H. C. ARORA

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BURNING PROBLEMS OF THE NATION & THEIR SOLUTIONS

HIGHLIGHTS

- Ayodhiya Disputes
- Religious Conversions
- Hung Parliament
- Reservation for Women (in Parliament)
- J & K Problem
- Judicial Inquiries
- Taited Representatives
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- Unauthorized Colonies
- Communal Roits
- Corrupt Public Servants
- Disappearing Tigers
- Paper Leaks
- Muliplities of Banks
- Political Bank Directors

SINGLA LAW AGENCY

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OF

THE NATION
&
THEIR SOLUTIONS

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DEDICATED

TO

My Gurudev

Swami Vishvas Ji

Meditative Thinking

Meditative thinking is a departure from normal meditation process. During meditation, one is supposed to be acting only as a witness to the happenings taking place in mind. He is supposed to be completely passive. However, at the start of meditation, a person may think deeply on a problem, in search of best and non controversial solution thereto. The way certain scientists like Archimedes made certain inventions can be taken as instances of solutions found by men when they were in deep meditation and they jumped with joy when suddenly some idea occurred to them. As a matter of fact, they were not consciously meditating. Rather, they appear to have entered the realm of meditation incidentally, and found answers to the questions that were staring them in the face. One can well imagine the result if such scientists had entered the realm of meditation consciously for searching solutions to the problems faced by the mankind.

Our athletes, our sharp shooters, our scientists, our political leaders and other people can do wonders in their fields once they venture into the field of meditation. This I am speaking from my own experience in entering the realm of meditation every morning, with some problem facing the Nation in my mind, for the last about two years, and the ideas gathered by me during this process of meditative thinking are being put before the Nation for critical examination. However, it is not my cup of tea to explain how the meditation works such miracles. This aspect is better left to my Gurudev, Swami Vishvas ji.

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Ayodhiya Dispute

Our country has always shown tolerance towards all religions. It has always been secular to the core. The demolition of Babri Masjid, by a section of our people, in a fit of frenzy, was most unfortunate, but it has now become a part of history. We must not forget a fundamental principle of history, that history can neither be created nor destroyed. The demolition of Ram Mandir which was at the disputed place, and which is a question of pure and simple faith for the Hindu community, and construction of Babri Masjid over it, is also a part of history. The performance of *pooja* since long at this place is also a part of our history by now, and the emotions of crores of members of the Hindu community are attached with it. The non-performance of *Namaz* at this place by the members of the Muslim community is also by now a part of history. By demolishing the Babri Masjid, its history could not be destroyed. Rather the people have become alive to this history more than what they ever were. The entire controversy is *sub-judice*. The issue is emotive for the Hindu community, and quite sensitive for the Muslim community. It can only be solved through a *"win win approach"* for both the communities. The feelings of Muslims have been hurt the way the Babri Masjid was demolished. Thus, as a part of handing over the entire area to the Hindu community, for constructing a grand Ram Mandir at the same place, with sanctum sanctorum at the place where *pooja* is being performed by the members of the Hindu community, a replica of the Babri Masjid be erected at the same place where it was before its demolition. That is the only ideal solution of the problem. If a solution to the problem is arrived at on these lines, the coming generations would remember the history of Ram Mandir as a tribute to our secular heritage. Let the Nation consider this suggestion coming from a patriot lay man like me.

2

Reservation for Women (In Parliament)

There is urgency to have 33.33% reservation for women in the Parliament. Every political party, in principle, agrees that such reservation has to be there, but it cannot be permitted at the cost of replacing the existing members of the Parliament, who have been elected by the people. Removing such elected representatives, indirectly by reserving some constituencies for women, would not be in the interest of the Nation. At the same time, the Nation cannot afford the luxury of increasing the number of seats in the Parliament. Some of the political parties have opposed such reservation on the principle that only the women from high profile families would enter the Parliament through the new system at the cost of women from scheduled castes and backward classes in the absence of reservation of same for the latter. All these concerns are genuine, which could not be addressed so far, and that is the precise reason why consensus is deluding the political parties, despite their wish to empower the women by reserving 33.33% seats for them in Parliament.

My humble suggestion is that all conceivable genuine concerns of various political parties, in relation to reservation of seats for women in the Parliament, can be addressed by passing a simple legislation, not requiring any constitutional amendment, which may be called "The Representation of Women in the Parliament Act, 2006". The proposed legislation should provide for filling up all the seats of Council of States, except under the nomination quota, through the existing system of filling up those seats by single transferable vote, but as regards the qualification for being chosen to membership of Council of States under the proposed legislation, not even a single word of Constitution of India, nor that of the

Representatives of Peoples Act, 1951, need be touched, and the only thing to be provided in the proposed legislation is that all the seats in the Council of States shall be filled strictly in accordance with the provisions of the Constitution of India and the Representation of the Peoples Act, 1950, but only from amongst the women members of the Gram Panchayats.

In my humble but considered view, if the legislation as suggested is passed, all the evils connected with the present system of election of members of the Rajya Sabha, through back door, would be eliminated, and only the real grass root level representatives of the people would enter the Rajya Sabha from a particular State or Union Territory. Another ancillary benefit of the proposed legislation would be that running of Panchayti Raj Institutions through proxy by the husbands of female members of the Panchayats would come to an end.

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3

Religious Conversions

There is a very thin dividing line between right to profess and propagate a religion, and to convert the persons from other religions to one's own religion, as the allegations of financial assistance or other allurements are always denied by the concerned people. Sikhs in the border belt of Punjab are being converted to another religion. Hindus in tribal belts are being converted in a similar manner. The children of such Hindus and Sikhs get admission in minority educational institutions. Some of such converts later get re-converted into former religion. Such pulls and pressures, threats and counter-threats, allurements and counter-allurements by the champions of rival religions vitiate the peaceable atmosphere of the concerned region. In fact, conversions are the biggest reason for communal disharmony in our country. Our country is oscillating between conversions and re-conversions, with communal riots in-between. Article 25 of our Constitution gives to every citizen the right to freedom of conscience and free profession, practice and propagation of religion.

Thus any anti-conversion statute in our country would be counter-productive. It would only add fuel to the fire. Let us make a legislation not opposed to conversions, with certain safe-guards against monetary allurements etc. leading to conversions of poor and needy citizens without free conscience. I may suggest that following stipulations be put in the new statute to be called "Conversions Act, 2005":-

1. There shall be no restriction on any citizen to convert to any other religion as per his religious belief and free conscience;

2. On conversion, the convert shall be entitled to profess, practice and propagate his new religion;

3. On conversion also, the convert snall not lose his legal rights based on his original religion, for instance, the right of a member of scheduled caste to reservations in appointments etc., on conversion to Islam, shall not be forfeited, although he shall be free to waive those rights;

4. On conversion, the convert shall not be entitled to any new legal rights under the new religion during his life time, nor his children would be entitled to such new rights. For instance, a Hindu converted to Islam shall not be protected in case of bigamy, nor such Hindu on conversion to Christianity shall be entitled to get his children admitted in medical college against Christian quota, although he shall be free to avail all his legal rights as available to him as a Hindu.

With such a legislation, the menace of conversions shall be reduced to a great extent.

4

Hung Parliament etc.

Our electorate, by returning hung Parliament or hung State Assemblies, has too often threatened the very basis of our Constitution. Latest example of Bihar is before us, where Assembly could not be constituted, and in the absence of clear majority with any coalition, what to speak of a single largest political party, neither any popular Government could be formed, nor the newly elected people's representatives could draw their salaries in the absence of administration of oath to them. In the Centre also, the UPA Government, like the earlier NDA Government, is facing rough shod from its coalition partners every now and then. It is, therefore, suggested that in such a situation, the President or the Governor, as the case may be, should be empowered to invite the single largest political party to form Government, without any condition to seek vote of confidence. Rather, the system of seeking vote of confidence should be done away with. A no-confidence motion may, however, be permissible to be passed for toppling such a Government, by a two third majority of the members present and voting. Thus, the following amendments in the relevant provisions of the Constitution are required to be made in article 75 of the Constitution:-:-

"*Article 75 (1) The leader of the single largest political party in the House of People shall be appointed by the President as Prime Minister, and the other Ministers shall be appointed by the President on the advice of the Prime Minister.*

(2) The Ministers shall hold office during the pleasure of the President.

(3*) The Council of Ministers shall be collectively responsible to*

the House of the People, and shall be presumed to enjoy the confidence of the House of People unless a no-confidence motion is passed against the Counsel of Ministers by at least two thirds of the members of the House of People present and voting."

Likewise, following amendment shall have to be carried out in article 164 of the Constitution, in relation to formation of State Governments:-

Article 164 (1). Other provisions as to Ministers.-*(1) The leader of the single largest political party in the Legislative Assembly shall be appointed by the Governor as Chief Minister and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor:*

Provided that in the States of Bihar, Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

(2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State, *, and shall be presumed to enjoy the confidence of the Legislative Assembly unless a no-confidence motion is passed against the Council of Ministers by at least two thirds of the members of the Legislative Assembly present and voting.*

5

Speaker's Role under Anti-Defection Act

Our Constitution gives pre-eminent role to Speaker of Lok Sabha and also to the Speakers of the Legislative Assemblies in the democratic fabric of our country. The Supreme Court and High Courts have their own pre-eminent role in their own sphere. Both these organs of our democratic system are expected to respect each other. The very day the Anti-defection Act conferred a role on the Speaker, which was not envisaged under the original Constitution, a sort of imbalance was created, which was bound to affect the health of our democratic system. This imbalance came to the forefront during latest episode in Jharkhand Legislative Assembly. The whole country felt perturbed about the criticism of the judiciary by other wings of the Constitution. The concept of judicial review enjoins upon the Supreme Court to preserve and protect the Constitution in such a situation. Without going into this debate, which shall continue so long as the Speakers continue to enjoy the power to decide the disputes about the disqualification of an M.P. or an M.L.A., it may be submitted that the affected person is always expected to approach the High Courts and Supreme Court, as his or her political future is at stake. The role of the Speaker is bound to be commented upon by the judiciary in case his decision is liable to be reversed, in the interest of justice. It is, therefore, suggested that paragraph 6 of the Tenth Schedule to the Constitution be reviewed and the power to decide disputes about the disqualification of a member of a House be conferred on the Chief Justices of the concerned High Court, with a further right of appeal to the Full Court of the concerned High Court. That will remove the very bone of contention between the Parliament and Judiciary, and restore their supremacy in their respective spheres.

6

Appointment of Governors

There is always much scope for improvement in the functioning of any institution. Same can be said about the Constitutional post of Governor. Moreover, the status and dignity of this Constitutional post has been considerably undermined by the quality of appointments made, and frequent and wholesale removal of Governors made on change of the Government at the Centre. Under the present set up, when the Governors are removable at the pleasure of the President, to be exercised on recommendations made by the Central Government, the Parliamentary democracy at the State Government level is not safe. It is, therefore, suggested that the procedure for appointment and removal of Governors should be changed, and they should be appointed for a fixed tenure, by the Chief Justice of the concerned High Court, from amongst a panel of retired Judges of the concerned High Court, as they are required to interpret the Constitutional provisions, during constitutional crises, and are supposed to act in an impartial manner. The provisions contained in articles 155 and 156 of the Constitution should be amended accordingly.

