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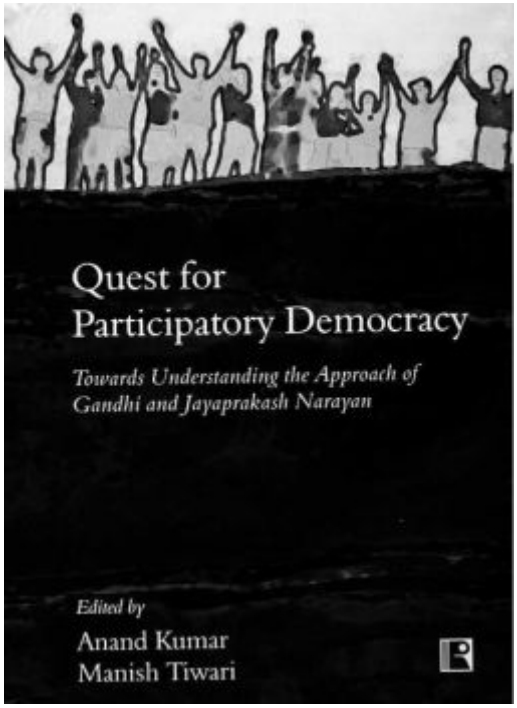
BOOK REVIEW

HINDU 15.6.10 BOOK REVIEW

Democracy, according to Gandhiji and JP

J. SRI RAMAN

An interesting book on an important political event of post-Independence India that raises more questions than it answers



QUEST FOR PARTICIPATORY DEMOCRACY — Towards Understanding the Approach of Gandhi and Jayaprakash Narayan: Edited by Anand Kumar and Manish Tiwari; Rawat Publications, 4858/24, Ansari Road, Daryaganj, New Delhi-110002. Rs. 895.

“I have every sympathy for the Naxalite people. They are violent people. But I have every sympathy for them because they are doing something for the poor...If the law is unable to give the people a

modicum of social and economic justice,...what do you think will happen if not violence erupting all over?"

This was Jayaprakash Narayan at a New Delhi conference of voluntary agencies way back in 1969. He was more forthright when he stated: "I say with a due sense of responsibility that, if convinced that there is no deliverance for the people except through violence, Jayaprakash Narayan will take to violence." This quote questions the subtitle of the book under review, which suggests an identity of outlook between Jayaprakash Narayan, or JP for short, and Mahatma Gandhi. For Gandhiji, "The democracy or the Swaraj of masses can never come through untruthful and violent means, for the simple reason that the natural corollary to their use would be to remove all opposition through the suppression or extermination of the antagonists." In his notion of democracy, "the weakest should have the same opportunity as the strongest," and that can "never happen except through non-violence."

Frustration

Veteran journalist Ajit Bhattacharjea, citing JP's statement, says that it only vented the leader's "frustration", which was to find expression in a major movement five years later. Certainly, JP's offer of qualified support for the ultra-Left or other hues of violence is not the primary feature of his platform of "participatory democracy." There is a link, though.

JP's philosophy of "participatory democracy" was contraposed to electoral or "representative democracy." He was not just asking for electoral reforms, as frequently suggested, but arguing against what he considered a basically flawed system. As early as 1959, in an essay titled, "A Plea for Reconstruction of the Indian Polity," he said: "The fundamental defect …is that this form of democracy is based on the vote of the individual...the system is based on a false

premise; the state cannot be an arithmetical sum of individuals. The people, the nation, the community can never be equated with the sum of individual voters." On this tenet was based his 'Total Revolution' of 1974 which culminated (or reached its anti-climax) in the installation of the first-ever non-Congress, Janata Government in 1977. The authors of most of the papers on JP's ideology and political actions, put together in this book, are agreed on two things. They see his ideological struggle as one of "participatory democracy versus representative democracy." They are agreed, too, that the Total Revolution suffered a total reverse when the Janata regime of Morarji Desai took over in New Delhi. They all bemoan the fact that the new rulers simply turned their backs upon someone whom they had hailed as the Lok Nayak (People's Leader) until the other day. Curiously, however, none of the papers delves into the causes of his debacle.

Vision

Many of them speak, for example, about JP's vision and vehement advocacy of "a partyless democracy." But they don't dwell on the fact that he depended on major political parties (with their unconcealed agendas for power) for mass mobilisation. Among these new-found acolytes and followers of JP was the Jan Sangh, which later refused to merge with the Janata Party and, instead, let the "dual membership" of its Ministers and MPs undermine the experiment.

Some of the articles note that the JP movement in Bihar has left a legacy of "caste" leaders like Lalu Prasad, Nitish Kumar, and Ramvilas Paswan. None of them, however, mentions that Gujarat, where the movement began with a Sangh-backed agitation against the Congress regime of Chimanbhai Patel, has been consigned to communal politics under "netas" like Narendra Modi. Nor is any question raised about community-based democracy, especially in the

context of the outrageously lurid activities of “khap panchayats.”

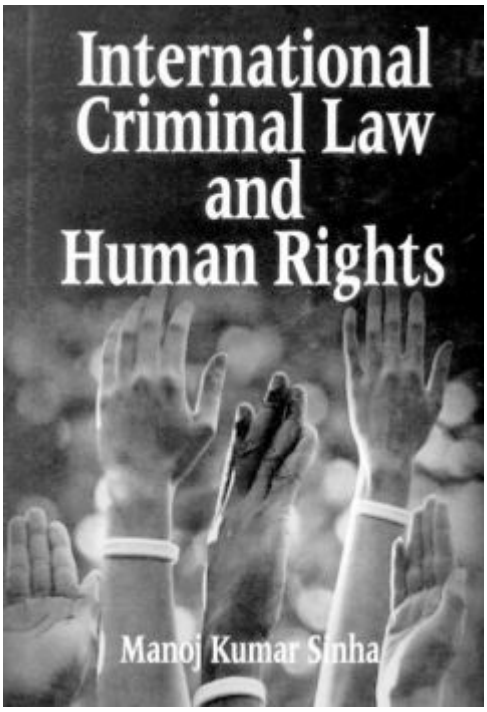
It is rather surprising that, in a volume of as many as 26 papers, there is no attempt at a detailed analysis of the historical and social context of the JP movement. Nor is there any discussion of the economic crisis of the mid-1970s that was marked by an all-round price increase. In short, this is an interesting book on an important political event of post-Independence India that raises more questions than it answers.

