supreme Court and the Law Minister and the other two “Eminent Persons” shall be appointed by a committee comprising of the Prime Minister, the Chief Justice of India and the leader of opposition in the Lok Sabha. It shall be appreciated by any person really concerned with the maintenance of Independence of Judiciary that the composition of the National Judicial Appointments Commission will be absolutely outside of the reach of the party in power.

In this very context, I personally wish to bring to the notice of the readers that the “Independence of Judiciary” depends very much on the INDIVIDUAL INDEPENDENCE of the person appointed. All of us know that the Constitution provides total INDEPENDENCE to Judiciary and there is no organ under the Constitution, much less any individual, to interfere with the independence of any Judge.

It is, of course, a sad part of our constitutional History that some times, the Judiciary had CAVED IN and subordinated itself to the executive as in the case of “A.D.M. Jubulpore” during the Emergency, for which no other organ of the Constitution was responsible.

These unwarranted and unconstitutional Judicial Interventions by the Higher Judiciary of India, (whether High Courts or the APEX Court) would certainly lead to a Political and Constitutional Anarchy, which must be avoided by exercise of “JUDICIOUS SELF RESTRAINT” by our Higher Judiciary, more particularly, the APEX Court in the larger interest of a healthy growth of our Democratic Republic, and MUCH MORE in the interest of

MAINTENANCE of the Power of “JUDICIAL REVIEW” and the concept of “JUDICIAL INDEPENDENCE” itself.

Many of us, particularly, Lawyers, Judges, Jurists and Social activists are aware that the theory, principle or concept of “Judicial Review of Administrative Action” was introduced as early as 1801 by a great Jurist and Judicial Statesman, Viz., Chief Justice John Marshall of the Supreme Court of USA in a Case known in our Judicial annals as the case of “MARBURY Vs MADISON”. That was a case where the outgoing President of USA, Adams, at the end of his term appointed one MADISON as the Post-Master-General of USA, which was considered to be a very important position. When this action of the President of USA was challenged in US Supreme Court by one MARBURY, Chief Justice John Marshall entertained the same in spite of formidable objection by the US executive headed by the succeeding President Jefferson. In this historically memorable Judgment, Chief Justice John Marshall declared that every action of the executive, including the President of US, is subject to Judicial Review, while upholding the appointment of Madison as Post-Master-General on merits. Again in 1806, when the new President, Jackson succeeded Jefferson, Chief Justice Marshall wrote another Judgment, purporting to exercise the same power of “Judicial Review of Executive Action”; this time deciding the matter against the Executive. President Jackson refused to implement the decision saying “let Chief Justice Marshall implement his Judgment “IF HE CAN”.

In my view, Chief Justice John Marshall invented this theory or concept of Judicial Review in the background of centuries old conflict between the powers of the State and the extent of judicial access over the State. So far as my knowledge goes, such conflict was originated in a conflict between the King of

England and the then Arch Bishop of England, Thomas Becket. It is a matter of common historical fact, that before the establishment of formal Judicial Courts, the adjudicative authority was with ECCLESIASTICAL Institutions. While in the Christian World, the Bishop or Priests, in the Islamic World, the Mullahs, and in the Hindu Society, the Rishis were the adjudicators and the Kings or Khalifs were implementing those adjudications.

Even after the establishment and growth of formal Judicial Institutions, the conflict between the Monarch and the Judicial Institutions continued. The best known historical incident in the context was the conflict between the King James I of England and the Chief Justice Sir Edward Coke. When the Chief Justice Sir Edward Coke tried to give advice to King James I, James asked Coke:- “Are you trying to interfere with my power, which amounts to TREASON, leading to your execution”. Chief Justice Coke replied:- “No Your Majesty, while not disputing your authority over your subjects, I only wish to bring to your notice that your Sovereign power is subject to Almighty God AND THE LAW OF THE REALM. That is how Chief Justice Coke saved his head.

Perhaps, this historical fact had inspired and encouraged Chief Justice John Marshall to introduce the theory of “Judicial Review of

Administrative Action”. In any case, this act of “Judicial Statesmanship” exercised by the Chief Justice John Marshall, stands now as an universally accepted Judicial Precedent on the subject of “JUDICIAL REVIEW OF ADMINISTRATIVE ACTION”.

In this context, it is necessary to HIGHLIGHT THE “CONSTITUTIONAL REALITY” that the constitution DOES NOT provide any separate machinery, much less any paraphernalia to the JUDICIARY including the APEX COURT, to implement its Judgments and adjudications. Article 144 of the Constitution ONLY declares: “All authorities, Civil and Judicial, in the territory of India shall act in Aid of the Supreme Court of India”. If the executive decides NOT to implement any Judgment of the Judiciary (including that of the APEX Court) as happened in 1806 in USA, as referred to above, it would result in an undesirable Constitutional Anarchy.

I, therefore, very humbly and respectfully implore and beseech the learned Judges of High Courts and Supreme Court of India to exercise this power of Judicial Review of Executive actions and Legislative measures Very JUDICIOUSLY, ADVISEDLY AND CAUTIOUSLY AND NEVER EXCEED THE LIMITS OF THE PROVISIONS OF THE CONSTITUTION.

## **M.N. Roy on Superstition**

Superstition is rooted in the ignorance of the primitive man. In course of time, man outgrows the blissful state of ignorance, Nevertheless, he is haunted by superstitions haloed by tradition, and often raised to the dignity of the expression of revealed wisdom. Eventually, scientific knowledge gives him the power to break the spiritual bondage. The history of the development of science coincides with the history of a bitter struggle against superstition. In our country, the struggle is still to begin. Whatever little of modern scientific knowledge is now there, is very largely superficial, and is often utilised with the purpose of reinforcing superstitions. That is an abuse of science.

June 15th, 1950.  
Dehradun

From: Preface of the second revised edition of 1950,  
**‘Fragments of a Prisoner’s Diary: INDIA’S MESSAGE’**

**M. N. Roy**

# Marital Rape?

**Jawaharlal Jasthi**

It is very rare that parliamentarians in India come out exercising their right to introduce a private bill for consideration of the parliament. Now-a-days we are witnessing some activity in that direction. There has been initiative on many fronts but the one in the news is on “Marital Rape.” It is the word rape that is more in the news and now it is directed to marital rape. It refers to rape committed by the husband on his wife. It is considered the utmost of violence that can be committed by the husband against his wife and has to be prevented at any cost.