7

President's Rule in States

Article 356 of the Constitution empowers the Central Government, through President, to issue a proclamation for imposition of President's rule in a State, on receipt of a report from the Governor of that State ***or otherwise,*** on being satisfied that the Government of that State can not be carried on ***in accordance with the provisions of the Constitution.*** A perusal of these provisions very clearly indicates that the satisfaction of the Central Government may be based on the report of the Governor or otherwise. The word "otherwise" is a pointer towards the circumstances where the Governor may be remiss in the discharge of his duties, and despite break down of the Constitutional machinery, may not submit proper report to the Central Government. In such circumstances, the Central Government may arrive at its satisfaction on the basis of material otherwise available to it. Thus, the Governor's report is not a *sine qua non* for imposition of President's rule in a State. The other important aspect is about the circumstances during which such a proclamation imposing President's rule may be issued by the President. That aspect is also very clearly laid down in article 356, i.e., when the Government of the State can not be carried on in accordance with the provisions of the Constitution, meaning thereby when the Constitutional machinery (as distinguished from mere law and order machinery) in a State has broken down. A perusal of the Constitutional provisions contained in Chapter II of Part VI of the Constitution shows that the only provision relating to constitutional machinery is contained in article 164, which lays down that "the Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor". This provision is akin to that appearing in article 74 of the

Constitution, which lays down that "There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of its functions, act in accordance with such advice." Thus, the President's rule under article 356 may be imposed by the President (on the advice of Central Government) in the circumstances under which the Prime Minister in the Centre could have been directed to step down, meaning thereby that where the Chief Minister does not carry the confidence of the House, his Government is bound to be replaced by issuance of a proclamation under article 356. There is no other circumstance which may justify the imposition of the President's rule in a State. Any amount of deterioration in the law and order situation in a State can not justify the Central Government, through the President, to interfere in a State under article 356. The Nation is to be blamed for this situation, because earlier before the amendment of article 352 of the Constitution, at least in case of worsening of the law and order situation in a State to a great extent on account of "internal disturbances", it was possible for the Central Government, through the President, to issue a proclamation of emergency in such State, but unfortunately, with effect from 20.6.1979, the words "internal disturbance" were replaced by the words "armed rebellion". Thus, the sooner the earlier words "internal disturbance" are restored in article 352 of the Constitution, the better would it be for the Nation, so that in case of repeated Naxalite attacks, or terrorist attacks, in a State causing deprivation of the fundamental right to life and liberty of the people, an emergency may be imposed in such a State under article 352, instead of imposing President's Rule under article 356, thereby making that State amenable to Central Government's control to a limited extent, without removing the popular Government .

8

J & K Problem

The accession of the State of Jammu and Kashmir to India is complete and irreversible, but the accession of Kashmiri hearts to the Indian hearts is yet not complete. That is the only problem being faced by us in the State of Jammu and Kashmir, and all acts of terrorism and lack of development in that State are due to incomplete accession of Kashmiri heart to the arteries of our Country. The accession of hearts can not be achieved by negotiations, or by monetary assistance, or packages for development of the State of Jammu and Kashmir. Something much less(not more) than that is required to be done by the Central Government. It is, therefore, suggested that the Central Government may take the following steps for bringing the people of Jammu and Kashmir to the Indian mainstream:-

(1) It is suggested that a very simple and short legislation be brought by the Central Government taking upon itself the responsibility for awarding compensation to the victims of terrorism or army or police operations against terrorists, for loss of limb(s) or life, at rates applicable to similar loss of limb(s) or life of a workman under the Workmen's Compensation Act, so that the element of discretion in the matter of grant of compensation may not be there. As regards the compensation for loss to property, destroyed during anti-terrorist operations, or operations by the terrorists, such compensation should be paid at 100% of the market value of the immovable property on the basis of approved map plan of the property as existing in the records of Estate Office etc. This will ensure uniformity in the matter of grant of such compensation also. Under the proposed legislation, the victims of terrorism should be prohibited from accepting any financial assistance from political parties, and if they do accept such financial assistance, the quantum of compensation to be granted to them by the

Central Government shall stand reduced to that extent. The Central Government should release the compensation to the victims of terrorism every month in a simple but impressive ceremony. The cheques for compensation should be handed over to the victims or their family members, as the case may be, personally by the Prime Minister/Leader of the largest opposition party in the Lok Sabha, alternately every month. There should not be any speeches at all during this function, and only cheques should be handed over by the Prime Minister/ Leader of Opposition. The Chief Minister should assist the Prime Minister/Leader of Oppcsition in giving the cheques. Stage should be handled by the Chief Secretary of the State.

(2) The Central Government should institute Bravery Awards for conferment on those residents of the State of Jammu and Kashmir, who give away their life for saving the honour and dignity of our Country. Such awards should carry a citation and a monetary reward of rupees five lakhs. The Bravery Awards should be given at an impressive ceremony on every Republic Day in New Delhi by the Prime Minister of India, with the Leader of the largest opposition party presiding over the function.

(3) The Kashmiri Muslims should be allowed to join the mainstream of the Country. The identity of their separate cultural heritage should not be denied to them. If the Kashmiri daughters intend to marry Muslim youth residing in other States of our country, by asking for a legislation at State level for protecting the small immovable properties of their father from disintegrating, it should not be inferred that the Kashmiris do not intend to marry their daughters in other parts of the country, or that they intend to deprive their daughters of their right to succession in paternal property in case they marry the Muslim youths in other parts of the country. In other States also, despite the existence of Hindu Succession Act, 1956, Hindu daughters, and for that purpose, the Sikh daughters, are not accepting any share in the immovable properties of their

father. Their worry is to maintain their ties and bonds with their brothers through the sacred thread of *Raksha Bandhan*, and not to allow that sacred thread to be broken under the weight of a share in the property of their father. The intention of the Kashmiris in demanding such legislation should not be doubted. In this matter, they also enjoy the same cultural heritage that all other sections of Indians enjoy.

(4) A world class Urdu University should be opened in New Delhi for propagation of Urdu and for saving and preserving the cultural heritage of the Muslims. The graduation and post graduation degrees of this University should be awarded in a befitting ceremony by the Prime Minister of our country, with the Leader of the largest opposition party presiding over the function.

(5) The spirit behind the Resettlement Act should be respected by us, despite differences, if any, on its contents. Instead of allowing the State of Jammu and Kashmir to pass the controversial Resettlement Act, for permitting the State residents who had migrated to Pakistan between 1947 and 1954 to re-settle in the State of Jammu and Kashmir, the Central Government may itself pass appropriate legislation. Those migrants should be given an equivalent alternate property qua the property left behind by them at the time of migration to Pakistan. The grant of compensation to them is meaningless. There should be no condition of affirming their allegiance to our Constitution before accepting alternate property. Once they accept some benefit under an Act of our Parliament, their allegiance to our Constitution is automatic. However, there should be a provision in the proposed Resettlement Act for granting alternate property only to such migrants who show their serious intention to re-settle in the State of Jammu and Kashmir, and that intention can be ascertained by permitting the allotment of immovable property to such migrants only after the expiry of a period of two years from the date they re-migrate to the State of Jammu and Kashmir.

(6) The bogey of article 370 need not be raised by us every now and then. Let this article be allowed to remain a dead letter on our Constitution. It has not endeared us to the people of Jammu and Kashmir, although its removal from the Constitution would definitely send adverse signals to the people of Jammu and Kashmir about our intentions. If the steps from serial no. 1 to 5 are implemented in their true spirit, article 370 would automatically get lost in the mainstream of other provisions of our Constitution.

This author is confident that passing of this legislation would itself alienate the terrorists from general masses in the State of Jammu and Kashmir, and within a period of two years or so, they would be completely isolated/ eliminated from the scene.

9

Leader of Opposition (Lok Sabha)

In a Parliamentary democracy, the Government and the Opposition have to work in tandem. A slinging match of public statements by the Prime Minister and the Leader of Opposition is not good for the health of our democracy. Both of them have to work together for enhancing the image of our country in the entire world. Both must hold each other in high esteem. Both should be respected by the Ministers and Members of Parliament, and no Minister should launch a personal attack on the Leader of Opposition. Both of them should be seen together as comrades-in arms, on the issues of State's interest. With this end in view, the following suggestions are made for amending our Constitution and/ or other relevant statutes:-

(1) Both the Prime Minister and the Leader of the Opposition should be allotted adjoining seats in the Lok Sabha.

(2) Both should be allotted adjoining seats in all functions to be held in the honour of foreign dignitaries;

(3) Both should be allotted adjoining seats in all functions to be held in the Rashtrpati Bhawan;

(4) Both should stand up together to appeal to the members of the Lok Sabha whenever any member (s) attempt to disrupt the Lok Sabha;

(5) Both should sit together with the Speaker of the Lok Sabha to sort out the matter whenever there is any stalemate in the Lok Sabha;

(6) The Leader of the Opposition should be briefed by the Prime Minister before leaving for foreign tours, and should again be briefed on returning from such tour;

(7) The Leader of the Opposition should enjoy all the privileges of a Cabinet Minister;

(8) The Prime Minister should prepare a panel of three names for election of the Speaker of Lok Sabha and Deputy Chairman of the Rajya Sabha, out of which any candidate of the choice of the Leader of Opposition should be elected the Speaker of Lok Sabha or Deputy Chairman of the Rajya Sabha, without any contest;

(9) Wherever necessary in the interest of consistency in foreign policy of our country, the Leader of Opposition should be deputed, instead of deputing a Foreign Secretary for the purpose;

(10) No personal attacks should ever be made by the Prime Minister and the Leader of the Opposition against each other;

(11) In the conference of Chief Ministers of States, the Leader of Opposition should not only be invited, but also be given a seat next to the Prime Minister;

(12) The Prime Minister should consult the Leader of the Opposition before appointing any Commission of Inquiry or ordering a C.B.I. inquiry into any matter;

(13) The Prime Minister should consult the Leader of the Opposition before recommending any names for appointment to Constitutional posts.

10

Political Bandhs

Despite the ban imposed by the Supreme Court on political *bandhs,* such b*andhs* are continuing. Some political parties have expressed their determination to violate such ban. With utmost respect to the Courts of law, placing of a blanket ban on such *bandhs* is neither in consonance with the fundamental right to speech and expression, nor the same is practicable. The position becomes all the more embarrassing for the Courts, where the *bandhs* are supported by the ruling political party in a State. The only solution of the problem is to regulate and monitor the *bandhs* in a practicable manner. There are only three aspects of such *bandhs,* which are required to be regulated; namely (i) the right of the administration to recover the expenses for deployment of police force and other officials for monitoring the *bandh* and for ensuring peace during the observance of *bandhs,* from the organizers thereof ; (ii) the right of the administration to recover the expenses incurred by it to restore the site of political rally to its original position, after it is completely defaced and damaged by the demonstrators; and (iii) to divert the vehicular traffic to other routes for creating least inconvenience to general public. The fourth aspect that is required to be looked into by a responsive administration is to make proper arrangement for providing drinking water to the participants of the rally or *bandh,* and wherever possible, to make arrangements for temporary toilets so that people do not defecate in the open, as has happened in New Delhi during a kissan rally. Who should regulate these *bandhs* is another million dollar question. No State Government headed by a political leadership would like to invite adverse reaction from public by regulating such political *bandhs.*

It is, therefore, suggested that the task to frame a code

of conduct for observance by the political parties during such bandhs or rallies, should be left to the Election Commission of India, which is a Constitutional body, respected by all political parties, and who is empowered to recognize or derecognize any political party on various grounds. Election Commission of India should incorporate in its guidelines, the requirement to observe political *bandhs* or rallies in a peaceful manner, and with decorum, and to pay all the reasonable expenses incurred for deployment of police force etc. and for making other arrangements for peaceful conduct of such rallies or *bandhs,* to the State Government by the organizers of the *bandhs* or rallies. The Election Commission should take upon itself the responsibility for monitoring such political *bandhs* or rallies through its observers in the concerned State. That appears to be the only way to regulate and monitor such political *bandhs* and rallies.