HINDU 15.6.10 BOOK REVIEW

Norms of global criminal law

AMITA DHANDA

Provides a fair sample of the issues that require deliberation in the realm of international criminal law and human rights



INTERNATIONAL CRIMINAL LAW AND HUMAN RIGHTS: Edited by Manoj Kumar Sinha; Manak Publications, B-7, Saraswati Complex, Subhash Chowk, Laxmi Nagar, New Delhi-110092. Rs.1600.

On the 12th anniversary of the International Criminal Court, the United Nations Secretary-General urged that more countries should accede to the Rome statute so that an era of accountability could be ushered in. Both the institution (ICC) and the statute are important in

themselves. Yet any serious discussion on international criminal law cannot be limited to the Roman statute. A collection of essays, the book under review provides a fair sample of the issues that require deliberation in the realm of international criminal law and human rights. While at one end of the spectrum there is an essay discussing the legitimacy of using torture to fight terrorism, at the other end there is another that wants an international legal response to the problem of domestic violence. The history and evaluation of international criminal law; the judicial exposition on serious violations of humanitarian law; and the norms of equity that should guide the ICC in the exercise of its powers are some of the other subjects discussed in the book.

Uneven

The product is singularly devoid of editorial scrutiny and judgment. The essays are of uneven length — it varies from five pages to 100 pages. There is no analytical sequence in their presentation. Thus a piece on India's nuclear policy is followed by one on the distinction between ‘civilians' and ‘combatants.' And, the various issues related to war crimes are found scattered. The disparate nature of the collection is further compounded by the absence of an introduction by the editor.

Balanced

As for the essays, Bertrand G. Ramcharan's contribution on the challenges before the Human Rights Council offers an informed and balanced analysis that is characteristic of a piece by one who has had the benefit of watching the system from inside — he had been High Commissioner with the erstwhile Human Rights Commission. He wants the Council's operation to be above international politics because only an even-handed treatment of all countries would lend legitimacy to human rights enforcement and international law.

This plea for equality of treatment resonates through several of the articles. Thus, while Katerina Novotna questions the denial of head-of-state immunity to Charles Taylor by the Sierra Leone Special Tribunal, Hans Kochler condemns the iniquitous manner in which the ICC addressed the infringement of International Criminal Law in Sudan.

Values

Notably, the contributors neither romanticise nor belittle the importance of international criminal law. Instead, by marshalling facts and adducing evidence, they speak about the kind of norms and values that should inform such law. To give an illustration, Almiro Rodrigues points out how fair-process norms applied to ordinary criminal trials cannot be extended to war crime trials. This is because the perpetrator, who is viewed as a villain by one side, is seen as a hero by the other.

Informed by this insight, Rodrigues examines the various ingredients of a fair trial — such as self-representation, protection of liberty, and personal presence at trial — to determine how these principles should operate in a trial of war crimes.

Considerable significance is accorded to the decisions of international courts. It is because judicial choices do not just impact the parties before the court but influence the behaviour of the larger international community. This is the very reason why Wattad strongly disapproves of the decision of the Supreme Court of Israel that allowed the defence of necessity to be pleaded for applying torture on alleged terrorists. He makes a fascinating distinction between ‘justification' and ‘excuse' and contends that while the defence of necessity should not be a justification for state officials, it may, in an individual case, be an excuse. This is because an excuse in no way condones the wrongfulness of the act, even as it allows for

compassion to be shown to the wrongdoer. S.R. Bedi argues that India altered its policy of peaceful use of nuclear power only after the ICJ allowed for the possible use of nuclear weapons in self-defence.

Traditionally, the prosecution of crime and maintenance of peace and order have been regarded as the sole responsibility of national governments. As a corollary, a failure of national government and a failure in the enforcement of criminal law have come to be seen as inter-linked. Such perceptions of crime enforcement no longer hold good. The question what kind of behaviour merits what type of intervention by the international community is far from settled. This book makes an informed intervention in this vital area of contemporary concern.

CORRUPTION

PIONEER 14.6.10 CORRUPTION

Corrupt babus, weak leaders

Joginder Singh

The conduct rules of all Government employees in our country mandate that they maintain absolute integrity in their functioning. Though unambiguously stated, these rules have unfortunately been violated both in letter and spirit by bureaucrats as well as their political masters.

It might appear surprising that five months after the Secretaries Committee decided that Ministries with Central Public Sector Employees under their control would not allow them to use facilities owned by or paid for by these state-run companies, the Department of Personnel and Training asked its officials to return at the earliest and before March 31, 2010, all mobile phones, chauffeur-driven cars, air conditioners, laptops and faxes provided to them by Central public sector enterprises.

Instead of specifying that such misuse would attract dismissal or severe penalty, the order says, “Any such use shall attract suitable action... Any manpower or other facilities from CPSEs already being availed by the Ministries or Departments will be returned by the concerned Ministries.” The same communication adds, almost apologetically: “In case of exceptional circumstance, if there is a need to utilise a facility for a *bona fide* purpose related to official duty, usage may be allowed by the Secretary concerned for a specified period after a careful assessment of the situation.”

Common sense says that if one issues a directive, there should be no loopholes. But our legal experts leave sufficient loopholes when they

make laws in order to provide escape routes to crooks in the bureaucracy. Anyone who has had anything to do with the functioning of the Government has suffered the consequences. Nothing moves without love, money, influence or other considerations. I once asked a businessman why he required an agent to move around in Government offices and speak on his behalf. “One is generally unaware of the exact procedure to be followed for getting one’s work done. Even otherwise, it is too circuitous,” was his reply.