It is somewhat pathetic to notice our leaders being apologetic to the UN authorities who came with a message that the rights of a wife must be safeguarded and India is lagging behind in that respect. The UN Committee on Elimination of Discrimination against Women said it and the UNDP Chief Helen Clark is reported to have asserted that ‘rape is rape; the issue is the consent of woman and if it is not there it is rape.’ They have also been insisting for elimination of all forms of violence against women and girls in the public and private sectors. Of late the emphasis is more on the private domain and the stress naturally is laid on marital relations. The utmost form of violence that can be committed against a woman is subjecting her body for sexual gratification against her consent. If that violence is committed by the husband it is called “marital rape.” Now the demand is that it should be declared as a crime so that the wife can be saved from that ignominy. It will not stop just by branding it a crime. There must be consequences for it and the problem is what the consequences should be.

It is agreed in all spheres that sexual relation is the basis of marriage. The first oath of marriage is “*naati charaami*” which means “I

will not cross the boundary”. It relates only or mainly to sexual relationship more than to any other relationship. All other relationships or services are just consequential and secondary. Those services can as well be discharged by any other person, other than the spouse. But the sexual gratification must come only from the spouse and granted only to the spouse. That condition is not confined to any particular religion as it is a condition of all civilized societies. Even when promiscuity is allowed, it is only up to marriage and abhorred after marriage. It is in that context that the concept of remedies for marital rape have to be considered.

It is a pity that our leaders were apologetic before the world leaders who try to enlighten them on their responsibilities. The minister is reported to have said in Parliament that “the concept of marital rape as understood internationally cannot be suitably applied in the Indian context due to various factors like illiteracy, poverty, myriad social customs and values, religious beliefs and the mindset of the society to treat the marriage as a sacrament.” The statement is entirely false on every count except the mind set of society.” “Marital rape as understood internationally” is not different from what is understood in India. The only difference is in the reaction expected to the crime. In regard to marriage, there is no country which is more literate than India. Even if we look at the American society, we can find rigid attitudes in regard to marriage. The only thing is there is nothing like honor killings there. Premarital sex is not a taboo there. Contrary to the statements of the minister, India has recognized marital rape in many of the laws, but the particular word is not used. It is only the man that is considered capable of committing the crime of rape.

Section 375 of the Indian Penal Code defined

rape extensively. "A man is said to commit rape, who, except in the cases hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six descriptions:

1. Against her will;
2. Without her consent;
3. With her consent when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt;
4. With or without her consent when she is under sixteen years of age.

The section implies that rape can be committed only by a man against a woman. It can be otherwise in developed countries, but that is beside the point. The section applies even to the husband. No exception is given to him. The only exception given is when the wife is aged above fifteen years. Obviously those who want to criminalise marital rape refer to a situation where the wife is sufficiently matured and advanced and enlightened. The cases that we come across also are committed by men against women.

The sixth condition mentioned under section 375 shows that there is no coordination between various laws applicable in India. Under Prevention of Child Marriages Act, the girl must be of eighteen years to get married. Under the exception given under Sn.375 also intercourse is allowed if the wife is aged more than fifteen years. The sixth condition states that the man shall have no intercourse with a girl aged less than sixteen years even if she gives consent.

Section 497 of the Indian Penal Code defines 'Adultery' as sexual intercourse with a person who is the wife of another man without 'his' consent or connivance. The consent or refusal of the woman is of no consequence. She shall not be considered even as an abettor. How

atrocious is the situation when the husband can consent or connive with such an act and the law concedes to it? The husband has the right of action against the culprit, but not the woman who is raped. That is how protection is offered to women without giving them any rights or recognition. It might be minimal or nominal, but some protection is given to the woman only in marriage institution. That is because it is a relationship established with mutual consent at the beginning and extends throughout life later on. That does not make it a sacrament. It is so with all systems of marriage. It arises because children are the inevitable result of marriage. It creates a responsibility on both the partners to look after the children. One may choose out of getting children (as the previous prime minister of Australia has done for which she was looked down) and some couple may not be able to get children because of various reasons.

There must be reciprocation for everything that one spouse expects from the other. It is the only accepted relationship that involves sexual gratification without any remorse or reservation. Added to that is the sweet result in the form of children that makes life fulfilled and purposeful. It is the only context in which sexual gratification is respected and not despised. Conjugal relationship forms the cornerstone for the edifice of family. Marriage legitimately restricts and confines that relationship to the spouses. That is why the Hindu marriage and the Special Marriages Act consider the breach of it as a ground for dissolution of marriage.

Section 13(1)(i) of the Hindu Marriages Act, 1955 states that "Any marriage solemnized... may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse.

The clause is reproduced verbatim under section 27(1)(a) of the Special Marriages Act, 1954. It only proves that sexual relationship is the basis of marital relationship. Other services can be performed by any other person, whether related or employed, and not necessarily by the spouse. The relationship must be maintained as an obligation to the spouse and also while enjoying it as a right. Even while defining domestic violence, sexual act is not specifically included as a form of domestic violence. But it is recognized as violence in a wider sense. It states that any act “that violates the dignity of the woman” is considered as a domestic violence. Subjecting the woman to sexual intercourse against her will certainly violates her dignity.

Under Sn.375 of IPC sexual intercourse committed by a man (husband) with a woman (wife) amounts to rape if it is against her will and without her consent. The section tries to distinguish between the two conditions: against her will (after her refusal) and without her consent (cold response). Perhaps most of the family relations run on the second gear (condition). Nevertheless, the conjugal relationship continues – calm and cool. No warmth in it.

Section 13(2)(ii) of the Hindu Marriages Act states that “A wife may also present a petition for dissolution of her marriage by a decree of divorce on the ground that the husband has, since the solemnization of marriage, been guilty of rape, sodomy or bestiality.” A similar provision is also found under Sn.27(1A)(i) of the Special Marriages Act. The prohibition of extramarital relationships under Sn.13(1)(i) of the Hindu Marriages Act and under Sn.27(1)(a) of the Special Marriages Act apply equally to both the spouses. But this non-consensual sexual gratification by the husband makes him a criminal and gives the right to wife to call it a rape and

demand dissolution of marriage itself. Such being the case, there appears to be no justification to bring in another legislation specifically to bring in the concept of ‘marital rape’. It is there already even if the word is not used.

It is true that this right is not invoked by women as frequently as they suffer rape technically. Perhaps they do not consider it rape or do not know that there is such a provision in law. But the liberal gentry in the civilized world presume that it is only because of the fear of the consequences that the wife is not coming to court with allegation of rape against the husband. The suggestion to make a special law intends, perhaps, to rectify the situation by giving , confidence to the women and offering them the security required after divorce to which the petition necessarily leads. The hesitation may be that the society will look down upon the woman who has broken the marriage bond. Can any legislation tell the society to honor them? Is it practicable? In what way can the law give respectability when the society is like that? Most of the problems faced by women are because of fear of social attitude. But women have improved a lot and are now showing defiance and daring the society.