11

Regional Languages

The demand by a section of the population of a State for recognizing its spoken language (mother tongue) as second language of the concerned State often raises problems for such State Government. It is always in a fix. For instance, the Punjabi population in Haryana is often raising its demand for recognition of Punjabi as a second language in the State. It is a demand which could have been easily accepted by the State Government, but for the next demand that will emanate from the implementation of the first demand, as the next demand shall be for giving employment to such candidates who qualified with Punjabi as medium of instructions, whereas the official work of the State Government is to be carried out in Hindi. The problem is created by our previous Governments at the Centre by making inappropriate amendments in the Constitution. Article 16 (2) of the Constitution lays down that " *No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment or office under the State.*" However, by inserting an amending provision in clause (3), the States were empowered to specify the requirement of residence within a State or Union territory as a condition for employment or appointment within such State or Union territory. Thus, an imbalance was created by unconstitutional amendment made with extraneous purpose of accommodating the "*sons of soil*" in place of the "*sons of the Nation*", and thereby further violating the preamble of the Constitution as regards the solemn undertaking made by the PEOPLE OF INDIA, to its citizens for securing fraternity and the unity of the Nation. The result is the demands raised by sections of population, for treating their mother tongue as second language. It is, therefore, suggested that position as existing prior to Seventh amendment of the Constitution, be

restored, so that the State Governments may accommodate the demand from any sections of its population to allow their spoken language as the medium of instructions in the educational institutions. If the restriction regarding condition of residence within a State for giving employment in that State to Indian citizens is removed, the demands for recognition of Punjabi as second language in the State of Haryana will die its natural death, as no Punjabi, who is conscious of making his career, by seeking employment in all States within territory of India, would like to restrict himself to studying through Punjabi as a medium of instructions in schools. In such an eventuality, article 350A , which lays down that " *It shall be the endeavor of every State and of every local authority within the State to provide adequate facilities for instructions in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provision for such facilities.*" would no longer be required to be retained on the Constitution, as it is a consequence of limiting the employment in a State to its own residents, and it has resulted into more problems than the problems solved by it.

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12

Subordinate Judiciary

The "*Times of India*" in its issue dated May 1, 2005 had revealed that a Committee of Judges of Allahabad High Court had held 28 judges from the lower judiciary guilty of various charges of doubtful integrity, alcoholism, moral turpitude and professional incompetence. The names of all the 28 judges had been disclosed in the news item. This was reported to be the first large scale purge carried out in the judiciary in the State of Uttar Pradesh. Ten of the judges, who had been directed to be compulsorily retired, had been facing vigilance inquiries, and one of them had set a record of sorts with as many as 13 vigilance inquiries pending against him. One judge was found guilty of "frequenting houses of few mischief-mongering lawyers and *goondas* of the city." Another judge was found guilty of "immorality and impersonation", yet another was found guilty of "drinking during Court hours".

In my humble but considered view, for preventing such ugly situations in future, the system for recruitment of persons in lower judiciary is required to be overhauled. Presently, only the superficial manners of candidates are evaluated through interview, e.g., his manner of walking, talking, dressing, and his superficial legal knowledge, which stands polished by attending coaching classes before appearing in the interview. This system, coupled with lack of transparency, results into filling these prime posts by undeserving candidates, barring a few exceptions. It is, therefore, suggested that the process of recruitment of judges in the subordinate judiciary should be thoroughly overhauled. The competitive written test should be replaced by a qualifying written test, and all those candidates who qualify the written test should be interviewed by a permanent Selection Committee of three retired Judges of the

High Court, to be headed by a retired Chief Justice of the said High Court. The appointments of the retired Judges on this Committee should be made by the Chief Minister of the State, in consultation with the Leader of Opposition in the State Assembly. The whole proceedings of the Selection Committee should be video recorded. The persons whose appointment is recommended by this Selection Committee of retired Judges, should thereafter be screened by another Committee of Eminent Persons (CEP). The members of CEP should be nominated by the Chief Minister of the State in consultation with the Leader of Opposition, for a fixed tenure of five years, with no provision for further extension. The CEP should check the antecedents of selected candidates from all available sources, including through the peers of selected candidates, the members of Bar, their teachers, relatives, and if need be, through intelligence agencies also. Rather, the names of such empanelled candidates should be published in news papers, and objections invited from public, and enquired into by the CEP. The selected candidates, whose names are cleared by the CEP, should be given appointment without any further hitch. This system is bound to ensure considerable improvement in the quality of Judges appointed to subordinate judiciary.

13

High Court Judges

The present system of appointment of judges has not proved successful. It has not been able to select only the persons who are persons of unimpeachable integrity and having acceptable degree of intellect and efficiency as judges of the High Courts, although the system has undoubtedly given us many judges of extraordinary merit and integrity. As there is always much scope for improvement in the functioning of any institution, with that object in view, the following suggestions are given for considering amendments in the provisions contained in article 217 of the Constitution:-

(1) The present system of elevating District Judges to the concerned High Courts on the basis of seniority cum suitability to be determined by the concerned High Court may be abolished.

(2) The present system of recommendations of the names of the advocates by the concerned High Court may also be abolished.

(3) The selection of the High Court Judges should be made by a Selection Committee comprising retired Supreme Court Judges. The members of this Selection Committee should be chosen by the Prime Minister in consultation with the Leader of Opposition in the Lok Sabha, for a fixed tenure of five years, with no right to further extension.

(4) The Selection Committee should invite applications from the eligible advocates and District Judges, for appointment as High Court Judge, and interview them from the point of view of integrity and efficiency.

(5) After clearance of the name of a person by the Selection

Committee for appointment as a High Court Judge, it should be further cleared by a Committee of Eminent Persons, to be chosen by the Prime Minister, in consultation with the Leader of Opposition in the Lok Sabha. The members of this Committee (CEP) should have fixed tenure of five years only, with no right to further extension. The CEP shall collect data and information about the integrity about the person concerned from his native place, his peers, his teachers, and all other conceivable sources, including through Intelligence Agencies. Rather, the names of such empanelled candidates should be published in news papers, and objections invited from public, and enquired into by the CEP

(6) After clearance of the name of a person by both the Committees, he shall be appointed by the President of India, without any further procedural obstructions.

14

National Commissions

An irony of our Country is that we do not implement the international conventions in true spirit. We just complete the formalities, which result into wastage of a lot of public funds on various projects. Same thing has happened in the matter of setting up of National Commissions for Minorities, SC/STs and Women. For appointment as Chairman of the National Commission for Women, the prescribed qualification is "a person, who should be committed to the cause of women", and for the post of Chairman or Vice Chairman of Minorities Commission, the qualification is "a person of eminence, ability and integrity", and for the post of Chairperson and Vice-Chairperson of the National Commission for Saphai Karamcharis is "a person of eminence connected with the socio-economic development and welfare of Saphai Karamcharis." The object is to fill up these posts with political persons of choice. It is strange that such high-powered Commissions, having the powers of civil Courts, have been left to be filled up by adjustment of political persons. These Commissions are supposed to review the Constitutional safeguards and the provisions of various statutes, and make recommendations for protection of human rights of the concerned sections of the society. The persons heading such Commissions are, therefore, required to be experts in constitution law etc. In the interest of preserving the sanctity of these posts, therefore, it is suggested that all these posts be manned by retired High Court Judges. The National Commission for Women should have a woman, retired as a Judge of the High Court, as its Chairperson; the National Commission for Minorities should have a person from minority community, retired as a Judge of the High Court, as its Chairperson; the National Commission for Saphai Karamcharis should have a person from ST community (and in case of non-availability of such a person , a person from Scheduled Castes), retired as a Judge of the High Court, as its Chairperson. Likewise, for the proposed National Commission for Child, it should have a widow, who retired as a Judge of the High Court, as its Chairperson, and in case of non-availability of such a person, any other woman who retired as a Judge of the High Court, as its Chairperson.

15

Judicial Inquiries

Heart of every citizen weeps on knowing about the fate of reports of Judicial Commissions of Inquiry. There reports are either not acted upon, or are maligned. Country watches the 'FATE ACCOMPLI' of these Inquiry Commissions' reports without any interest, as the appointment of Inquiry Commissions are made only to side track the issues or for other extraneous considerations, including to avoid C.B.I. inquiry etc., and also for diverting the attention of the public from the burning issues till it forgets about the subject matter of inquiry itself. It is, therefore, suggested that appropriate amendments be made in "The Commissions of Inquiry Act, 1952". A new section 3(3-A) be inserted in the Act, to provide for submission of report of the Inquiry Commission to the Supreme Court, instead of submitting it to Government, so that it may be processed by the Supreme Court, and appropriate directions may be issued to the Government. That would preserve the sanctity of such reports.

16

Lies in Courts

Some of our judges are very honest in saying that "*We do not deliver justice, We can only decide cases on the basis of evidence before us.*" The inherent flaw in the criminal justice delivery system, where innocent persons can be sent to jail, is thus obvious. Cases where after the conviction of the alleged murder accused, the "murdered person" appeared in the court, and prayed for protecting his life, since the police authorities were allegedly trying to murder him, are no longer confined to motion pictures alone; such cases have actually happened in real life. In a recent case of U.P., the wife, who was allegedly the victim of dowry death, was, after about seven-eight years , during the pendency of that case, arrested and produced before the court before whom a trial of his husband (who had fled away for fear of police, and was missing after having been declared as a proclaimed offender) for her alleged murder was going on. She was found to be living with another person all these years whom she had married, begetting two sons from the wedlock. Thus, instead of permitting more and more innocent persons to be hanged or imprisoned, it would be worthwhile for the Central Government to empower the Courts to direct any person, including the complainant, accused and any of the witnesses appearing in the case, to be put to a lie detector test. It is suggested that the appropriate amendments be made in sections 293 of the Code of Criminal Procedure, 1973, for empowering the Criminal Courts to direct putting an accused to lie detector test in appropriate cases.

17

Custodial Deaths

Individual instances about the frequent use of torture and deadly force at local police stations in India, a practice decried by human rights activists and the Indian Supreme Court, need not be cited. A little more than a decade after Parliament established the National Human Rights Commission to deal with such abuses, police torture continues unabated, according to human rights groups and the Supreme Court. According to the available government data, there were 1,307 reported deaths in police and judicial custody in India in 2002.