Notwithstanding Government’s claims of simplifying procedure, layer after layer of legislation is added to the point that it becomes too difficult to get anything done in the normal course of business. A single window system with a time-bound response is the only solution. The common complaint is that whether in India or abroad, Indian citizens face humiliation, contempt and ill treatment. If one makes a complaint against any member of the authority, one is guaranteed to receive no positive response.

Admitting that the bureaucracy has failed the country owing to widespread corruption and malpractices, the Cabinet Secretary in March said in a communiqué: “The issue of corruption needs to be addressed fair and square. Preventive vigilance should be strengthened. Transparency must be introduced in decision-making. Stringent action must be taken against officers found guilty. Disciplinary proceedings must be expedited.”

He added that civil servants were appointed on the basis of fair and open competition and said, “We must respond in full measure to the faith that citizens have reposed in us and meet their hopes and aspirations of good governance... Of late, there have been some disturbing incidents which call for serious introspection by civil servants. Integrity, honesty, objectivity, impartiality, transparency, accountability and devotion towards duty are the core values which civil servants should cherish and which form an integral part of our decisions and actions.”

The Ministry of Personnel, Public Grievances and Pensions has also stressed on the importance of bureaucratic reforms. “There is a perception that the Indian bureaucracy is inefficient and corrupt. If we are not able to provide for inclusive growth and maintain regional and social balance, it may lead to conflicts which may shake the very foundations of our federal polity and our nation,” Minister of State Prithviraj Chavan said. He added that India’s performance (132 out of 179 countries) as per UNDP’s human development index that provides composite measures on three dimensions of human development — life expectancy, literacy rate and standard of living — remains “abysmal”.

Six years ago, Prime Minister Manmohan Singh had assured Indian industry that a high-level standing committee with representatives from industry and the Government would review all existing industrial laws vis-à-vis international best practices and if required amend archaic laws to end the tyranny of the inspector raj. “The rules and regulations would be made more transparent and simple…The attempt would be to, as far as possible, not leave issues to personal interpretation and to ensure that discretionary powers are not misused,” Mr Singh said. But unfortunately, there has been no change in the working style of the Government.

It is a reflection on the utter insensitivity of our bureaucracy that while the common man and the poor are reeling under skyrocketing prices of food commodities, the subsidy provided by the Government for distribution of foodgrains through the public distribution system is being misused. The Justice DP Wadhwa Committee appointed by the Supreme Court to study the public distribution system said in its report: “It is a known fact that the Department of Food and Public Distribution has the dubious distinction of being one of the most corrupt in the country. Corruption is pervasive in the entire chain and it continues to remain a formidable problem. Most functionaries in the Department are typically callous and resort to corrupt practices. It is, in fact, a cancerous growth

and has to be chopped off."

The committee added that although the Centre was giving a "whopping" annual subsidy of Rs 28,000 crore to the States on food items to be distributed to poor through the system, it was being pocketed by a strong nexus of corrupt officials, dishonest fair price shop owners, treacherous transporters engaged by State Governments to carry the goods to the shops, and unscrupulous mill owners. While finding that wheat was being directly sold to flour mills, the committee said unless concrete remedial measures were immediately taken as suggested, "the poor will go on suffering at the hands of this nexus".

Despite setting up two Administrative Reforms Commissions, India's leaders have failed to implement their recommendations. Apart from weak political leadership, one reason for corruption and inefficiency that permeates bureaucracy at all levels is that it defends the *status quo* long after it has lost its relevance.

ECONOMIC DEVELOPMENT

TELEGRAPH 14.6.10 ECONOMIC DEVELOPMENT

People's access to justice

PATRICIA MUKHIM

On April 17 this year, the North Eastern Region Committee for Access to Justice and Socio-Economic Development Programme was launched by none other than the first citizen of the country, President Pratibha Patil, at ITA Machkhowa.

The President assertively stated that the legal system should not only meet the requirements of individual justice but should fulfil the broader role of being an instrument of legal empowerment for society and the nation. She said the large number of pending cases has caused deep cynicism in the common man.

The fact that access to justice is expensive also pushes it beyond the reach of the ordinary citizen. It is, however, also possible that lack of awareness about ways and means of accessing justice by availing of the facilities created by the state such as the State Legal Services Authority has been an impediment. The objective of the Committee for Access to Justice and Socio-Economic Development Programme is essentially to take the message about the programme to the last person in the village so that justice no longer remains the domain of the privileged, even while the common person continues to suffer grave injustices at the hands of the government and other agencies entrusted with implementation of welfare schemes.

It is heartening to note that the legal fraternity is now ready to step out of its ivory tower to bring justice closer to the people.

This would imply providing justice that does not demand too heavy a

price from the litigant. While many of the northeastern states have depended on customary laws to redress their grievances, these laws may not be adequate to address present needs.

The enactment of welfare schemes by the Union government and state legislatures requires that the law exercises its authority to ensure such legislations are implemented in letter and spirit. Now that development has itself taken on a rights-based approach, non-implementation of those rights should entail punitive action against those who abdicate their duties.

The role of the judiciary is not merely to interpret the Constitution but also to ensure that the rights mentioned in this overarching document are enjoyed by the citizens and that any attempt to deny these rights to any section would deserve strong judicial reprimand.

Court as rescuer

We now have Child Rights, Right to Education and Right to Information among others. The first makes it mandatory for the state to ensure that children enjoy all their rights, but more so, the Right to Education and Nutrition. Hence, the midday meal scheme. The Right to Education is a fairly recent legislation and the states are already groaning that they do not have the resources to implement this scheme. This means that the Union government should step in and do the needful. The states, however, also need to be imaginative and raise resources for this noble mission.

In 1988, the government of Meghalaya imposed a cess on coal whereby part of the royalty earned from this mineral was invested in primary education. This scheme was, however, soon abandoned. Such legislations are required to meet the expenses connected with the implementation of welfare schemes. The Comptroller and Auditor General's (CAG) report for all the northeastern states shows huge revenue leak which could have been judiciously invested in such welfare

schemes.