While some are afraid of society, all the cases of tolerance are not due to social fear. Most of the women tolerate and submit to such demands keeping in view the future of the children. She thinks she brought the children into this world by enjoying with her husband and so it is her divine responsibility to look after them and bring them up properly. They know that any dispute or separation between the parents will have tremendous psychological consequences on the children. Such effects cannot be undone by any of the welfare measures that may be offered. Even in the western countries where divorce is more frequent, the effect of separation of parents is manifest on the children.



Whether it is in East or West, whether you consider marriage as contract or sacrament, the divorce has a devastating effect on the children. The Acts try to say in so many words that the welfare of children is paramount in deciding the problems arising on dissolution of marriage. Whatever provisions are made, they are not a substitute for loving parents living together. It is the same considerations that make the man tolerate the wife who refuses marital pleasures, for whatever reason. Consequently, neither of them go to the extent of dissolving the marriage taking advantage of legal provisions.

The question arises whether it is necessary for the mother (or father) to sacrifice her happiness for the sake of children. It is a question that is not asked because the answer is obvious and not palatable. We refuse to face it. Moreover there is another gross anomaly in the legal system. All the provisions are made with the presumption that it is only the wife that refuses consent for conjugal relationship and she has to be protected against the husband. Religions will try to find situations where it is legitimate for the wife to refuse. The implication is that she has no right to refuse under any other circumstances. In fact the situation under which the religion permits refusal are just matters of common sense and even uneducated husbands will honor it. The problem arises only when there is no obvious reason or the reason is purely personal for the wife. It is a question of her pride and dignity. If the husband pounces on the unwilling wife he is considered a beast and she has to be protected from him. It is no doubt a laudable purpose. But what happens if the husband abstains from conjugal life and withdraws his consent for cohabitation? Why don't we consider such a situation? When the wife refuses, you are afraid that the husband will pounce on her and she needs protection. But when the husband refuses, you presume

that the wife will suffer silently. Why not you expect she too will demand the right of conjugal relationship? She cannot force him physically. She has no strength required for the purpose. Why not make law to give her the strength? The difficulty is you expect sexual desire as the domain of man and not of woman. Is it reasonable? Is she not a human being with all the natural instincts and desires? Does not she need sexual gratification? Is it not one of the purposes of marriage?

We cannot ignore the fact that there are such situations where the husband renounced family life for no obvious reason except that he decided like that. Such cases also are not rare. Many men have abandoned family life expecting heaven by leading celibate life. Consider what Gandhi did. He discarded family life and adopted celibacy to devote all his energies and time and attention for the welfare of the people. We called it a great sacrifice and many of the leaders of the day are reputed to have followed his example. Did they obtain the consent of their spouses? Does it mean that men or women cannot serve society if they remain married? The wife cannot afford to be aggressive. So we prefer to ignore her needs.

If the husband imposes himself on the unwilling wife, she has a remedy by going to court and get the marriage nullified. The husband can marry again if he wants. If he does not resort to violence, she will also keep quiet and gets no right to go to court and the family runs silently. But what will be the alternative for the husband if the wife does not allow conjugal pleasures and also does not go to court? What about his natural needs? The society and law frown if he resorts to extramarital relationships. So is the case with the woman. We come across many men who served their wives for decades when she was bedridden. What opportunity does law provide to such

people to satisfy their natural needs? They served the bedridden wives thinking that it is their moral obligation. Out of their love and affection for the wife they served without murmur. But when the wife deliberately withdraws from family life for personal reasons, we want to recognize it as her right and try to protect that right. When the husband similarly discards family life we praise it as a renunciation of worldly pleasures as if it is a great sacrifice.

The problem is we never considered women equal to men. They are different. It does not mean they are one above the other. We are habituated to look at problems from a lopsided vision. We refuse to acknowledge natural desires and refuse to call the spade a spade except when it is to our convenience. By making a law on marital rape we are only trying to help her keep away from family life. It is a negative right. But we don't make any law to

help her assert her conjugal right against the husband. Just preventing the husband from going to the wife is not a solution. Can we make the husband serve her interests when she needs it? Is it not a mutual relation? Can we legislate it? If you want to bring in the concept of marital rape, you must be prepared to annihilate the institution of marriage. You cannot have both simultaneously. The institution thrives only on mutual respect and mutual responsibilities and they cannot be earned by legal compulsion.

It has to be acknowledged that there are certain things that cannot be subjected to legislation. Leave it to the concerned persons. Just ensure it will not become a problem to the society at large. The law we have is adequate for the purpose. No need to be apologetic. But the law is of no use except to satisfy the ego of feminists and a trap for feminine votes.

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# ‘Khattar Kaka’: Role Models

Translated by Kata Chandrahas

*(‘Khattar Kaka’ is a literary work translated by Kata Chandrahas from the original book “Adarsavyaktulu” written in Telugu. Khattar Kaka is a simple person well-versed in*

*mythological works written in Sanskrit. However, in his outlook he is rational, realistic and scientific and interprets happenings and events accordingly. His role models are different from mythological characters and he has reasonable and logical explanation for that. With this issue we are starting a series of episodes from the book. Following is the first episode. – Editor)*

Uncle saw me on the road and asked, “You seem to go somewhere. What’s the fat book in your hands?”

“*Adarsa Charitavali*,” I said.

“Anyone who cares to follow these days the ideal persons mentioned in that book will surely end up in a lunatic asylum,” Uncle said, grinning.

“What do you mean, Uncle? Harischandra, for instance, was a king renowned for being truthful and munificent. It’s said that he would not forsake the truth even if the sun, or the moon changed course or the world turned upside down. Wasn’t he great?”

Uncle said with a smile, “O, what truthfulness are you talking about? Suppose you donated your land to me in your dream, would I prepare the gift deeds by the morning or what? If I gifted a young girl in my dream to someone, I wouldn’t accept him as my son-in-law, would I?”

“The story exemplifies the virtue of being truthful,” I said.

“Exactly! And that’s the starting point of foolishness! In the dreams, people have a vision of many senseless and meaningless things. If one believes them to be true and follows up, what would be the consequence? But such oddity is a part of our people. We attach greater importance to the dreams than to the reality. It’s on this

foundation that the edifice of Vedanta rests. For us, the whole universe is like a dream; everything is a mirage. We take the state of deathly silence to be a loftier ideal than the state of being awake. While the kettledrum of awakening rolls on in the other countries, we take refuge in this mantra-

*‘Yadevee sarvabhuteshu nidrarupena samstitha*

*samastastai samastastai samastastai namo namah.’*

(To the goddess who is embodied in all the living creatures that are in stupor, salutations! Salutations.)