"India has the highest number of cases of police torture and custodial deaths among the world's democracies and the weakest law against torture," said Ravi Nair, who heads the South Asia Human Rights Documentation Center. "The police often operate in a climate of impunity, where torture is seen as routine police behavior to extract confessions from small pickpockets to political suspects."

I fully endorse the aforesaid observations of Ravi Nair. A sense of responsibility is required to be inculcated in the minds of our police officials. In the absence of strong deterrents, they would not change their ways, and would not apply their minds to alternate and scientific ways, like using lie detector tests etc., for securing confessions from accused persons. On the other hand, it is almost impossible to produce evidence for proving as to whether the person committed suicide or was tortured to death while in police custody. The fact remains that, be it murder, or suicide in police custody, the custodian of such under trial person does not deserve to remain in government service unless he is acquitted by a competent court of law in criminal trial. At present, such a police official

is usually placed under suspension during the pendency of criminal trial against him, with a right to get subsistence allowance during the prolonged period of suspension. In many cases, suspension is revoked even before the decision of criminal case. The existing provisions are not a sufficient deterrent against deaths in police custody. It is, therefore, suggested that article 311 of the constitution be amended by inserting another proviso below clause (2), to the following effect:-

"Provided further that where an under trial or an accused dies in police custody, the police official(s) having the custody of such a person, would be deemed to be dismissed from service by the appointing authority with effect from the date of such death, without holding any such inquiry."

This author is confident that the proposed provision is capable of acting as a very strong deterrent against police officials causing deaths during police custody. No person, much less a police official, would like to lose his job for the fun of acting in a barbaric manner resulting into death of an accused person, since no amount of high connections with people who matter, can save such a police official from being dismissed from service, if the proposed amendment is carried out.

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18

Sick Police

A study conducted by a panel of clinical psychologists in association with Mumbai Police and a private hospital, on 1,800 policemen (from Constable to Assistant Commissioner), a gist of which has been published in the "Times of India" issue dated April 30, 2005, shows that a majority of the cops suffered from extensive anxiety and stress, a fall out of lack of sleep, irregular working hours and absence of weekly offs. Almost 90% of the cops interviewed reported that they slept only 4-6 hours a day. On many occasions, even that was not possible due to demands of their duty schedule. Lack of sleep caused chronic fatigue, gross irritability, poor appetite, poor concentration and difficulty in making decisions in about 80% of them. About 70% of the policemen interviewed reported "sexual disturbances", especially female cops who suffered from lack of cooperation and support from their spouses and would be compelled to attend to "all the duties of a wife or mother" after work hours.

My humble suggestions are that policy of flexible working hours, where the department tries wherever possible to accommodate requests in this regard, should be followed. Every one, male or female, police or support staff, should be entitled to apply for staggered or flexible working hours. There may be a variety of reasons why people would wish to work flexibly, including family commitments or undertaking further education. Besides, career breaks should be open to men and women, police and support staff. A career break is an extended period of unpaid leave from work, usually between 1 to 5 years. The female staff should be taken off confrontational duties when they become pregnant. That is precisely the solution for reviving the physical and mental health of policemen in our country. Besides, irrespective of working hour schedule of any

policeman, there should be a compulsory sitting of Yoga, *Pranayam* and meditation for all policemen in a town in the early morning hours. That would take care of all those problems which have been noticed in the study referred to in this chapter.

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19

False Prosecution

The T.V. Channel, Zee News, in its programme captioned "*Andha Kanoon*" at 2.30 p.m. on 28.4.2005, has revealed a true but shocking story of a false prosecution of one Baleshwar Mehto. Baleshwar Mehto was married with one Anita, who was already having love affairs with one Pardeep of Kanpur. (U.P.) She left her matrimonial home secretly and started living with Pardeep at Kanpur. Her parents were well aware of the fact that she was never harassed for not bringing dowry, but still conspired against Baleshwar and his parents, and filed a false case of dowry death against Baleshwar, his father, Nageshwar, his mother and certain other close relatives. Anita was constantly in touch with her parents through correspondence during all this period, when her father filed a false case of dowry death against her in-laws. Nageshwar and his wife had to remain in jail for four months and three months respectively after which they were granted bail by the criminal court. Baleshwar was so terrorized by the false case filed against him that he fled away to some unknown place and has not been traced so far. On the other hand, Anita during the intervening period of seven years had two children from Pardeep. Nageshwar and his wife were constantly harassed by police officials and were pressurized to tell the whereabouts of Baleshwar. Their house was also attached and sealed. Suddenly, in September, 2004, Nageshwar got the news that Anita was alive, and was planning to call on her brother on the auspicious occasion of Rakhi festival. Nageshwar brought it to the notice of police authorities, who raided the house of Anita's brother, and arrested her. All the accused in this case have been acquitted, but Baleshwar is still untraceable. This news story puts a question mark on the very foundation of our criminal justice delivery system and calls for its thorough over-hauling.

The provisions contained in sections 194 and 195 of the Indian Penal Code, for imposing punishment for "giving or fabricating false evidence with intent to procure conviction of capital offence" and "giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment for a term of seven years or upwards" are totally inadequate for checking the incidence of false prosecution. Section 194 prescribes punishment of imprisonment for life or with rigorous imprisonment for a term which may extend to ten years, in case of an attempt to commit that offence, and in case of actual conviction of an accused in a false case, prescribes punishment of either death or the punishment prescribed earlier. In case of an offence under section 195, the punishment prescribed is imprisonment for a period of seven years or upwards. Thus, there is no general provision for punishing the offender for false prosecution. For instance, for false prosecution under section 498-A, there is no corresponding provision for punishing the wrong-doer, since an offence under section 498-A itself is punishable with imprisonment which may extend to three years and fine. Such offenders at best can be punished for giving false evidence in a court of law. This is one of the biggest lacunas leading to increase in the incidents of false prosecutions under section 498-A and various other provisions. Thus, on the lines of provisions contained under sections 194 and 195, corresponding provisions for punishing the complainants for false prosecution should be incorporated by amending the Indian Penal Code, so that the offender becomes liable to same punishment which would have been, or which has been, imposed on the accused on the basis of false prosecution. That would prove to be an effective deterrent against filing of false cases by unscrupulous elements in our society. Such a provision may be made applicable to pending cases also, with provision for compounding, so that the contesting parties may compound their cases, thereby reducing the back log of cases in criminal courts.

20

Hostile Witnesses

Jesica Lal's case has brought to the fore the inherent weaknesses of our system of recording statements of witnesses by the police under section 161 and 162, which are not required to be signed by the person making such statement before a police officer. The witnesses retract from their statements the moment they appear in the court. The situation requires to be salvaged. With the advent of modern technology, a stage has now been reached when the provisions of section 161 and 162 should be completely overhauled. Thus, appropriate amendments in section 161 and 162 are required to lay down that *Every statement made by any person to a police officer in the course of investigation under this Chapter, shall, if reduced to writing, be signed by the person making it, and any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record , may* be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. It may further be provided that *such person, during proceedings in the Court, may be permitted to resile from the whole or a part of such statement by such Court, if he satisfies the Court that such whole or part of the statement was not given by him of his free volition.* Further, the video recording of the statements at the time of making thereof should be made a condition precedent for admissibility of such statements recorded by the police officials. These suggestions, if accepted, would not require the creation of a special cadre of Magistrates for recording the statements of witnesses, which would be unaffordable and unmanageable also, in view of the huge infra structure required for the purpose, if recording of statements of witnesses before a Magistrate is made mandatory.

21

Forged Wills

The incidence of forged wills is on the increase. The beneficiaries of such wills enjoy a good degree of immunity, notwithstanding any such will being in their favour. The lacuna is in the provisions of section 63 of the Indian Succession Act, 1925, which requires the signatures of testator, and two or more witnesses, but the provisions do not require the signature of the beneficiary of the will on the document. A will should never be kept secret from the beneficiary, for unfounded fears or apprehensions. Notwithstanding the general fall in moral values of our society, the beneficiary of a will shall normally not be such an ungrateful person so as to harm the testator. Rather, in the case of a secret will, a beneficiary, who knows about the fact that will is in his favour, can secretly remove a testator from this world, while claiming ignorance about the existence of any such will in his favour. The execution and registration of forged wills after the death of the testator would not take place if the provisions of clause (c) of section 63 of the Indian Succession Act, 1925 are amended to provide for pre-condition of signatures of the beneficiaries also on a will. It is expected that such beneficiaries would ensure the secrecy of such will by all means so that non-beneficiary members of the family may not get wind of the will, and thereupon pressurize the testator to change the will.

22

Bogus Voters

As per news paper reports, there are about 2.5 crore bogus voters in our Country. It is speculated that this is mainly the outcome of migration of voters from one constituency to the other, with the result that without getting the vote in the former constituency cancelled, such voters get their votes registered in the new constituency. It is a common experience that the names of persons who die in the intervening period are also not deleted from the electoral roll of various constituencies. Likewise, the names of those persons who have settled abroad also continue to be shown in the electoral rolls. Section 17 of the Representation of the Peoples Act, 1950 lays down that "No person shall be entitled to be registered in the electoral roll for more than one constituency." Section 18 of this Act lays down that "No person shall be entitled to be registered in the electoral roll for any constituency more than once." Under section 19 of this Act, "only a person who is ordinarily resident in a constituency shall be entitled to be registered in the electoral roll for that constituency." Section 31 of this Act, which prescribes punishment for making a false statement in connection with the preparation etc. of an electoral roll, is reproduced hereunder for better appreciation thereof:-

"Section 31. Making false declaration.- If any person makes in connection with-

(a) the preparation, revision or connection of an electoral roll, or

(b) the inclusion or exclusion of any entry in or from an electoral roll,

a statement or declaration in writing which is false *and which he either knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with*

both."