Since the CAG is almost a toothless institution and the governments cock a snook at it, it is left to the judiciary to reprimand governments and ensure accountability. So far the courts have failed to take suo moto action against such gross failures exhibited by the government.

Certainly, this cannot be termed as stepping into the domain of the executive because there is no other way that governments can be taken to task and made to invest their revenues in welfare schemes.

Even in regard to the Right to Information Act, groups across the region have faced immense resistance from different quarters in the government to provide information. Those who have persisted have been threatened with dire consequences. However, even if information is made available, the power to take action against the offenders is vested with the chief secretary who is the chief vigilance officer. It would be naïve to believe that a government functionary would take punitive action against his own officers or against politicians. This, to my mind, is the biggest flaw in the RTI.

It leaves activists with only one way out — to approach the courts with the public interest litigation (PIL). But how many PILs can activists take up? If the courts step out to take suo moto action in some cases, perhaps that might have a cascading effect and ensure better compliance and action against offenders who have been exposed by the RTI.

Mission mode

In the last decade, several beneficial legislations and programmes have been articulated by the Union government. They include the rural roads programme, employment guarantee scheme and the rural health mission. In the northeastern states these schemes are meant to be implemented on a mission mode — meaning a targeted intervention with commitment and purpose, but there have been interminable delays.

The first phase of the rural roads programme which started some five years ago is yet to be completed. Had this programme been implemented in a time-bound manner all our villages would have been connected to the district headquarters. Tardy implementation has always been the problem. But there is complete absence of monitoring of the way these schemes are implemented. Monitoring ensures that if the implementation model is faulty, the schemes can be engineered and tailored to meet the needs of the community they are meant to service. No monitoring means that even if the model is faulty it continues and finally fails. When the scheme fails no one is punished and no one is accountable.

The sad reality is that till date no NGO or community has gone to court to seek redressal for non-implementation or tardy implementation of schemes. Some have gone to court to seek justice when largescale corruption besets the state government. But courts have not been pro-active in treating such cases with the priority they deserve. It is also difficult to find public spirited lawyers to help civil society pursue such cases. Hopefully the Committee on Access to Justice will be more people-friendly and enable those living in the periphery to see development being delivered.

Justice Mukundakam Sharma, a Supreme Court judge and chairman of the NER Committee on Access to Justice has taken his task seriously. He is traversing all the eight states to activate the state units.

Eight points have been listed as part of the task of the Committee. They include (1) Right to Education (2) Child Labour and trafficking (3) Environment and Sustainable Development and Water Sources (4) Maintenance of Parents and Senior Citizens (5) Drugs and NDPS Act (6) Media and Social Justice (7) Terrorism and human rights (8) Domestic Violence and Gender Equality. These points are considered to be of fundamental importance to the region and will therefore be taken up by the Committee at its level and by states through the State Legal Services Authority.

A pro-active judiciary will hopefully bring justice for the collective in the form of speedy and effective implementation of beneficial legislations.

Hope indeed springs eternal in the human breast and there is need for optimism to overcome the dark clouds of dismay and cynicism.

(The writer can be contacted at patricia17@rediffmail.com)

EDUCATION

TELEGRAPH 12.6.10 EDUCATION

Recalling an old school
- An institution with little rooted identity

SUNANDA K. DATTA-RAY

A country's future cannot but be bright if its citizens prize education so highly as to commit crime for its sake. But one wonders whether qualifications are not bound to be flawed if there's a backdoor into school and college and a bribe overcomes the hurdle of examinations. No wonder Singapore derecognized Indian medical degrees.

Media reports about my old school prompt both thoughts. Yet — faint ray of light in the engulfing darkness — I know for certain of one recent instance of La Martiniere for Boys admitting only on merit a Bengali child without money or influence. This heartwarming news mitigated to some extent the shock I received 18 years ago when a respected private tutor told me she couldn't coach my son — not even a teenager then — because she did not take pupils from schools for "moneybags". Her objection was not ideological. Nor communal though she did identify "moneybags" in ethnic terms. Her point was that scholarship had to take a backseat in institutions so awash with money.

It was a shock because the school I remembered was anything but rich. Most pupils were poor Anglo-Indian boarders supported by the church or private foundations. No shame attached to being a foundationer. That was the purpose of Claude Martin's philanthropy. The Armenian boys also received help: the school prayer extolled their benefactor, Paul Chater.

The scattering of full-blooded non-Christian fee-paying Indian day scholars who went to school by bus or tram were admitted under gentle government pressure. The art master was the only non-Christian Indian on the staff, and he was not invited to the last British principal's farewell

party. I could understand it when the owner of Park Street's best restaurant, an old boy from before the Second World War when the school moved to Lucknow, told me he felt no attachment because "they didn't really want us".

The inexorable laws of demand and supply did not then set a price on everything. If La Martiniere has fallen like a ripe mango into the arms of those who know no other way of doing things, it is at least partly because it never had a rooted identity to defend. I recall a master who later emigrated to Australia (where else?) dismissing socially superior St Xavier's as "an Indian school". St Thomas, Kidderpore, and St James were undisguisedly Anglo-Indian. La Martiniere was also as Anglo-Indian as the Rangers Club but nursed pretensions derived from a unique provenance and the distinction of sister schools in Lucknow and faraway Lyons.

We were never allowed to forget that Martinians had fought for the government in 1857. The battle honours they won — the only school in the Empire to be so honoured — hung in the Lucknow chapel. Ceremonial occasions brought out the Union Jack and French tricolour. Signed photographs of King George VI and Queen Elizabeth (the last emperor and empress of India) graced the assembly hall and polished brass tablets, as in an Oxford college, honoured long-departed principals like "William Henry Arden Wood". We mispronounced the English public schoolboy's Latin slang. The few Brits on the staff were colonial relics who went on "Home Leave". A Lodge Martiniere lurked somewhere. Everything pointed to higher aspirations.