“But Uncle, right from the ancient time, we have had this philosophical bent of mind. No?”

Uncle was sarcastic. “True. That’s why we reckon the day as night and the night as day –

*‘Ya nisa sarvabhutanam tasyam jaagarti samyamee*

*Yasyam jagrati bhutani sa nisa pasyato muneh.’*

(What is night for all the living beings is the waking time for the inspired soul; the time when the living beings are awake is the night time for the enlightened sage.)

“When the world is asleep, we would be awake and asleep when everyone is awake. It’s not hard to identify the bird which is our inspiration!”

“Uncle, your sarcasm is hard hitting even when you say it casually.”

“I’m not misstating anything. Even the birds of this country are philosophers. Parrot, Jatayu, Garutmantha, crow and the like are our preceptors. And, about ‘*uluka*’ (owl), the less said the better. Owl must indeed be special, for otherwise why should ‘*vaisesika*’ (the six Hindu philosophical systems – *darshans*) be called ‘*Oulukya darshan*’?”

“Supremely knowledgeable and enlightened preceptors and seers like Janaka also were born in this country,” I said.

“Arre, such enlightenment only has ruined us, hasn’t it? The philosophy of Janaka, the king of Mithila, was this –

*‘Mithilayam pradiptayam na me dahati kinchana’*

(Nothing will be lost for me even if Mithila is burnt down and reduced to ashes.)

“If all the countrymen follow this ideal, what would be the fate of this country?”

“Uncle, their ideal was ‘*Padmamitra mivambhasa*’ (be unaffected like a lotus leaf on water).”

“The simile indeed sounds very good. But try to be like that just for a single day: detached, and I will rush and promptly take over your house and whatever belongs to you.”

“Uncle, Janaka was beyond all bodily attachments. For him, the breasts of a beautiful woman too were like lumps of mud.”

Uncle smiled and said, “If that were so, there was an indescribable joy in being detached of bodily pleasures. Tell me this. If he were so detached, to him Ravana should be no different than Rama. Isn’t it? Then, where was the need for all that ruckus of the bow yagna? And, what if perchance Ravana had broken the Shiva’s bow?”

“Leave it alone, Uncle. Take the case of Yagnavalkya. He was such an enlightened person, wasn’t he?”

“Yes, so enlightened that he needed two wives: Maitreyi for the soul and for the body Katyayani,” said uncle, giggling.

“But his scholarly debate with Gargi was of a high order, wasn’t it?”

“It was absolutely a debate at the level of kids. When Gargi asked him one question after another rendering him clueless, he flared up and said, ‘If you continue to ask such questions, your head will be severed and fall to the ground.’”

“But he renounced everything, didn’t he?”

“Well, he got all the cows herded back home before the ritual was complete, being worried that someone might drive them away taking what he said in the ritual about renunciation literally. So much for his renunciation.”

“The Brahmins here are such ascetics?” I said.

“Yes, so ascetic that anger is always perched on their nose. Bhrigu kicked Vishnu with his foot. Parasurama chopped his mother’s head off with an axe!”

“What of Maharshi Vasishta and Viswamithra?”

“Both had connection with pleasure women. One came out of Oorvasi’s womb; the other impregnated Menaka. The *apsaras*, the celestial beauties, knew the weaknesses of the sages too well.”

“Devarshi Narada was such great devout...”

“Yes, so devout that Mohini stoked the flames of lust in him and made him prance around her like a monkey. Actually, beautiful women made the sages run after them and with one sidelong glance, in a flash, could make their penance come to a nought.”

“Prahlada and Vibhishana were such men of piety.”

“One got his father killed; the other, his brother. Pray save the country from such ideal people.”

“Bhishma was such an epitome of morality.”

“That’s why in the crowded royal assembly, when Draupadi was being disrobed, he kept absolutely mum.”

“Drona was such a great man...”

“So great that he selfishly got the thumb of his disciple Ekalavya chopped off. A student of today would have twirled the thumb at him from a distance and said ‘tata’.”

“Aruni was so devoted to his guru.”

“Yes, when he was asked by his guru to go and fill the breach in the field, he went and lay himself supine on the breach, demonstrating unadulterated stupidity. Such students would have gone about collecting dry leaves all day to burn them at night to study if there was no oil to light the lamp.”

I was distressed. “So, Uncle, is there no merit at all in these tales?”

“Why, indeed there is. Those days the gurus were smart and the disciples, dimwits. So, the gurus made up such tales which eulogised devotion for the gurus. The disciples were asked to do errands such as grazing the cows and collecting the firewood. Every story has an underlying message. Someone would have plucked a guava fruit without seeking the owner’s permission. In order to make him feel abashed, the story of Sankhalikhita, who was cursed a great deal for committing a small mistake, is told. A king might have taken back a cow gifted earlier to a Brahmin. To scare such persons, the story of king Nriga was created. Nriga had gifted thousands of cows. That charity did not count in his favour but that a cow that he had gifted away strayed and returned to the king’s herd caused him to live in a well like a chameleon for thousands of years! If the descendants of Nriga had any sense, they would

not utter donation of cow even by mistake.”

“Who can win an argument with you, Uncle? But look at the great kings who ruled this land. It’s after the king Bharatha that this country is known. His father, Dushyantha, was a jewel of the race, wasn’t he?”

“Sakuntala, who was brought up by a sage, lost her virginity because of Dushyantha. Afterwards, he even refused to recognise her. You call such debauch and coward a jewel? It’s more apt to call him a curse of the race. In fact, that is the meaning of the word ‘dushyantha’. Arre, they were so lustful, always craving for sexual pleasures. King Yayathi was old and his organs were inert. So, in order to satisfy his carnal desires, he borrowed his son’s youth and plunged into the pleasures of the flesh. We cannot find another example of such unbridled lust in the history of any other country.”

“Uncle, why don’t you see the positive side? This country gave birth to Sibi and Dadheechi who were renowned for their charity.”

“I agree that Sibi cut his flesh and gave it away and Dadheechi, his spine. So, tomorrow if you cut your nose and give it away, will I look upon you as a role model?”

“What can I say if you are so derisive, Uncle? But Look at Aswatthama, Bali, Vyasa, Hanuman, Vibhishana, Kripacharya and Parasurama. These seven are said to have attained immortality –

*Aswatthama Balirvyasoh Hanumanscha Vibhishanah*

*Kripah Parasuramascha saptaite chirajivinah.”*

Uncle smiled and said, “Do you know the true meaning of this *sloka*? A Brahmin in penury, a foolish king, a scholar who flatters, a devout who is purblind, an ingrate brother, an arrogant teacher and an irascible Brahmin – these seven



types always exist on this land. Take it that this is the misfortune of our country.”