As this section stands at present, it is not possible to prosecute any person, who gets his name entered in the electoral roll of new constituency, without first getting his name deleted from the electoral roll of old constituency, since on being questioned, he shall always argue that he was not aware that his name had not been deleted from the electoral roll of the old constituency. Similarly, the names of the voters continue to appear more than once in the electoral roll of the same constituency on migration from one place to another within the constituency. However, registration of the name of a person more than once in the electoral roll of the same constituency or in the electoral rolls of more than one constituency encourages the unscrupulous persons to cast bogus votes in place of such persons. It is, therefore, suggested that the provisions of section 31 may be amended so as to remove the condition about existence of *mens rea* from this section, and only fine be permitted to be imposed in case of violation of the provisions of section 17 and 18 of the Act:

PROPOSED AMENDED PROVISIONS:

"Section 31. Making false declaration.- If any person makes in connection with-

(a) the preparation, revision or connection of an electoral roll, or

(b)the inclusion or exclusion of any entry in or from an electoral roll,

a statement or declaration in writing which is false, *he shall be punishable with fine, which may extend to ten thousand rupees."*

23

Model Election Code

There is news about cancellation of appointments of about 450 nurses in the State of Haryana, by the orders passed by High Court, as those appointments were made in violation of the Code of Conduct for elections. Strange are the laws in our country. What has the selection and appointments of nurses to do with the unfair practices in elections? How much influence these nurses could have wielded in different constituencies in favour of the ruling political party, and if at all their appointments had any effect on the outcome of any election, why that election is not countermanded. It is, therefore, suggested that instead of playing with the careers of innocent citizens, the Election Commission, in future, should countermand the election of the constituency of the Chief Minister, who permits such appointments to be made in violation of the Model Code, so that no Chief Minister dares in future to violate it. There is another vital aspect of this matter also. Model Election Code comes into force the moment the Election Commission announces the schedule for conducting elections. Some times, the election schedule is staggered over a long period of time. The activity of the concerned Government, be it the Central Government, or any of the State Governments, comes to a stand still. The guidelines issued by the Election Commission in this regard are required to be modified. It should be laid down that although the Model Code shall come into force with effect from the dates the election Programme is announced, the Government would be stopped from taking any policy decision only with effect from the date the formal election compaign begins, and all the policy decisions taken by a Government during the intervening period should be subject to ratification by the new Government, and in case the new Government does not expressly adopt or ratify such policy decision within a period of thirty days from the date the new

Government is constituted, such policy decision shall be deemed to have lapsed. Let our Election Commission pay heed to this humble suggestion.

24

Untouchability
(In Offices)

The 'Times of India" in its issue of May 7,2005 had reported about the arrest of Shri V.P. Shetty, Chairman of the IDBI, on the basis of an F.I.R. filed by Shri B.W. Ramteke, General Manager of the same Bank. The report further adds that since the alleged remarks of the Chairman were not uttered in public, the action taken by the Police was not under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The arrest of the accused was, therefore, made under section 7 (1) (d) of the Protection of Civil Rights Act, 1955 which deals with insulting a person on grounds of untouchability.

Section 7(1) (d) of the Protection of Civil Rights Act, 1955 lays down as under:-

"7. Punishment for other offences arising out of "untouchability".-(1) Whoever,-
(a).....to.....(c)
(d) insults or attempts to insult, on the ground of "untouchability" a member of a scheduled caste, shall be punishable with imprisonment for a term of not less than one month and not more than six months, and also with fine which shall not be less than one hundred rupees and not more than five hundred rupees."

In my humble view, this clause is required to be amended, and a new section 7(1-A), required to be added as under, for preventing its misuse, so that humiliation of being arrested may at least be avoided:-

"7. Punishment for other offences arising out of

"untouchability".-(1) Whoever,-
(a).....to.....(c)
(d) insults or attempts to insult, on the ground of "untouchability" a member of a scheduled caste shall **be *punishable with fine of rupees ten thousand only.***"

"7.(1-A). Punishment for other offences arising out of "untouchability".-(1) Whoever,-
(a).....to.....(c)
(d) *habitually* insults or attempts to insult, on the ground of "untouchability" a member of a scheduled caste, shall be punishable with imprisonment for a term of not less than one month and not more than six months, and also with fine which shall not be less than one hundred rupees and not more than five hundred rupees."

Explanation.- A person, who has been earlier convicted for an offence under section 7(1) (d) would be deemed to have committed the same offence habitually, if he commits it on second or subsequent occasions.

25

Untouchability (In Public Places)

Section 3(1) and section 3(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 lay down various acts of a person, who is not a member of a Scheduled Caste or a Scheduled Tribe, directed towards a member of a Scheduled Caste or a Scheduled Tribe, as offences and also prescribe the punishments therefor. Section 3(1) lays down that whoever commits any offence envisaged under it shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

For preventing the misuse of these provisions, I humbly suggests the following amendments, so that humiliation of arrest atleast be avoided:-

"3. Punishments for offences of atrocities.-(1) Whoever, not being a member of a Scheduled Caste or Scheduled Tribe,-
(i) ..... to .....(xv)

shall be punishable with a fine of rupees ten thousand only on the first occasion, and with imprisonment for a term which shall not be less than six months, but which may extend to five years and with fine, on the second and subsequent occasions."

26

Marriage Feasts

Extravaganza at marriage feasts, with 500 to 600 *baraat*is (members of the marriage party) even by a clerical employee, or an advocate or a doctor or a business man, who hardly pays a penny by way of income tax, exposes the loop holes in our fiscal policies and the legal system. Sometimes the girl side is forced to entertain hundreds of *baraatis,* although it is beyond their financial capacity. "Whether the display of wealth, which mostly comprises black money, can be checked through any legal device, if it is not entirely a social evil?" is a question that stares the Nation in its face?

It is high time that extravaganza on marriages should be banned by the Government. A sizable section of our society has already made its choice very clear at Bhopal" on May 1, 2005 (through *Bhopal Declaration*) against extravaganza on marriage ceremonies. The example set by it is worth emulating by the entire country. The Central Government should come out with a law for regulating extravaganza on marriages. It can be a very simple legislation It may be called "Prevention of Extravaganza on Marriages Act, 2006". The Act may provide for designated officers for this purpose in district level towns or cities (District Magistrates) and sub-division level towns (Sub Divisional Magistrates) as Nodal Officers under this Act, who should ensure the video graphing of the feasts in every marriage. It should be mandatory on the part of a party to the marriage (which is residing at the specified town or cities where the marriage feast, be it reception or marriage ceremony, is to take place) to inform the Nodal Officer in writing about the exact programme of celebration of a feast in connection with any marriage. The report of videography , along with an estimate of the expenses incurred on the feast) would then be required to be sent by the Nodal Officer to the concerned

Income Tax Assessing Authority, along with PAN number of the concerned person, if any, who incurred the expenditure on such a marriage feast. No penalties need be provided under this new Act, except for non-submission of information for proposed programme of feast three days prior to it. The Act should be made applicable only in the sub division level towns and cities and at district headquarters, at the first instance, with power to the Central Government to extend its application to other areas also. The menace of extravaganza of feasts on marriages would automatically disappear.

27

Unauthorized Colonies

No political party in our country is serious about demolition of unauthorized colonies. As and when the administration decides to take some strong measures, like demolition of such colonies, the politicians jump into the fray, and with the object to consolidate their vote-bank, stoutly oppose the action of the administration. These slums or unauthorized colonies are the hub of criminal activities, and also constitute a huge vote bank, which can tilt the balance against any candidate, who supports demolition of such colonies. The politicians are, therefore, afraid of raising their voice against the residents of these colonies. The arguments often raised in their favour are that they were issued ration cards, or election ID cards, and, for that reason, they should not be uprooted. It is, therefore, obvious that such colonies, so long as they constitute the vote bank of the political parties, would continue to flourish, and would as usual re-surface soon after their demolition. It is, therefore, suggested that following amendment be made in clause(e) of section 2(1) of the Representation of the People Act, 1951, and a new section 17-A be inserted in the Representation of the People Act, 1950(43 of 1950) :-

EXISTING PROVISIONS OF REPRESENTATION OF THE PEOPLE ACT, 1951:

"***Section 2 Interpretation.- (1) (e) "elector"*** in relation to a constituency means a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in section 16 of the Representation of the People Act, 1950 (43 of 1950);

PROPOSED AMENDED PROVISIONS:

"Section 2. Interpretation.- (1) (e) "elector" in relation to a constituency means a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in section 16 *or section 17 or section 17-A* of the Representation of the People Act, 1950 (43 of 1950);

PROPOSED NEW PROVISION OF REPRESENTATION OF THE PEOPLE ACT, 1950:

'Section 17-A. No resident of an unauthorized colony to be registered in the electoral roll.- No person shall be entitled to be registered in the electoral roll for any constituency, if the address of such person as given in the ration card or voters identity card, shows such person to be a resident of an colony unauthorizedly built on Government Land"

Communal Riots

Communal riots have caused incalculable harm to the reputation of our country, and have sharpened the communal divide, particularly in sensitive states like Gujarat and U.P. Houses are set on fire. People are burnt alive. Some of them are brutally slain. Thereafter, witch hunting starts. State Governments are accused of being partisan. Compensation is given to the victims of communal riots in a haphazard manner. Chief Minister gives compensation from State funds. Prime Minister announces separate aid. Charges are traded between political parties.The Chiefs of the Human Rights Commission and National Commission for Women rush to the State separately, and seek reports. Central Government seeks another separate report. Minority Commission also springs into action. The formation of a Judicial Commission for inquiring into the incident is also sometimes announced. Atmosphere in the concerned city or town is totally vitiated. The whole nation is stunned over such ghastly incidents. With the passage of time, the things are forgotten, but till then some fresh communal riot surfaces at some other place. Political parties are trying to find some solution to this problem, which is a national slur. There appears to be a proposal for enacting some law for punishing those persons who incite communal violence or actually take part in communal riots. Any law prescribing stringent penalties can be misused with change of power in a State or in the Centre. The POTAs have failed to deliver goods in our country. There has to be some innovative solution to this problem of the common man whose life and property is at stake during such riots. It is, therefore, suggested that a very simple and short legislation be brought for awarding compensation to the victims of communal riots for loss of limb(s) or life, at the rates applicable to similar loss of limb(s) or life of a workman under the Workmen's Compensation Act, so that no allegation of

insufficiency of compensation may be leveled by the opposite parties against the State Government in power. As regards the compensation for loss to property, such compensation should be uniformally paid at 100% of the market value of the immovable property on the basis of approved map plan of the property as existing in the records of Estate Office etc. This will ensure uniformity in the matter of grant of such compensation also. Under the proposed legislation, the victims of such communal riots should be prohibited from accepting any financial assistance from any political parties, and if they do accept such financial assistance, the quantum of compensation to be granted to them by the State Government shall stand reduced to that extent. The State Government should release the compensation to the victims of communal riots within a month positively, and thereafter proceed to recover the total amount of compensation, both for life and property, from the residents of the city in which the communal riots took place, in easy instalments along with water and electricity bills. If such legislation is made and enforced, it will almost completely eliminate communal riots from our society and people would come forward to disclose the names of the persons who had participated in such riots.