Anomaly and contradiction began at the inception when it was uncertain whether Martin had left his money to Roman Catholics or Protestants. They battled over his will until the former handed victory to the latter by rejecting the Privy Council's ruling of joint administration. The school was notionally Church of England in my time and that was its only certainty. No other British Indian institution took so long to come to

terms with contemporary reality.

Bengali posturing compounded ambivalence. It was the fashion to sneer at things *phiringi*; the derogatory word most commonly used was *tyansh*. But many cultural patriots in flowing *dhoti* pleaded and cajoled to get their sons admitted in our bastion of *phiringi* life. It was refreshing the other day to hear Julius Malema, the African National Congress youth leader, admitting on television, “It’s always been our ambition to live like whites.” Such candour is unthinkable in India.

“What has the school done?” Lakdasa de Mel, the last Metropolitan of India, once exclaimed over dinner in Bishop’s House. “All that expense and it’s only turned out generations of railway guards and customs inspectors!” Had the patrician Sinhalese, who was proud of his pre-Christian caste but a great and generous man otherwise, connected La Martiniere with St Xavier’s in Partibus, “the great old school” in *Kim*, he would have known that Anglo-Indians had no higher destiny under the British.

Change did not come easily to them, resulting in all manner of dissonances and discrepancies. Teachers and students who did not admit to understanding a word of any Indian language had to force themselves to sing *Jana Gana Mana*. My curiosity about the school authorities being called “acting governors” was only satisfied many years later when someone explained that the real governors under the charter were dignitaries like the commander-in-chief, lieutenant-governor and chief justice. Some positions had been abolished; some incumbents were no longer Christian. Hence the makeshift “acting governors” — white *burra sahibs* from Clive Street who added to the sense of impermanence since they were here today and gone tomorrow. The sole exception for a while was West Bengal’s devoutly Christian *rajyapal*, Harendra Coomar Mookerjee, whose attire occasioned merriment in the school where no one followed his Biblical references.

I can only guess what happened as the last of the senior old-school Anglo-Indians departed as the Brits had done, as the number of Anglo-Indian boys dwindled, and investments withered. There were no committed owners and managers with a stake in the traditions that had nurtured the school's sense of being different. Authority had to be vested in Christians and that often meant inconsequential people on the make gambolling like Kipling's *bandar-log* in the abandoned city. The saintly Mookerjee would have turned in his grave at their antics.

One heard of Indian Christians trying to pose as Anglo-Indians in hopes of benefits but theirs can have been a feeble intervention. They did not have the money, connections or business acumen to fill the vacuum when the school was up for grabs. It was like sterling tea gardens and British management agencies. The sharp operators hovering around greedily eyed La Martiniere's two most marketable assets — prime land and the imprimatur of a supposedly Anglo-Indian education in a state that the Marxists were purging of English.

It's many years since I entered the gates but I can imagine the promoters, hand-in-glove with some of the Indian Christian worthies to whom management passed, gnawing like jackals at the estate's carcass. The assembly hall was the first casualty. Much of the land bounded by Loudon Street, Lower Circular Road, Rawdon Street and Moira Street (the old names seem more appropriate) has gone, the still lofty main building imprisoned by ugly new structures to the gods of commerce. One mocks Claude Martin's Lucknow palace for calling itself Constantia. More money-driven vandalism is evident in Moira Street. A string of other scams is reported.

Education is big business in upwardly mobile India. *The Guinness Book of Records* acknowledged South Point School's spectacular explosion. Delhi Public School is expanding like any multinational organization. English-medium instruction commands the highest price and a touch of Anglo-India (a Rozario or Parker on the staff) adds value. Irrespective of

standards, the snob appeal that still attaches to even the shade of the La Martiniere that was generates brisk commerce.

Such institutions sell a dream even more than education, the “simple dream” that inspired Malema and his comrades to fight for freedom, “If we defeated apartheid we would all live like whites.”

Flats sell at huge undisclosed premia. Trading in dreams may yield even higher profits.

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TELEGRAPH 9.6.10 EDUCATION

THE MORE THINGS CHANGE...

The draft Higher Education and Research Bill promises to promote greater autonomy in higher educational institutions. But it may end up doing just the opposite, says **Seetha**

NEW DEAL: Academic Yash Pal (right) with human resource development minister Kapil Sibal after submitting the Yash Pal Committee report last year

It could be a new architecture for regulating higher education. A draft bill — Higher Education and Research (HER) Bill — that will set up a National Commission for Higher Education and Research (NCHER) is to be placed before the Central Advisory Board of Education (an advisory body under the human resource development ministry) when it meets on June 19.

The establishment of an NCHER was recommended by the Committee to Advise on Renovation and Rejuvenation of Higher Education, headed by academic Yash Pal (and hence known as the Yash Pal Committee). The committee envisaged this body to be the overarching regulator for the entire higher education sector. It was also to subsume all existing regulators such as the University Grants Commission (UGC), All India Council for Technical Education, National Council for Teacher Education, and the academic functions of the Medical Council of India, Bar Council of India and others.

Most experts agree that the present system of multiple regulators in higher education isn't working. "Everyone is pulling in different directions. If you want to open up the sector, new entrants will need a

system which is transparent, dynamic and a regulatory agency that doesn't micromanage," says Amitabh Jhingan, partner and education sector leader at consulting firm Ernst & Young.

The draft HER Bill does seem to be an improvement over an earlier version (called the NCHER Bill). That draft had attracted widespread criticism for over- centralisation and bureaucratisation of the education system. Yash Pal too feels that it is better than the earlier draft but wants to wait and see what shape the final bill takes when it is tabled in Parliament.

Yash Pal is satisfied, though, that the new bill brings medical education under the purview of the NCHER, something which the earlier bill had omitted.

The overall responsibility of the NCHER is to promote the autonomy of higher education institutions, facilitate access, inclusion and opportunities for all and promote a culture of quality and excellence in higher education.