“We have many ideal persons, one greater than the other. But you fancy none. Isn’t it true that many virtuous women such as Savitri were born in this country?”

“None of those women listened to their fathers. They married as per their wish rebelling against their parents. You call them ideals, do you? If today my daughter too does the same, how would I feel? That’s why I wouldn’t allow my daughters to read the story of Sati Savitri. And, this ‘*Charitavali*’ shall not get into my home.”

I was anguished. “It’s due to these ideals that our country is known as a pious land, isn’t it? The ideals established here have no parallel,” I intoned.

“True, we have no parallel! Moradhwaja’s mania for honouring the guest was so overarching that he sawed his son, cooked his meat and served it to the guest! Was this idealism or madness? For some, it was a mania for charity and for some others it was truthfulness. A woman by name Sumathi was so crazy of her wifely duty that she carried her leper husband on her head and took him to a prostitute’s house to satisfy his lust. Do we take these as our ideals? I for one reckon them as mentally sick.”

“Kings and Brahmins in our country followed high principles, didn’t they?”

“Hey, son! The king had physical strength but no brain. The Brahmin had brain but no physical strength. For every word uttered, one picked up a weapon, the other showed the scriptures. One was ready with the strung bow; the other with a curse on the tongue. If the Brahmins were incensed, they came out with the rules. If the kings were upset, they vowed. There’s no count of the lives lost in this country due to such

vows.”

“One shouldn’t break a promise even if it resulted in death. Our people steadfastly believed in this dictum, didn’t they?” I asked.

“That’s what I call stupidity. Theories are meant to help us. We are not born for furthering the theories. They have to be the means to our ends. When they come in the way of fulfilling our goals, what do we need them for? Isn’t it wise to discard the golden ear ring that cuts the ear and throw into the fire? If the pair of shoes you wore in your childhood don’t fit you now, would you cut your feet to fit the shoes?”

“Our theories are not like the shoes which can be changed, are they?”

“Why not? Once upon a time, a woman who threw herself on the burning pyre of her dead husband was worshipped as goddess. Now if anyone tries to do that, the police will arrest and take her away.”

“But theoreticians don’t go about keeping the provisions of law in mind, do they?”

“Perhaps. But shouldn’t they at least be sensible? There’s no theory which can be followed blindly. Assume a teacher orders his disciple to go in the easterly direction. Obeying the teacher, if the disciple walks straight and hits a palm tree and stubbornly refuses to move an inch this side or that, what do you call such stubbornness? An ideal or stupidity? How many heads of kings have been chopped off due to such obstinacy? How many queens have been reduced to ashes? And, how many royal palaces have been pulled down? Our history is replete with instances of such foolishness.”

“Uncle, when these tales in our mythology don’t serve any purpose, why were they written?”

“Arre! They were written to deceive the kings; to be served by the disciples and the *sudras* and to keep women under their thumb.

The writers of these stories push the moral ideal to the extreme limits. If the idea is to demonstrate the prowess of chastity in a woman, fire would leap out from the hem of her sari. A woman would bring her husband back alive, snatching him from the hands of Lord Yama. Another woman would stop the progress of time by stopping the Sun's chariot. Our people are absolutely incapable of saying anything without exaggeration. What's the result of all this? The portraits of our idols have become cartoons instead of photos."

"Do you mean to say these ideals in our mythologies have no value?"

"They have. Like the value that can be assigned to the rusted sheath and sword in the museum. They are meant for display in the exhibition; not fit for any work."

"Uncle, why is there so much exaggeration in describing the characters?"

"Arre, my child! Exaggeration is in our blood. Right from the Vedic times, whoever we praise, we lift him sky high and call him '*tvamarkah tvamsomah*' (you are the sun or the moon). Whoever we blame, we crush and throw him into the abyss. Like it's said, 'The hillock on which Hanuman rests his foot sinks into the abyss in a few moments.' We don't know the golden mean at all.

"Check it out yourself. Our literature is full of hyperbole. When the heroine has large eyes, then it's said that they are stretched covering the entire space between the ears. If the breasts are well proportioned, they are like the golden pitchers. Arre! There's a limit to everything. Not in our case!

"Just because we have a mouth to babble, we say that myrobalan fruit is as long as ten arms!

"Whatever occurred to them, they wrote. One would lift a mountain. Another would drink the

water of the ocean and dry it up. No less. One would hold the earth between his teeth. One would swallow the sun. If one was *chaturanana* (four-faced), another was *panchanana* (five-faced), the third was *shadanana* (six-faced), and yet another *dasanana* (ten-faced)! If one was *chaturbhuj* (four-shouldered), another was *shatbhuj* (six-shouldered) and yet another, *sahasrabhuj* (thousand-shouldered)! If one fought war for one thousand years, another did penance for five thousand years. A third had intercourse for ten thousand years! In the torrent of hyperbole, we have buried the truth."

"Do you mean to say that these are all yarns?"

Uncle said sarcastically, "Who has the courage to say so as long as there are great pundits in our country who write them? If our great Hanuman arrives, that would be enough. He would wrap up the soldiers of all countries around his tail! One Sage Agastya would do to empty the water of all the oceans together with the ships! A Varaha incarnation would be enough to lift and throw the earth like a football! One Vamana would do to cover the moon with one foot! Let the people of other countries invent wonderful machines and take care of them! We of course would have our work done through the incarnations. One incarnation would suffice to solve our problems in a jiffy. A mere shout is enough for a mountain of food grains to appear before us! With one arrow, the ocean of milk and curd would become a wave of joy!"

"Uncle, you have made exaggeration flow like a stream!"

"Arre, who do you think I am? Of which race? I'm true to my blood. There are other countries to take the science forward. But there ought to be someone to bear the burden of the sport of fantasy," Uncle said gleefully. "Okay, son. Now take your album and be off. I don't need these ideals. I'm a realist."

## Book Review : **Many Faces of Men and Women**

Dipavali Sen

*The Many Faces of Kashmiri Nationalism From the Cold War to the Present Day*, Nandita Haksar, Speaking Tiger, New Delhi, 2015, paperback, pp 335, price Rs 350.

This book has already made its impact and has been discussed in national dailies. It sketches the many faces of Kashmiri Nationalism, especially the human face. Its author, Nandita Haksar, is a well-known human rights lawyer, teacher, activist, journalist and writer. She has several must-read publications such as *Demystifications of Law for Women* (1986), *ABC of Naga Culture and Civilization* (2011) and *Across The CHICKEN NECK Travels in Northeast India* (2013). Her writings have been translated into several languages including Burmese and Tangkhul. She lives in Delhi, Goa and Ukhrul. Right from 1970 when she joined Delhi University, she has been a fighter for truth and justice, as in this book.