29

Strikes by Workers

Despite elaborate provisions contained in the Industrial Disputes Act, 1947, for regulating strikes, and for declaring strikes illegal in certain circumstances, strikes are taking place in all departments of the government every now and then, so much so that even the doctors and nurses often go on strike, unmindful of the inconvenience to the patients. Our laws are also very strange. If the employees go on strike for an hour on a particular day, the law entitles the employer to deduct their salaries for the entire day. The legal doctrine propounded is that the contract of service of employees is divisible in terms of number of days, but is not further divisible into number of hours. Why the employees should then be expected to go on strike for less than one full day. It is, therefore, suggested that the provisions of section 22, 23 and 24 of the Industrial Disputes Act, 1947 should be thoroughly revised in a manner that while a six weeks' prior notice would be required to be served in a prescribed manner by or on behalf of the persons who propose to go on strike, yet at the first instance, they would go on strike for only one hour for not more than three consecutive days, and that too during the last one hour of their working hours. For instance, if an office closes at 5.00 p.m., the concerned employees can be permitted to strike work from 4.00 p.m. to 5.00 p.m. only on three consecutive days of the week. As regards the public utility services, their employees, subject to the procedural safeguards mentioned above, may go on strike only during lunch hours, and for that purpose, their lunch hours shall be deemed to be extended by one hour on those days on which they propose to go on strike, and consequently, their working hours on those days shall also be deemed to be extended by one hour in the evening, so that the public may not have to suffer on account of their strike, while their grievances should come to the knowledge of the public. For observing

strikes in the prescribed manner, the employees shall not be exposed to deduction of salary, nor shall any other penal action be taken against them. It may also be incorporated in the Industrial Disputes Act, 1947 that the concerned Regional Labour Commissioner, Central or that of the State concerned, shall invite the parties for conciliation immediately on receiving the notice of strike from the employees, and intervene effectively for settling their dispute, and if he does not succeed in his efforts, he would submit his report to the *Chief Justice of the concerned High Court,* with a copy to the appropriate government. Upon receipt of such an report from the Labour Commissioner, the Chief Justice may constitute a committee of two retired Judges to look into the problem of the employees. The Judges Committee shall then serve notice on the parties to the dispute, through the Registrar of the High Court to appear before it on a specified date and time, and may also issue any interim directions for regulating or banning the strike in the meanwhile. The Committee of Judges would hear the parties on specified date and time, ordinarily, some Saturday or Sunday, in the High Court premises, and during such hearings, the parties can be represented through advocates, and the decision of the two members Judges Committee shall be final and binding on the parties. In case of difference of opinion between the two Judges, the matter shall be referred to the Chief Justice, and his decision shall be final. An appeal against the decision of the Judges Committee shall lie only to the Supreme Court of India. No penalties need be prescribed for going on an illegal strike, i.e., a strike in violation of the provisions of the Industrial Disputes Act, and it shall be the prerogative of the Judges Committee to impose any punishment on the erring employees, if their interim orders are violated, by treating such violations as contempt of the court's orders.

30

Court Martial

Incidentally, I had the benefit of open discussion with a very senior officer of Special Services Bureau (SSB) at Jammu about three years ago, who, in a state of little intoxication before dinner, and in an unsuspecting manner, revealed to me as to how the army officers misuse the court martial proceedings. He very candidly admitted that the purpose of court martial is to humiliate the concerned officer, who has dared to question any decision or action of a superior officer, and to destroy his career. Particularly referring to court martial proceedings of low level officials, he disclosed that in order to pre-empt interference by a court of law, he would hurriedly convene the court martial proceedings at some weekend, and impose a punishment of imprisonment or detention for two three days, so that before the concerned person approaches a court of law, his punishment is over. He also proudly disclosed to this author that such an official who is charged with commission of any offence is generally put under military custody. According to his version, there is no other way for an offender to escape from punishment, once charged to court martial, except by tendering apology and by appeasing the superior officers. The interesting part of the revelations made by that senior officer was that he himself was having a very strong grievance against the treatment given to him by the superior authorities in the matter of grant of pay scale. His grievance was that despite being in charge of a Battalion and other officers similarly situated having been granted the higher pay scale, he was afraid of submitting a representation, or filing a case against the department, as he apprehended victimization in that case. Since I stayed in their guest house officially in my capacity as Senior Standing Counsel for the Central Government, the officer got a representation drafted from me, and got it revised and re-revised a number of times, in respect

of his claim for higher pay scale. However, I am sure that the officer had no guts to submit a representation even regarding a discrepancy in his pay scale. I, therefore, wonder whether that officer would have dared to make a complaint to the Army Headquarters, if any of his superior officers had committed some act involving lack of integrity. I had listened to his stories with amusement for about two days' period of my stay as his official guest, since the officer had no work to be performed as the entire Battalion was totally idle, and the Government had been considering a proposal to shift the Battalion to Nepal border. However, I forgot his stories with the passage of time, but last year when I read about the orders for court martialling of Anjali Gupta, I immediately recollected the story told to me by that officer. The poor Anjali, who is perhaps the only lady officer, employed in Aircraft Systems and Training Establishment in Bangalore, had also been placed under military custody, by way of preventive detention, during the pendency of court martial proceedings, *so that she may not commit suicide*. Thus, the superior officers achieved their objective, notwithstanding the ultimate outcome of the court martial proceedings, which led to her dismissal from service, notwithstanding the pendency of serious complaints lodged by Anjali Gupta against the senior officers relating to her sexual harassment.

It is suggested that the rules governing the Armed Forces should be amended in such a manner that only during war period, provisions relating to court martial may be invoked, whereas during peace time, the enquiry against a member of the armed forces should be conducted in accordance with the Central Civil Services (Conduct, Discipline and Appeal) Rules. Further, for the suppose of disciplinary action, during peace time, the offences enumerated under various sections of the Army Act, 1950, should be treated as 'misconduct' under the C.C.S. (C.C.A.) Rules, and full opportunity of defence should be afforded to the delinquent officials. It is only during war, when the disciplinary action is required to be completed

swiftly, that the provisions relating to court martial should be invoked.

It is also an admitted fact that overdose of indiscipline in the Armed Forces has led to increased litigation during the last decade. As per available data, during the last five years alone, there had been 5100 court martial cases conducted by the Armed Forces, and 8000 fresh writ petitions were filed by the court-martialled officers for challenging the punishment imposed on them. This does not speak well about the position of discipline in the armed forces. The Armed Forces should be completely disciplined ones. "*There is not to reason why, there is but to do and die*" should be the hallmark of our armed forces. Admittedly, some of the court-martialled officers may be very honest and upright officers, but on account of their temperaments, they are not likely to prove good soldiers or officers. It is, therefore, suggested that before ordering court martial of any soldier or officer, a Committee should review the service record of such soldier or officer, so that those soldiers or officers, who can prove to be assets for civilian side (like MES), may be transferred to that side without passing any stigmatic order, instead of destroying their careers by imposing punishment through court-martials. An amendment in the Army Act, 1950, to that effect, would be necessary.

31

Suicides by Army Men

An alarming news report was published in "Times of India" issue dated 5.5.2005, about the spurt in the number of suicides being committed by BSF *jawans*. As per the report, on an average, over 30 cases of suicides and as many angry shootouts take place in a year in the BSF. 'Grievance Cell" constituted in the BSF has proved to be ineffective. Just on 2.5.2005, a BSF *jawan* of 136 battalion gunned down two of his colleagues before taking his own life at the Ramgarh border outpost (BOP) on the Indo-Bangladesh border. Two days later, Subedar Major Surjeet Singh was found hanging from the ceiling of his quarters at Lal Bagh in the same area. He had been suffering from depression and had been under treatment. Constable Sanjay Kumar, in a fit of rage shot dead head Constable P.K. Goswamy while on duty near Baramullah in J & K previous Saturday. Experts have "explained away" these incidents as outbursts, under some kind of psychological pressure of years of separation from family, coupled with fatigue emanating from the nature of job involving long hours of duty. Other reasons enumerated are harsh living conditions in small bunkers of inhospitable environs, aggravated by differences with colleagues over numerous matters, from money, duty to sexual harassment, which are overlooked by the superiors which frequently leads to vicious quarrels.

The only remedy or solution, to my mind, is *Pranayam, Yoga and Meditation*. Yoga keeps a man fit and completely free from various physical and mental ailments. *Pranayam*, in addition, gives relaxation and peace, besides concentration, which is extremely useful for sharp shooters. It reduces anger. Meditation makes a person strong believer in his destiny. It

strengthens his moral values. A person who has meditated for half an hour continuously for two years does not require any medicine for treatment of hyper-tension and a large number of other mind-related diseases. He learns to control his "*indris*", and can curb his undue desires. He does not fear death. He does not submit to oppression, nor does he sell his conscience for fear of court martial. He does not feel tired after extensive exercises, nor does he require whiskey before sleeping, for relaxing his mind. He does not become party to "false encounters with enemies" and thereby help the Brigadiers to earn bravery awards. He becomes a true patriot. If we require various qualities of head and heart in our *jawans*, including officers, we must teach them *Pranayam, Yoga and Meditation.*

32

Recruitments in Army

A very shocking story was published in the "Times of India" dated 28.4.2005 regarding the arrest of one Lt. Col. (Retd.) S.P. Singh, presently the Deputy Director of Bathinda Sainik Welfare Board, on 27.4.2005, for accepting Rs.20,000 as bribe from the parents of Squadron Leader Ajay Ahuja, who died during the Kargil war on May 28,1999, and was awarded Vir Chakra posthumously for sacrificing his life for the Nation. Two cheques for Rs.1 lakh each, on account of monetary relief announced by the Government for the family of Ajay Ahuja, issued as far back as on March 10, 2005, were lying with Lt. Col.Singh, but he did not release those cheques to the family. The news paper observed that "He (Lt. Col. S.P. Singh) brought shame to nation". The question arises whether Nation is safe in the hands of army officers like Lt. Col. (Retd.) S.P. Singh? Whether there is some serious shortcoming in the method of selection of army officers? Whether there is grain of truth in allegations of financial scandals in purchase of arms and ammunition? The Nation must find answers to these questions, and find remedies also.

In my humble view, the interview process for recruitment in the Army should be such that only persons of integrity should be recruited as officers in the Armed Forces. Presently, it appears, the children of army officers get recruited in the army easily. Personality of candidates gets polished before interview, by intensive coaching. Fluent English speaking, the speaking, walking and dressing manners are treated as an asset for recruitment of officers in the armed forces. Lt. Col. (Retd.) S.P. Singh also must have been one of those senior officers, associated with selection of officials in the army. What must have been the quality of persons selected by him is obvious from his latest conduct. The solution to the

growing menace of corruption in the armed forces, therefore, is that process of interview of candidates for selection to officers' rank must involve passing through a lie detector test, the proceedings of which should be video recorded, and complete record thereof should be preserved for a reasonable period, so that only the persons with unimpeachable integrity should get selected, and army officers' posts may not become a sort of right to inheritance of children of senior army officers only, including those of the kind of Retd. Lt. Col. S.P. Singh, who could not be caught accepting bribe during their service career.

33

Counterfeit Currency

The present provisions of Indian Penal Code as contained in sections 489-A to section 489-E have proved inadequate in curbing the circulation of fake currency. These provisions pertain either to preparation of counterfeit currency notes, or using the counterfeit currency notes as genuine, while believing those to be fake or counterfeit. Sub-sections 489-B and 489-C cannot be invoked against persons who claim to be innocent. In legal parlance, the *mens rea* , i.e., "knowing or having reason to believe that the currency notes or Bank-notes are forged or counterfeit", is an integral part of offence envisaged under these two sub-sections. In other words, in the absence of *mens rea,* no offence can be proved. Thus, even if a person, giving currency notes to a shop keeper or a bank, is handed over to police, he is not likely to be convicted, as it would not be possible to prove *that he had the knowledge about those currency notes being fake,* more so when in criminal cases, every offence is required to be proved beyond doubt, which is a cardinal principle of our criminal law. As a matter of fact, many such people in possession of fake currency are innocent. They cannot distinguish between counterfeit and genuine currency notes. Even despite being an ex-Manager of a commercial bank, I am unable to distinguish between fake and genuine currency notes. The reason is *'take it easy'* approach. Government will have to successfully check the circulation of counterfeit currency by amending the law. If that can be done, the printing of such currency notes would automatically come to a halt. It is, therefore, suggested that section 489 B be completely substituted as under:-

"489 B. –Possessing or using counterfeit currency notes or bank-notes.- Whoever possesses or sells to, or buys, or receives from, any other person, or uses as genuine, any forged

or counterfeit currency note or bank-note, shall be liable to a fine equivalent to ten times the value of such currency notes or bank-notes." Besides, an Explanation should be inserted below this section that "commission of the offence covered under this section for the second or subsequent time would be deemed to include *mens rea,* while committing the offence and shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine.