A major innovation in the draft HER Bill is the setting up of a Higher Education Financial Services Corporation (HEFSC) as a company registered under the Companies Act, 1956. The corporation is to disburse funds to universities on the basis of norms and principles set by the NCHER. This is an improvement over the current system where the regulator (UGC) is also the funds disburser, a practice the earlier draft had continued.

However, the HEFSC is not getting unqualified approval. For example, the president of the Delhi University Teachers Association, Vijender Sharma, worries that this will bring a corporate culture to the financing of education.

One criticism against the earlier draft was that it eroded the autonomy of state governments. No universities could be set up without the

“authorisation” of the NCHER and, therefore, even state governments would have become supplicants before the commission if they wanted to establish a university. The new draft seems to address this by saying that every university has to intimate the NCHER of its intention to commission operations, along with an assessment report by a registered accreditation agency. The NCHER cannot refuse “commencement of academic operations in a university” if it fulfils the stipulated norms and it has to either “declare” or “reject” the request within 120 days.

However, Sharma insists that the changes from the draft NCHER are only cosmetic. Since no institution can confer a degree without a declaration from the NCHER, he points out, states still don’t have the freedom to set up universities. The draft HER Bill, he insists, far from decentralising the system will only further centralise it and erode the autonomy of higher education institutions.

There’s concern also over a proposed Directory of Academics for Leadership Positions from which institutions can choose their vice-chancellors. The directory is to be prepared on the basis of names suggested by a collegium of scholars. The earlier draft had made selection of vice-chancellors from a “national registry” compulsory. The revised draft says the directory is available for universities “if they so require”. Yash Pal, however, wonders if there is a need for this at all. “Lists like these will only have competent people. Our universities don’t need merely competent people. They need special people who will make an impact. Such people will not figure in lists of this kind.”

Yash Pal is also unhappy at the large number of formal structures that the draft bill sets up. There is a collegium consisting of scholars of repute which is to “aid, advise and make recommendations” to the NCHER on a range of issues, recommend names for the post of the chairperson and members of the NCHER and constitute advisory committees on specific issues. Then there is an 11-member general council which includes, among others, representatives of each state

higher education council, vice-chancellors of universities, heads of professional bodies, among others. The council is to make recommendations to the NCHER on steps to enhance access to education, to link education with professions, remove imbalances in education, funding of education, to name just a few.

“Why are they adding layers and layers of bodies,” asks Yash Pal. His report had mentioned a collegium but that was to be an informal body of eminent academics who would advise the government on educational policy and on the selection of the chairperson and members of the NCHER. “We had never intended it to become another formal body,” he says. “With structures like these, freedom and autonomy will be meaningless.”

Over now to the Central Advisory Board for Education.

JUDICIARY

PIONEER 9.6.10 JUDICIARY

The justice system is crippled

Anuradha Dutt

The Bhopal court's verdict in the Union Carbide disaster case has come 23 years after trial began. The judgement is infirm and the punishment for the accused inadequate

A Bhopal court verdict, fixing culpability for Union Carbide's pesticides plant leak 25 years after the disaster occurred on the night of December 2-3, 1984, is an indictment of our legal system on three counts. First, the judicial process to nail culprits stretched over an inordinately long period, spanning one-third of the average human life span. And as the old adage goes, justice delayed is justice denied. Second, the pathetically meagre punishment meted out under existing laws to Union Carbide and eight former executives of the firm is a token penalty. The former executives have been sentenced to two years imprisonment and fined Rs 1 lakh each while Union Carbide has been fined Rs 5 lakh. And third, to compound the injustice, those convicted have been granted bail after furnishing personal bonds of Rs 25,000 each.

The disaster killed at least 15,000 people and afflicted many more with serious ailments. All right-minded people have condemned this mockery of justice. In an attempt to show that he shares the public sentiment, Law and Justice Minister Veerappa Moily has come out strongly on the issue, declaring that the main accused, Warren Anderson, who was chairman and CEO of the parent company at the time of the disaster, is a

“proclaimed offender” since he has never responded to summons, and that the case against him is not closed. The American and his top managers are accused of having known the pitfalls of storing lethal chemicals within city limits. He has also been charged with having compromised security by undertaking cost-cutting measures. He was arrested by the police on his arrival in Bhopal after the disaster but allowed to return to the US the same day. That was the last India saw of him. The CBI formally charged Anderson with culpable homicide not amounting to murder in 1987.

Mr Moily's reaction is not credible, given that the then Congress Governments in the State and at the Centre allowed Mr Anderson to flee. His assurance that Mr Anderson could still be tried elicits disbelief as past events indicate that the entire official and legal machinery appeared to have colluded to ensure his escape and freedom. Angry activists blame the ruling dispensations at the Centre and in the State for letting the American return to his country. They are also critical of a Supreme Court intervention in the case pertaining to the disaster, and the role of the late jurist Nani Palkhivala, whom the US corporation hired.

In the first instance, the order of the Justice AM Ahmadi Bench of the Supreme Court, in its order of September 13, 1996, diluted charges against the Indian accused from manslaughter to death caused by a rash or negligent act. The former allows for a 10-year jail term as against a maximum jail term of two years for the latter. Culpability was transferred to Dow Chemical Company after it took over Union Carbide Corporation, USA, in 1999.

In the second instance, Palkhiwala filed an affidavit on behalf of the corporation in New York's Southern District Court, on December 18, 1985, certifying that the Indian judicial system could “fairly and satisfactorily handle the Bhopal litigation”. That sealed the fate of the victims, with judicial proceedings dragging on for 23 years and providing inadequate monetary compensation by Dow Chemical

Company — an amount of $470 million — for the kin of victims as well as the ailing, numbering well over a lakh. The settlement was brokered by the Supreme Court.