The 'Introduction Along the Silk Route Again' contains an account of Kashmiri history, with interesting revelations such as Napoleon Bonaparte presenting a Kashmiri shawl to wife Josephine whose fashion-statement with it made French dealers descend upon Srinagar (p xi). The Introduction also tells the readers how Nandita Haksar came in touch with the two main characters through whom she tells the story of Kashmiri nationalism, viz., Sampat Prakash and Mohammad Afzal Guru.

Sampat Prakash, was born in 1939, in a typical Kashmiri Pandit family. The first chapter 'Born in the Era of Kashmiriyat' describes his school years and the political history of that period. 'Kashmiriyat' signifies the ancient communal amity of Kashmir.

In 1951, Shyama Prasad Mukherjee had launched the Jan Sangh and the Cold War was reaching its heights. Sampat Prakash joined college in 1953 and moved close towards the

Communist Party of India. He took up students' causes within his college and organized union activities. Enthused by the release of Sheikh Abdullah and disturbed by his re-arrest, in 1958, when about to graduate, Sampat Prakash was arrested and harassed by the police even as he had taken his seat in the examination hall. As the 2<sup>nd</sup>-chapter heading says, it was a 'Season of Betrayals'. But even in 2010, talking to Nandita Haksar, Sampat Prakash re-iterated his faith in Kashmiriyat as evidenced in "our trade union movement" (p 51).

In 1962 Sampat Prakash got married to a young Kashmiri Pandit and in 1964 his son Lenin was born. He had wanted to name the next one Stalin but when that fellow arrived in 1967, his mother, taking advantage of her husband's absence, did not let that happen (p 48). (These are little touches that make the book so readable.)

The 3<sup>rd</sup> chapter, 'Rage Against the Dying of the Light', describes how Sampat Prakash met trade unionist Ghulam Qader Bhat, of the CPI(M), and a new trade union movement was launched, through the Low Paid Government Servants Federation. The chapter does not forget to mention that Sampat's wife managing the household alone while, say, her husband ("a bit of a swashbuckler" jumped into icy waters and swam across to avoid arrest (p 59). Or little Lenin innocently giving his away his father to the police in 1968 (p 63). In jail (Jammu Central Jail and Reasi Jail) for four months, Sampat Prakash not only read the *Rajatarangini* but also the Act relating to preventive detention. Through his wife, he petitioned the Supreme Court and found himself in Tihar jail in Delhi

where he met many interesting people including con man Natwarlal. In 1969, Sampat Prakash was back in Kashmir to strengthen the trade union movement. Several strikes were organized in the 1970s, such as that of the *safai karmacharis* in the municipalities of Srinagar and Jammu in September 1973. Both Ghulam Qadar and he agreed that 1964-74 was “the golden era of the trade union movement” (p 79).

‘Dark Side of the Moon’ spans the years 1974-84. Nandita Haksar weaves important political happenings into the personal accounts (say, of Gulam Mohiudin Punoo beside Sampat’s very own). Sheik Abdullah’s National Conference party is reduced to a minority in 1977 and President’s Rule is imposed on Kashmir. Splits were occurring in the CPM (L) and in 1979 Sampat Prakash moved over to the CPI (M). Although this party had never supported the right of Kashmiris to self-determination, he felt that its disciplined support would benefit the trade union movement (p 104). Zulfiqar Ali Bhutto’s assassination in 1979, Sheik Abdullah’s death in 1982, his son Farooq Abdullah’s win in the 1983 followed. But Sampat Prakash was injured in the 1983 election campaign and his party candidate lost. Maqbool Bhat’s hanging in Tihar jail also gave him a feeling of personal loss. Feeling that he needed rest, Sampat Prakash went to Pahalgam, but found himself overhearing a plot against Farook that sent him taxiing back. Punoo had left Sampat’s Federation but in 1984 he was back. Others too recognized Sampat’s “dynamism” in spite of his “unorthodox methods” (p 111).

‘Gathering of the Storm’, the fifth chapter, begins by saying that Sampat Prakash’s son Lenin, joined engineering college in 1982 but never became politically motivated.

Between 1990 and 1994 Sampat travelled all over India speaking about the human rights violation in the Valley (p 131). Returning briefly in 1994, he found his old home in Rainawari

ransacked and his faith in Kashmiriyat shaken (pp 135-6).

This chapter also introduces the readers to Mohammed Afzal Guru.

1967-born, son of a timber and transport businessman, Guru “loved poetry and talked of books” in school. His imagination was fired by the film *Lion of the Desert*, released in Kashmir in 1985. Even at medical college, he loved Iqbal and Ghalib and quiet peaceful scenic beauty. His mentor in academics and politics was his uncle Dr Abdul Ahad Guru shot dead in 1993. Between 1990 and 1996, Afzal Guru stayed in Delhi, graduating from Delhi University but missing Kashmir Valley all the while – and his mother.

‘In the Eye of the Storm’ covers the 1990s, drawing quick sketches of Nisar Ali Mir, Ashfaq Maji Wani, Dr M.K. Teng and Ali Mohammad Bhatt, all of them fighters in their respective spheres.

‘A Forest of Dead Leaves’ (1996-2001) comes next. In 1998 Afzal Guru, then 28, got married to his cousin Tabassum, a vivacious 18-year-old. Nandita Haksar writes: “Afzal and Tabassum dared to hope and dream of living a normal family life, having babies, watching them grow and filling their home with the laughter of children. They soon had a son and Afzal felt an indescribable joy” (p182). The chapter takes us to 17 December 2001 when Afzal was presented on the national media in handcuffs. Taken to Tihar jail, by the end of the month, the chapter starkly states that he was hanged inside the jail in February 2013 despite the battles and campaigns by Nandita Haksar and N.D. Pancholi,

‘Among a Caravan of Believers’ (2001-07) deftly winds its way through various people, parties and non-governmental organizations, with Sampat Prakash being part of the whole evolving experience. Nandita Haksar wonders how he felt in the caravan of different ideas

and faiths (p 221).

'Kashmir and the War on Terror' begins by discussing the anger and pain of young Kashmiri men not just against India but also America. The stories of Sampat Prakash and Afzal Guru coalesce. Heart attack and stroke notwithstanding, Sampat had "lost none of his passion" (p 248).