I am confident that this is the only remedy against circulation of counterfeit or fake currency notes or bank-notes.

34

Banks' Recovery Agents

The "Times of India" in its issue dated 6.5.2005, reported that three youths posing as recovery agents associated with a private bank tried to take away a Kinetic Honda from a Class XII student, and the daughter of a bank manager, in busting phase-X market in Chandigarh on 5.5.2005. Talking to Times of Chandigarh, the girl said that she was driving her scooter and while crossing the market, three youths suddenly came from behind and signaled her to stop. They first inquired about her address and when she refused, one of them got down from his vehicle and tried to snatch her scooter keys. They asked her to surrender the scooter as they said they have to impound it according to the bank's instructions. It was only after the intervention of the passersby that she was let free. In a complaint to the police made by her father, who rushed to Chandigarh from Delhi, on hearing about this incident, it was stated that after she reached home, the trio surfaced again and asked for money. They took rupees 2000 from her mother, without giving any receipt, and left her home after giving to her their telephone numbers. The girl's father told the police that they had submitted 36 post dated cheques to the bank at the time of loan approval and not a single cheque has bounced, and that there was no intimation from the bank regarding anything, and now all of a sudden, they harassed her daughter.

Many more such incidents can be referred to. Most of the recovery agents engaged by the private banks, and now even the public sector banks, are anti-social elements, having a history of past litigation, criminal or civil, and are having high connections. They generally do not have any knowledge about banking. They direly need money, and for getting commission from banks, to which they are entitled on percentage basis against the amount recovered by them, they go to any extent for

recovering money on behalf of bankers, and in the process, violate all norms of civilized behavior. They use "muscle power" to recover loans from customers. The are mostly related to politicians

I would, therefore, suggest the incorporation of a proviso below section 10 of the Banking Regulation Act, 1949, so that no bank employs anti-social elements as recovery agents:-

"PROVIDED FURTHER that no banking company shall appoint a person as recovery agent, who has been involved in any civil or criminal litigation as a respondent/ defendant/ accused, during the previous ten years."

35

Multiplicity of Banks

Of sometime late, there has been a debate about restructuring the public sector banks. In all, there are twenty seven public sector banks, including seven subsidiaries of the State Bank of India. The proposal mooted by the Finance Minister is to amalgamate all these banks into five or six big Corporations, so as to reduce the operational costs, like maintenance of ATMs etc., and also to reduce unnecessary competition. The idea is laudable, but is facing stout opposition from the trade unions of bank employees. Their apprehension is that the Central Government intends to weaken their trade union movement in banking industry, so as to reduce their bargaining power. A statement or two occasionally issued by the Finance Minister or by the IBA (Indian Banks Association) declaring that in future they would like the individual banks to arrive at their own settlement in the matter of wage- revision, adds fuel to the fire. It is suggested that the fears of the AIBEA (All India Bank Employees Association) and other trade unions on all these matters must be allayed before embarking upon any such ambitious programme of restructuring. My humble suggestion is that a *loose Federation* of all the public sector banks be formed, which should control only certain common functions of all the banks, without impinging upon the autonomy of any bank, or the rights of the workers. This Federation should take care of ATMs of all the banks, and other such functions which do not relate to the rights of workers. The purpose of making such a Federation is to carry on, rather speed up banking reforms. The wage revision negotiations and settlements should continue to be conducted at the level of IBA and AIBEA / NCBE (National Confederation of Bank Employees) as hitherto fore.

36

Regional Rural Banks

The Union Finance Minister, had in a statement on 3.6.2005, disclosed that nine State Governments have approved the Central Government's move to merge the Regional Rural Banks with their parent banks, and that he was now just to put his signatures on the file, more than 9 month have passed since then. The Regional Rural Banks were constituted under 'The Regional Rural Banks Act, 1976'. It was laid down under Section 3 (1) of the Act that "the Central Government may, if requested so to do by a Sponsor Bank, by notification in the Official Gazette, establish in a State or a Union Territory, one or more Regional Rural Banks with such name as may be specified in the notification and may, by the said or subsequent notification, specify the local limits within which each Regional Rural Bank shall operate." Further, under Section 29 of the Regional Rural Banks Act, 1976, read with Section 17 thereof, the Central Government, after consultation with the NABARD (National Bank for Agricultural and Rural Development), and the 29 Sponsor Banks, have made the "Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1988", which are uniform in all the Regional Rural Banks (which are 216 in number). A perusal of these Rules shows that the designations of subordinate and clerical staff in various banks are different from those available in the Sponsor Banks. These Rules were substituted by another uniform set of Rules vide notification dated 29.7.1998 issued by the Finance Ministry. The criteria for promotions from Scale-I officers to Scale –II officers, and onwards prevailing in these RRBs is totally different from that prevailing in the Sponsor Banks. Besides, in pursuance to an Award given by National Industrial Tribunal on 30.4.1990, the various posts of officers and other employees were equated with corresponding posts of comparable level in Sponsor

Banks, for the purpose of giving the appropriate pay scales and fitment in the scales to them. With this background, it may be noticed that the object of incorporation of the RRBs was to develop the rural economy by providing, for the purpose of development of agriculture, trade, commerce, industry and other productive activities in the rural areas, credit and other facilities, particularly to the small and marginal farmers, agricultural labourers, artisans and small entrepreneurs etc. Section 23-A of the RRB Act provides the procedure for amalgamation of two or more RRBs. The merger of various RRBs into their respective parent or Sponsor Banks would mean creating difficulties in the matter of seniorities and promotions of the employees of those RRBs vis a vis the employees of their 29 sponsor banks. It is, therefore, suggested that instead of disturbing all the 29 Sponsor banks, a lose Federation of the RRBs sponsored by each of these 29 parent banks, be formed. Thus, instead of 216 RRBs operating all over India, only 29 RRBs with branches in a compact area, and attached with respective sponsor banks would be created by this process of restructuring. Each of these 29 RRBs would be regulated by its Sponsor Bank through its Head Office, unlike the earlier position when 216 RRBs operating at the level of a district or two, were operating under guidance and direction of the respective parents banks. All these 29 RRBs can thereafter work under close supervision of the NABARD and the Central Government. In this way, disputes in relation to inter-se seniority, merit and promotions of employees of RRBs and those of the Sponsor Banks would be obviated, and multiplicity of the RRBs would also be checked to a great extent.

37

Political Bank Directors

Section 9 (3) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 contains elaborate provisions for nomination of different categories of persons as directors on the Boards of the nationalized banks. Clause (h) of this sub-regulation refers to and provides for nomination of not more than six directors by the Central Government on the Boards of various nationalized banks. Under sub-Section (3A), it has been further envisaged that such nominated directors shall be from various categories. The said provision is reproduced hereunder:-

"(3A). The directors to be nominated under clause (h) or to be elected under clause (i) of sub-Section (3A) shall-

(A) have special knowledge or practical experience in respect of one or more of the following matters, namely:-
(i) agricultural and rural economy;
(ii) banking;
(iii) co-operation;
(iv) economics;
(v) finance;
(vi) law;
(vii) small-scale industry;
(viii) any other matter the special knowledge of, and experience in which, would, in the opinion of the Reserve Bank, be useful to the corresponding new bank."

It is to be noticed that clause (i) provides for election of a maximum of six directors from amongst share holders of the bank. Thus, in view of sub-Section (3A), the directors to be

elected from amongst shareholders shall also have to be from the eight categories mentioned hereinabove. In actual practice, such directors under clause (3A) are nominated by the Government on political considerations, and that is the reason why such directors are some times called "political directors". Otherwise too, six directors having been appointed from amongst all sections of society and all walks of national life represented by share holders of the bank, under clause (i), further appointment of six more directors from the same categories as political directors under clause (h) amounts to making double provision for appointment from directors from the same very sections of society, which a nationalized bank can ill afford. The utility of such directors to the banks is doubtful. It only helps the politicians to adjust certain supporters as directors in banks, who later take care of the interest of those politicians. Such political directors have to be substituted by a category of persons, who should be well versed with law and should have a flare for giving justice, and should act as watch dogs for the nation, while discharging their functions as directors on the Boards of nationalized banks. It is, therefore, suggested that in the interest of the proper functioning of the nationalized banks, all the six directors under clause (h) should be nominated from amongst retired Judges of the High Courts, by amending the provisions of Section (3A) as under:-

PROPOSED AMENDED PROVISIONS:

"(3A). (a) ***The directors to be nominated under clause (h) shall be from amongst retired High Court Judges, to be appointed by the Central Government, on the basis of recommendation made by the Prime Minister, in consultation with the Leader of the Opposition in the Lok Sabha:***

(b) The directors to be elected under clause (i) of sub-Section (3A) shall-

(A) have special knowledge or practical experience in respect of one or more of the following matters, namely:-

(ix) agricultural and rural economy;
(x) banking;
(xi) co-operation;
(xii) economics;
(xiii) finance;
(xiv) law;
(xv) small-scale industry;
(xvi) any other matter the special knowledge of, and experience in, which would, in the opinion of the Reserve Bank, be useful to the corresponding new bank."

Since it would not be appropriate that the retired High Court Judges, as members of the Board of Directors of a nationalized banks should be acting as such Directors under political Chairmen, it is suggested that a new sub-Section (6) be added to existing Section 7, to the following effect, for laying down that the Chairman and the Managing Directors of the nationalized banks shall be the retired Judge of Supreme Court and High Court respectively.:-

"7(6). As and when the Chairman and Managing Director of the first Board of Directors of a corresponding new bank vacate their office, such Chairman shall be replaced by a retired Judge of Supreme Court and such Managing Director shall be replaced by a retired Judge of a High Court, to be appointed by the Central Government, on the recommendation made by the Prime Minister, in consultation with the Leader of the Opposition in the Lok Sabha"

38

Guarantor's Woes

When one cannot guarantee one's own conduct in future, it is the most innocent persons only who may stand guarantee for others. Many a time, a person giving guarantee of another person for repayment of a bank loan, does not know about all the consequences arising from such act, including his co-extensive liability along with the principal borrower. The interpretation of the term "co-extensive liability" by the Courts is too harsh, and a creditor is entitled to proceed against a guarantor even before proceeding against the principal borrower. In one of the cases in my knowledge, a guarantor, who had mortgaged his residential house also as security for repayment of the bank's dues by the principal borrower, extended an offer to the bank to pay half of the debt due, with the request that thereafter the bank should proceed first against the principal borrower's property, but the bank refused to accept his offer. Thus, the law is very harsh on guarantors. Section 128 of the Indian Contract Act, 1872 lays down that "*the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.*" Section 138 of the Contract Act lays down that "*Where there are co-sureties, a release by the creditor of one of them does not discharge the others, neither does it free the surety so released from his responsibility to the other sureties.*" Section 140 lays down that " *where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety upon payment or performance of all that he is liable for , is invested with all the rights which the creditor had against the principal debtor.*" Section 141 of the Act lays down that "*A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of surety ship is entered into, whether the surety knows of the existence of such*

security or not, and if the creditor loses, or without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security."