The archaic nature of the Indian criminal justice system, a legacy of the British Raj, holds out little hope for the victims and their families. Charles Dickens lampooned the progenitor of this system, the British judiciary of the 19th century, in Bleak House, thereby triggering reforms. The Congress-led UPA regime has done nothing during its tenure to modernise the system and expedite disposal of lakhs of cases pending in the courts.
The NDA Government did make efforts to streamline the functioning of the courts and make judicial proceedings time-bound. Towards this end, in July 2002, two important Acts were passed: Civil Procedure (Amendment) Act 1999 and Civil Procedure (Amendment) Act 2002. These were meant to ensure speedy disposal of civil suits. A case would have to be settled within a year of the date of filing. A litigant could not ask for more than three adjournments.

In April 2003, the Malimath Committee, set up to review the criminal justice system and propose changes in the IPC and the CrPC, submitted its report to the Home Ministry. The UPA came to power soon after, and the report and the Acts seem to have been given a quiet burial.

INDIAN EXPRESS 10.6.10 JUDICIARY

Caught in court

Pratap Bhanu Mehta

The verdict in the Bhopal gas tragedy has caused considerable outrage. It seems to provide little recompense to the victims, and little assurance to the public at large that the legal system is up to protecting us from the risks that make us all vulnerable. Perhaps there will be learning from this case, but I doubt any Indian has any more confidence that the legal system can protect us from catastrophic risk than we did twenty years ago.

The outrage is less over the specific verdict of the lower court, where the judge may have been constrained by the way charges were framed. The outrage is over how a whole system, every single part of it, from the investigating agencies to politicians, from corporate power to the judiciary, managed to efface a monumental human tragedy. And all of this was done using the instrument of law itself; as if law, rather than an instrument of justice, was a vast concoction of technicalities and evasions to evade it. In a macabre way, this episode enacted a version of Stalin's dictum to the effect that a single death is a tragedy, but the larger the number the more it is a statistic. The "system" did as effective an effacement job as anyone could have.

The implications of this judgment are being pondered for sundry issues, including India's geo-strategic position in relation to the US. Much of this discussion has focused on the political implications of this for the Civil Nuclear Liability Bill. But for those who think that even such

colossal suffering should be assessed through the geo-strategic prism, the important question should be what this says about the credibility of our own institutions to serve our citizens. There is no doubt that the judgment has come again as a reminder of how fragile the authority of the Indian judiciary is. The last few years have made a huge dent in the reputation of the Indian Supreme Court on several dimensions, so much so that a propitious political ground has been created for more political oversight and superintendence of the judiciary. In terms of public reputation and authority the Indian Supreme Court is probably at its weakest in a number of years, with greater clamour for its accountability. The decision has again drawn attention to the fact that for all its thunderous bluster, the Supreme Court has, at crucial moments, let the country down. In a sense it has to constantly reclaim its legitimacy.

The legal twists and turns of the Bhopal case are enormous. Upendra Baxi's work should be compulsory reading for anyone interested in excavating how the law sent justice for a toss in this case. A lot of the criticism of the Supreme Court in recent times has focused on institutional matters: the reluctance of judges to disclose assets, the lack of self-regulation within the judiciary, its failure to deal with corruption cases, the lack of judicial consistency, the gerrymandering of benches, the undue deference it consistently shows to top lawyers, the politics and lack of transparency of appointments, and so forth. The more serious and consequential critique of the Supreme Court should focus on its substantive failures in matters of law and governance. Bhopal was an illustrative case of how the Supreme Court could go seriously wrong.

In principle, the Supreme Court justified its original settlement orders in the case under the pretext of providing swift compensation for the victims, and on grounds that there was no law governing vicarious

liability that was applicable in this case. But both these arguments were, in a sense, travesties. The Supreme Court's role in reducing the settlement, in reclassifying injuries deserving of compensation, has always remained unfathomable. And the court's stand on vicarious liability has also cut little ice. It is important to remember that on the basis of available evidence, that the term "accident" in this context is one of those Orwellian words that hides more than it reveals. There was ample evidence presented in Court that Union Carbide knew that the safety standards in the plant were not up to mark; that it deliberately refused to act despite early warnings and a small prior gas leak. In short, the issue was not liability for an "accident"; it was liability for knowingly not acting upon risks that were known to exist.

The Supreme Court gets a lot of the blame for the legal travesty in this case, because it did not display a credible grasp over the principles at stake. It was all the more perplexing in light of the fact that the court has been importing all kinds of doctrines into Indian jurisprudence, as and when it needs to. In fact, a candid assessment of the range of the court's interventions in terms of rights would have to conclude that the court has the imprimatur of ad-hocness about it. To take one example, the court's much celebrated environmental jurisprudence has often imported principles like the precautionary principle, in ways that even distort its original meaning; it essentially converts tort claims into cases of precautionary principle.

While much attention will focus on the delay in court proceedings, equal attention needs to be paid to how jurisprudence evolves in the Supreme Court. The Supreme Court has, on the face of it, expanded the domain of rights, often at the risk of great semantic contortion. But these doctrines have often been more in the service of expanding its formal jurisdiction,

than it has been on achieving real objectives. There is a line going around about the court's jurisprudence which is something to the effect, "it articulates strong rights, gives them very weak content, and leaves them unenforced."

Debates over environmental regulation and protection from risk are so fraught because the courts are not trusted institutions. But it is important to recognise that this is not just because of institutional infirmities in the justice system which leads to delays. It is also because of a lack of serious intellectual leadership with the Supreme Court which has often failed to craft doctrines with sufficient, clarity, precision and scope to inspire confidence.

The Supreme Court is now in a battle for its legitimacy. Most of its wounds, including the handling of Bhopal, are self-inflicted. In fact in the entire debate over regulatory reform in India, very little attention is paid to the fact that institutions often fail, not because of their formal design or powers or lack of insulation from politics. They fail because of lack of internal institutional and intellectual leadership that is up to the task of the challenges the court faces.

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LIBRARY SCIENCE

TELEGRAPH 15.6.10 LIBRARY SCIENCE

Delhi lobs library book at publishers

CITHARA PAUL

The Indian government has riffled through its scriptures to find a quirky law to satiate a rediscovered appetite for free books.

The Centre has cited a 56-year-old law to issue notices to all publishers in the country saying they must send a copy of every new publication to each of India's four notified or "national" libraries at their own expense.