Kashmir is known as paradise on earth, "Bhusworgo Kashmir" as Bengalis like me to say. The word 'Dystopia' is the opposite of Utopia. The chapter 'Dystopia to Paradise' is thus fitting as the heading of the last substantive chapter of this book. It iterates that Afzal Guru "did not approve of mindless violence" (p 250) but also that he "had never feigned innocence (p 258-9). He had not sought martyrdom or wanted to die (p 259). He had even "decided to stop fighting for justice" in order to protect his family," (p 265) at which point Nandita Haksar and N.D. Pancholi had ended their involvement with the controversy-ridden campaign to save him (p 265). Although the event belongs to 2006, it is in this chapter that describes the Afzal's family visiting the then President of India to whom a mercy petition had been filed. Nandita gives a candid account of the "ugliness" that grew up around the issue and pays a moving

tribute to the love that his wife Tabassum bore her husband (pp 266-7) and the courage she continues life with.

The Afterword has Sampat Prakash taking a last look at the manuscript of this book and poignantly asserting his faith in Kashmiriyat.

Appendix 2 provides the rare and valuable Naya Kashmir Plan submitted by Sheikh Abdullah to Hari Singh. Appendix 2 is a long letter in Afzal Guru's own hand-writing, written to Nandita Haksar. "...don't colourize or dress my words in any colour or dress except a purely responsible Human concern for humanity"(p 297). That is what the author has done in this complex multi-dimensional book. The unembellished language and simple style are enough however to reveal the human face of the entire movement.

The Notes and Index are succinct yet accurate. For future students of history, this book will be a source of information blended with sensitivity, of objectivity tempered with subjectivity. Written by a woman and wife, it underscores the contributions she makes to any struggle for freedom and justice that the man makes in history, of Kashmir and elsewhere. It is this which makes this memorable historical account, a literary piece.

## FROM THE WRITINGS OF M.N.ROY (1887-1954)

### The spirit of Freedom and Revolt

*When, as a schoolboy of fourteen, I began my political life, which may end in nothing, I wanted to be free. Independence, complete and absolute, is a new-fangled idea. The old-fashioned revolutionaries thought in terms of freedom. In those days, we had not read Marx. We did not know about the existence of the proletariat. Still, many spent their lives in jail and went to the gallows. There was no proletariat to propel them. They were not conscious of class struggle. They did not have the dream of Communism. But they had the human urge to revolt against the intolerable conditions of life. They did not know exactly how those conditions could be changed. But they tried to change them, anyhow. I began my political life with that spirit, and I still draw my inspiration rather from that spirit than from the three Volume of Capital or three hundred volumes by Marx.*



## **Human Rights Section:**

### **Media behind bars: Why are authorities trying to turn Bastar into a no-go area for journalists?**

**Saba Naqvi**

In July last year Somaru Nag, an Adivasi journalist from the Darbha valley of Bastar, was arrested. After 10 months behind bars in Jagdalpur jail, he still has two long stripes on his upper left arm, scars of the thrashing he received at the time of his arrest. He unbuttoned his shirt and showed me the scar, when I got permission to enter the jail last week as part of a fact finding team.

Somaru is 25 years old and typical of what constitutes media in the hinterland, where a host of stringers in the districts supply news to multiple Hindi publications. He ran a photo studio and gave small news items about local events and functions. He says he is bewildered by his arrest as he never did investigative stories challenging the police version of encounters in the Maoist affected region.

Somaru has been charged with being a lookout for Maoists who attacked a crusher plant 25 km from where he is located. His gram sabha has passed a resolution saying that he had nothing to do with Naxalites. His lawyers say it is a weak case that will be dismissed on evidence. But before that Somaru would have spent time in jail.

Santosh Yadav, 30, also a stringer from Darbha (he knew Somaru), was very different. He repeatedly challenged the police narrative and would personally intervene in local thanas to get Adivasis released. He had become something of an irritant to the security forces as he also raised the issue of sexual abuse of women in the conflict zone.

He was picked up in 2013 and kept for a night and roughed up. In 2014 he was kept naked in a lock up for one night and let go. Finally, on

September 2015, he was summoned by the police, threatened with an encounter and actually arrested. The father of three small children remains fearless, although among the three journalists lodged in Jagdalpur jail, he faces charges under the most stringent laws such as UAPA and the Chhattisgarh Special Public Security Act.

Santosh Yadav names the IG of police, Bastar range, S R P Kalluri as personally threatening him just before he was whisked away by the force. He refers to a particular case that he believes provoked the IG, who is promoting a policy of so-called Maoist surrenders. Since Kalluri took over in 2014, the number of these surrenders has shot up, although investigative reports have subsequently indicated the figures are inflated and at times entirely false.

The 'surrendered' are in fact used to man vigilante type special groups that are expressly disallowed by the Constitution of India. The surrenders being promoted by the man in charge of police operations in Bastar were also reportedly questioned by his senior officer who was

divested of his charge as DG, Naxal operations, in January this year.

Santosh Yadav, meanwhile, believes he was arrested after he highlighted a particular case involving Badrimahu village of Darbha. About 150 villagers had walked 15 km to the Darbha thana, which was subsequently presented by IG Kalluri as villagers seeking protection against Maoists. In reality, as Santosh would highlight, they had gathered in the village because the police promised information about five boys who had been picked up from a weekly bazaar.

The third and most recent journalist-resident of Jagdalpur jail, Prabhat Singh, 32, arrested in March this year, was actually working on a campaign aimed at getting a law to protect journalists in the state and releasing those behind bars. He is the most articulate and for many journalists based in the state capital Raipur (and some visiting from other parts) he was the contact person to cover south Bastar.

Prabhat is visibly shaken by his ordeal but was clear about the sequence of events that landed him there. An investigative story published in an influential Hindi daily about cheating and fraud by an education society, another story about a family that recently converted to Christianity being intimidated by a campaign run by an individual linked to a local vanvasi kalyan ashram, and stories raising questions about the police version in encounters.

In fact, the local media had witnessed IG Kalluri once threatening Prabhat and some even reported it. The reason for his arrest was eventually given as posting an objectionable WhatsApp message against the IG, although other cases, including that lodged by the

education society he exposed, are also moving simultaneously. In fact, within a week of Prabhat's arrest, another journalist from Dantewada, Deepak Jaiswal, was arrested, also for the year old case involving the education racket.

Journalists not in jail are candid that they have been threatened and even offered bribes to leave Bastar. The editor of an influential magazine, who travelled to Delhi on May 10 to protest against what his colleagues have been subjected to, also quotes the IG as threatening him with a dossier that includes pictures of him meeting with individuals identified as Maoists.

It's all happening in the backdrop of human rights lawyers and activists being pushed out of Bastar (a contributor to a news portal had to leave). The ground rules for media in Bastar are simple: Accept the police version and stop independent reporting from villages where an encounter has taken place.

When asked for an appointment, IG Kalluri said he was busy with an encounter.

Courtesy TOI Edit Page, May 13, 2016

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## **The NCST's Report on Gangrapes and Assaults in Bastar Says There is a Breakdown of Discipline Among Security Forces**

**Chitrangada Choudhury**

In a 15-page fact-finding report, the National Commission for Scheduled Tribes (NCST) has stated that there is a breakdown of discipline among security forces deployed on anti-Maoist operations in south Chhattisgarh. The report was the result of a probe by the NCST into three instances of mass sexual violence against Adivasi women—all hardscrabble subsistence farmers—including gangrapes, as well as assaults, and looting by the police and paramilitary forces, in the Bijapur and Sukma districts of the state. The violence reportedly took place in October 2015

(in Bijapur) and in January 2016 (in Bijapur and Sukma) by contingents deployed on anti-Maoist operations.

A three-member NCST team led by the commission's chairperson Rameshwar Oraon visited Chhattisgarh between 3 and 5 April to probe the charges of violence. On 29 April, the commission finalised its report. It terms the investigations into the charges "unsatisfactory," adding that "no progress has been made in identifying" the security personnel who attacked the women villagers. "The statements of all the

complainants are yet to be recorded,” the report notes. The commission recommends that the investigation be taken away from the district police authorities, and handed over to the Criminal Investigation Department of the state, and suggests a judicial enquiry. The report stresses that, if the investigation is to be “credible,” these steps are essential.

The commission found that for all three cases, the district police had set up “special teams” of two or three members of police personnel to investigate the violence. However, despite the six months that had passed since the October complaint and the four months since the January ones, these teams have made no arrests, nor have they filed charge sheets.

“Transferring the cases out of the district is necessary, because those responsible for investigating the crimes are themselves involved,” Oraon, the commission chairperson, told me on 9 May. The NCST report notes that the commission sensed a breakdown of discipline among security forces deployed on search operations. Unless commanding officers enforce appropriate supervision, the report says, it would be impossible to prevent such acts of violence.

Last October, in Pegdapalli, Chinnagellur, Peddagellur, Burgicheru, and Gundam villages of Bijapur, three women, including a teenager and a pregnant woman reported being gangraped by members of security forces. Several others complained of sexual assaults and molestation. This January, 13 women from Bijapur’s Nendra village reported being gangraped by security forces personnel, some of whom reportedly carried out the assaults inside the women’s homes. The attackers belonged to a contingent that stayed in the village from 11 to 14 January, while on an anti-Maoist operation. In Sukma’s Kunna village, several women reported being sexually assaulted by security personnel on 12 January. In all three instances, many villagers

complained that members of these forces had also beaten them, ransacked their homes and looted money, food, and other possessions.

In its report, the commission strongly criticises the police for its reluctance to file the FIRs in the January cases, and the delay in conducting medical examinations of the survivors, thus undermining potential evidence. The FIRs were delayed despite a 2013 Supreme Court ruling that an amendment to India’s anti-rape laws makes it mandatory for the police to file a case as soon as a complaint of sexual violence is brought to them. For instance, in Sukma, the 12 January violence was reported on 15 January to authorities, but the police lodged a FIR only on 27 January, that too following persistent efforts by local Adivasi leaders such as Manish Kunjam.

With scores of remote forested villages, Bijapur and Sukma districts form part of the heavily militarised epicentre of a decade-long conflict between the Indian paramilitary and police forces and Maoist rebels, which has taken over 7000 lives already. Over a third of the casualties are civilians, killed by combatants on either side. While there have been several reports of sexual violence in Bastar over the years, the October 2015 complaint from Bijapur was the first instance of a formal FIR being lodged that charged male combatants with rape. It also marked the first time the state government invoked the Section 376(2)(c) of the Indian Penal Code, which was introduced into the IPC after the 2013 amendments to the anti-rape laws. This provision deals with sexual crimes by armed personnel.

The NCST’s attention was drawn to the violence by Hindi and English press reports on the violence, between November 2015 and February 2016. In a letter dated 25 February 2016, the NCST asked the Chhattisgarh state government for a report. It sent a reminder on 11 March. Since the government provided no response, the commission decided to travel to the

state and get information first-hand.

When Oraon and his team visited Chhattisgarh, they did not travel to the actual villages in Bijapur and Sukma where the violence is reported to have taken place—authorities in the state advised them to not do so, saying it was unsafe. Instead, the team met several women complainants in the district headquarters of Bijapur town. These included 8 women from Nendra, who told commission members that members of the security forces had raped them. Other women narrated being assaulted by members of the force. According to the report, several other affected villagers were unavailable since they had migrated to the neighbouring state of Telangana for seasonal work.

In Bijapur, the commission met with lawyers and women activists who had helped guide the Adivasi women villagers through the legal procedures. It also met with district police officials in charge of the investigations, as well as the state government's chief secretary and home secretary, and senior police officials in Raipur.

Following his visit, on 13 April, Oraon had told me that he was unconvinced about the seriousness of the police investigations into all three cases. Drawing attention to the fact that no arrests had been made yet, he asked, "In this case, if the police cannot identify and arrest the perpetrators from among a couple of hundred people, how can we expect them to identify the accused in general cases from among thousands and lakhs?"

Another key criticism contained in the report is that the police did not apply relevant provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, despite all the complainants being Adivasis. The report points out that by not including such provisions in the FIR, the authorities are undermining the seriousness of the charges, and preventing the

villagers from getting the monetary compensation to which they are legally entitled. The Atrocities Act, which was amended in January 2016, with amended rules issued in April 2016, mandates an investigation and filing of chargesheet within 60 days of the FIR being lodged. The new rules also provide for monetary compensation ranging from 2 lakh rupees to 8.25 lakh rupees for survivors of sexual violence. The report also notes the government must pay monetary compensation to villagers who have suffered in the violence.

The report argues that conditions for sexual violence are being created due to forces living in villagers' homes during operations, and the absence of women officers in the deployed units. Last December, in villages of Bijapur that had seen such violence, several women had told me that they were evicted from their homes by security forces, who then took them over for the duration of their stay in the village. The report asks the government to "issue orders that security forces must not, under any circumstances, live in the homes of villagers while on an operation."

Taking cognisance of the numerous reports of looting, the report also notes that the state forces personnel are not paid the same monthly allowance as those of the Central Reserve Police Force. It recommends that the state government increase the monthly allowance of its forces to bring it on par with the CRPF—which is, to increase it from Rs 600 to Rs 2400.

During our conversation on 9 May, Oraon told me that he planned to write to the Chhattisgarh Chief Minister Raman Singh this week with a copy of the report and urge speedy action on the commission's recommendations. "After some time, we will ask them for a follow-up report," he said.

**Chitrangada Choudhury** is an Orissa-based multimedia journalist and researcher, and a Fellow with the Open Society Institute.

Courtesy **The Caravan**, 12 May 2016.

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