These libraries are: Calcutta's National Library, the Connemara Public Library in Chennai, Delhi Public Library and the State Central Library in Mumbai.

If a book is not sent within 30 days of publication, the government says, the librarians must lodge a court complaint under the Code of Criminal Procedure. The publisher will be fined the cost of the book under the Delivery of Books and Newspapers (Public Libraries) Act, 1954.

"Initially, nearly every publisher would scrupulously observe this commitment under the 1954 act. But the publishers' negligence has increased over the decades and we had to remind them,'' a culture ministry official said.

The librarians of these national libraries had independently taken up the matter with the publishers several times but with little result, he added.

A retired National Library official said the library, on an average, received less than a fifth of the estimated 30,000 books in English and

70,000 in the vernacular languages that are published in India every year. Last year, through a special initiative, it received around 35,000 books.

Asked why the library did not buy the rest of the books to meet its responsibility towards the reader, he said it lacked an earmarked fund to do that. So, it bought Indian publications only if their old copies, already with the library, were damaged.

He added that publishers who complied with the 1954 law sent all their books, even the expensive ones, whereas the rest did not bother even to send their cheaper publications.

The act spells out the publisher's duty in detail: "The copy delivered to the National Library shall be a copy of the whole book with all maps and illustrations belonging thereto, finished and coloured in the same manner as the best copies of the same, and shall be bound, sewed or stitched together, and on the best paper on which any copy of the book is printed."

The government plans to amend the act and raise the fine to 10 times the book's cost, the culture ministry official said. "The penalty has to be made stricter so that the publishers will not forget their commitments."

He said the publishers who ignored the 1954 law were actually losing out on business, because the four notified libraries prepared a "national bibliography" every year listing all the books published in India they had received. "The list is procured by all the leading libraries in the world. By not sending their publications to these four libraries, the publishers are losing a unique opportunity to give the widest possible publicity to their publications."

WITH CALCUTTA BUREAU INPUTS

SOCIAL POLICY

TIMES OF INDIA 11.6.10 SOCIAL POLICY

Lure Of Social Networking

N D Batra

In the United States and Canada, recruiters invariably do Google search on their prospective candidates and trawl social networking sites such as Facebook, MySpace and LinkedIn to cross-check before they hire anyone. With millions of young people eager to share their spur-of-the-moment opinions, risque photos and outrageous experiences with others including strangers, the danger of compromising one's digital identity, privacy and social reputation and, consequently career prospects, is tremendous.

In a free-floating social network environment, users unfortunately forget that the delete key provides a deceptive and illusory function because someone might have already accessed the information and passed it on to others. Once information goes viral, we cannot recall it a curse of the digital age as many American politicians have been discovering. Or maybe it is a public blessing because now no politician can hide from us. Since the internet has taken up the centre stage in our lives, opting out of it is not an option. Our digital past cannot be undone and can haunt us.

According to a recent report from Pew Internet & American Life Project, 46 per cent online adults in the US have uploaded their profiles in virtual networks, which they keep monitoring and updating. And a majority of adult Americans use search engines to find information about themselves no, it's not digital narcissism but a modern-day necessity because maintaining one's reputation and privacy has become

difficult in the age of social networks. How ironic that you have to keep checking yourself online to know who you are!

More than older people, it is the younger generations, the 18-29 career-making age group, according to the report, that are keen to limit their personal information available online; they change their private settings, delete unwanted comments and remove their names from any photos tagged to identify them. There is a growing distrust of social networking sites, in spite of the fact that their use is increasing everyday. Since most cameras now come with instant YouTubing capabilities, one gets paranoid seeing a person clicking in public places.

The Pew Centre reported that nowadays most Americans do thorough online search about an expert whose professional services they seek. And this is certainly true about doctors, surgeons and financial experts, people so important to us today. Dating partners do online research about each other before they get into deeper waters. Even neighbours do digital social network snooping on neighbours.

A few days ago a Facebook friend of a friend in India posted a dreadful hate cartoon about a most revered prophet, which i had to delete promptly, not out of fear but out of sheer disgust. Earlier, someone had posted on my Wall a picture of an armed Maoist group, mostly gun-slinging women with children, which drew lot of comments from the friendly strangers on my Facebook. India's Facebook population at about eight million is tiny in comparison with 112 million in the US, but it is growing at a double-digit rate. And the potential is immense, especially when Indian cellphone users, 500 million and growing, the second largest after China, leapfrog fixed-line internet connections and begin to use mobile Web for social networking via the cellphone. It's hard to say how much openness Indians can stand once the country becomes one giant digital fish bowl but the lure of social networking is irresistible.

Today, a man is known by the company he avoids rather than that which

he keeps, but in the digital age barriers are so low that sometimes it is difficult to know who is entering your cyberspace. Friends recommend friends and, sooner than you realise, you have a hyperactive communal space where everyone is buzzing and posting something: from a new mom about how her lovely one-year-old warrior is growing so fast, to the most recent conspiracy theory about the railway accident that was engineered to malign the good woman of Kolkata, the redoubtable Mamata Banerjee.

I had to reset my Facebook privacy settings to restrict entrance but i am still not sure how secure the firewall is. Facebook voraciously collects personal information which it utilises for profiling users to enable advertisers to target them more productively. Facebook makes money out of our digital footprints. Under severe public protests, Facebook promised better privacy protection but few trust the network. Nonetheless, its 450 million users worldwide keep socialising perhaps because the benefits of serendipity outweigh the risks.

Online serendipity indeed can be a blessing. For example, sometime ago a Kolkata writer friend, a translator of Tagore's poems and songs, sent me a piece which i published on my website more like a message in a bottle than for distribution. But to my great delight the piece was picked up by the Bulletin of the Ramakrishna Mission Institute of Culture, as part of the 150th anniversary celebration of the poet's birthday. Nothing is lost once it is in cyberspace and an obscure piece in a blog or social network can reach a universal audience.

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