Thus, none of the provisions of Indian Contract Act gives any respite to a surety even if he pays any amount , less than the total liability of the principal borrower, to the creditor. It is, therefore, suggested that some reasonable concessions should be extended to a surety if he cooperates with the creditor bank. It is, therefore, suggested that following new section 140-A be inserted in the Indian Contract Act:-

PROPOSED NEW PROVISION:

Section 140-A. Rights of the surety on part-payment or performance.- *Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety upon payment or performance of fifty percent of all that he is liable for, without being invested with any of the rights which the creditor had against the principal debtor or other co-sureties, if any, shall stand fully discharged of his liabilities under the contract of surety ship.*"

39

Fraud on Development (Sub-standard Material)

In our country, entire development work depends upon contractors. Barring a few reputed contracting companies, the contractors, by and large, utilize sub-standard materials. The result is that the roads built through contractors are washed away during the earliest monsoon. Roofs of houses collapse during construction and laborers are buried under the *debris*. Over-bridges collapse during inauguration ceremony itself. Country loses heavily on account of the nefarious activities of the contractors, against whom no worthwhile action can be taken. Sometimes, they are arrested under general provisions of Indian Penal Code for cheating and fraud etc, and some of the departmental officials are also placed under suspension and with the passage of time, the anger of the public subsides, while scandals relating to use of sub standard material continue unabated.

It is suggested that a separate Chapter-XXII-A should be inserted in the Indian Penal Code for dealing with offences committed by contractors in relation to use of sub-standard materials during construction of public works. A penalty of rigorous imprisonment for a period of three years should be prescribed for using material below specification mentioned in the contract. What amounts to "sub standard material or material below specimen" should be clearly defined and further explained by giving sufficient number of illustrations below the relevant sections in this Chapter. No government official need be suspended any longer for such acts of contractors, as the contractors will stop giving bribe to government officials for using sub standard materials.

40

Fraud on Development (Delayed Projects)

The Development works entrusted to contractors are generally delayed. Meanwhile, the cost of the project escalates. The Government suffers a lot from such delays.

It is, therefore, suggested that Section 73 of the Indian Contract Act, which provides for payment of compensation for loss or damage caused by breach of contract, be amended, so that notwithstanding any provisions contained in a Government contract for development, regarding the compensation for the breach of contract, the Government may realize full compensation for the escalation of costs on account of delay caused by the contractor in completing the contract.

EXISTING PROVISIONS

"73. Compensation for loss or damage caused by breach of contract.- When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has been broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it....."

"74. Compensation for breach of contract where penalty stipulated for.- When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the

contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for."

PROPOSED AMENDED PROVISIONS

"73. Compensation for loss or damage caused by breach of contract.- ***Without prejudice to the provisions of section 74,*** when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has been broken the contract, compensation for any loss or damage caused to it thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.....".

This minor amendment in section 73 would enable the Government in appropriate cases to realize the total amount of loss caused to it due to delay on the part of contractor in completing the contracted work, or abandoning it half way, despite the contract containing a clause for realization of stipulated loss in case of a breach of contract.

Corrupt Public Servants

Rule 10 (2) (a) of the Central Civil Services (Classification, Control and Appeal) Rules, at present envisages deemed suspension of a Government servant with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours. An Explanation should be inserted below clause (a) to the effect that a Government servant, if detained in custody, on a criminal charge, for any of the offences under the Prevention of Corruption Act, 1988, would be deemed to have been compulsorily retired by the appointing authority with effect from the date of such detention. Besides, an Explanation would be required to be inserted below Rule 36 of the Central Civil Services (Pension) Rules, to lay down that " No retiring pension shall be granted to a Government servant, compulsorily retired under Explanation below Rule 10 (2) (a) of the CCS (CCA) Rules, unless he fulfils the conditions for compulsory retirement under Fundamental Rule 56. In the considered view of this author, these amendments would act as sufficient deterrent against corruption by public servants. Presently, such corrupt government servants enjoy subsistence allowance at the rate of 75% of their pay during the prolonged period of suspension, without performing any duty whatsoever. In case of criminal proceedings, which may result into conviction also, just on the basis of suspension of sentence, such corrupt government servants manage to continue in service. Instances are there, when a government servant, placed under suspension under the above said provision, managed to get his suspension order revoked on grant of bail. The proposed amendments would eradicate such misuse of statutory provisions also.

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Tainted Representatives

Our Parliament is often rocked by demand raised by the opposition parties for seeking resignation of one Minister or the other on account of being tainted by some charge sheet filed against him in a criminal case, or warrants of arrest issued against him in a criminal case. Some such cases are registered under the Prevention of Corruption Act, 1988, whereas others are registered under various provisions of Indian Penal Code relating to commission of criminal offences involving moral turpitude. It is often contended by the ruling party that mere filing of a charge sheet is no ground to seek the resignation of a Minister, since that does not disqualify a person from continuing as a member of the Parliament. It is also contended sometimes by the affected Minister that criminal charges against him were the outcome of criminal conspiracy against him. Even the position under section 8 of the Representation of the People Act, 1951, regarding conviction resulting into disqualifying a candidate from contesting elections of Parliament or State legislature, when the sentence has been stayed by a superior court, is not clear beyond doubt.

The criminal offences which the representatives of public generally face in our country may be divided into two categories; (i) under the Prevention of Corruption Act, 1988; and (ii) other criminal offences involving moral turpitude. Almost all the offences mentioned in section 8 of the Representation of the People Act, 1951 fall under "moral turpitude". However, in my humble view , the offences under moral turpitude, except those under Prevention of Corruption Act, 1988, can generally be manipulated, or may arise out of an innocent violation of some statute. Thus, those offences have to be treated differently from the offence relating to corruption.

As regards the offences in the first category, the Representation of the People Act should be amended in a manner, that the MPs and MLAs would automatically get disqualified from continuing as MP or MLA, as the case may be, with effect from the date a charge sheet is filed against them under any of the offences under Prevention of Corruption Act, 1988. However, this provision should be made applicable only to charge sheets, which arise out of offences that may be committed on or after the date of coming into force of the amended provisions, so that none of the MPs or MLAs currently facing such charges may be disqualified under the amended provisions, which otherwise also cannot be made to operate retrospectively.

As regards the other offences involving moral turpitude, the Representation of the People Act would be required to be amended in such a manner that an MP or MLA, who gets convicted for any other offence involving moral turpitude, would be automatically disqualified from continuing as a Peoples Representative, until his conviction (as distinguished from sentence) is set aside by a superior court. This amendment would also be required to be made with prospective effect, in the manner suggested earlier.

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Corruption in Public Dealing Offices

Corruption is rampant in Estate Offices, Revenue offices, Tehsildar's offices, Sub Divisional Magistrate's offices, PWD Offices, Income Tax Offices, D.C. offices, Treasury offices, District Education Officer's/ Block Education Officer's offices, Director of Public Instruction's offices, Accountant General's offices, etc., etc. In short corruption is the order of the day in every office dealing with problems of common man. Police officers do not record the FIRs correctly. The peons standing outside Courts generally run after the advocates and clients for *bakhshish* as soon as some interim order is issued or case is decided favorably. CSD Canteens are smuggling the liquor, meant to be sold to ex-army men at concessional prices. Other goods are also sold away by these Canteens to outsiders. At over bridges under construction, big scams are taking place in the matter of collection of toll tax from vehicles, and used receipts are re-used and exchanged between *dalals* standing on either side of the over bridge, and the profit is shared by them with the staff deployed at the over bridges. Similarly at Octroi posts, trucks are allowed to pass without paying any octroi by accepting petty bribes to the tune of rupees fifty per month on contract basis. In jails, visitors have to bribe the jail staff for securing entry into the jail. The less said the better about the honesty and integrity of the officials posted in public dealing offices.

It is, therefore, suggested that close-circuit cameras be installed in all such offices for keeping all round surveillance over the employees for eradicating corruption and other malpractices.

44

Disappearing Tigers

The whole Nation is worried about the tigers disappearing from the forests. Despite ban on sale of tiger skin, it is adorning the drawing rooms of big wigs of industry and politicians. Section 49B of the Wild Life (Protection) Act, 1972 prohibits trade or business in articles made from scheduled animals, like tigers. Still the trade in these articles is going on. Section 51 provides penalties to be imposed on any person who contravenes any provisions of this Act, except those contained in Chapter V-A (which contains section 49A also), and any rules or orders made there under. The proviso to section 51(1) only prescribes punishment for other offences in relation to tigers, except trade or business in them (envisaged under section 49B). One glaring defect in this Act is that it does not provide any punishment to those who are found to be in possession of any tiger article. As a matter of fact, tiger skin etc. does not adorn the showrooms of the dealers; it adorns the drawing rooms of influential persons, and is sold to them by the unscrupulous dealers in a secret manner. Thus, a provision for punishing the persons, who may be found to be in possession of scheduled animal articles, is required to be inserted in the Wilde Life (Protection) Act, 1972, and all permits issued so far to individuals to retain the tiger skins or other scheduled animal articles should be immediately cancelled. The allurement to kill tigers would be considerably reduced by this simple measure.

45

Forest Fires

These lines were written on 26th May, 2005. This was the start of the summer season. There were at least two news items in that day's news papers about forest fire erupting at various places in Haryana/ Himachal. Mostly, we suspect espionage in such fires. Sometimes, we suspect that fire might have erupted in the nearby *Jhuggis*. In fact, it is not so. Our military installations, our Fertilizer plants are all situated in or near the forest areas. Such fire always spreads through the wild growth on the ground. We have never taken care of this wild growth. All such wild growth on the ground in the forests has to be removed before the advent of summer season. If that is done, a fire even if it erupts, shall not spread in the absence of such wild growth on the ground. Let our country try this simple solution to the problem of devastating fires in the forests. It is a common saying that such and such news "spread like wild fire". People would forget about that saying also in due course, as neither there would be any wild fires, nor any references to it.

46

Quota in Private Sector

The UPA Government is in a fix to implement its promise to introduce reservation for the Scheduled Castes and Scheduled Tribes in the private sector. In principle, there is no quarrel with this proposition. With the shrinking of job opportunities in the Public sector due to large scale privatization, the job opportunities for the persons from weaker categories have to be explored. However, at the same time, it has to be kept in mind that these quotas in jobs in the private sector should not result into throttling the private sector. It is, therefore, suggested that legislation be introduced for amending the Constitution, and for introducing the principle of reservation in the private sector. The salient features of such legislation shall be (i) No job security, and no application of labour laws; (ii) Legislation shall apply to all private sector organizations employing ten or more persons during the previous year; (iii) No concessions in merit in the matter of selections, or in promotions; (iv) No accelerated promotions by operation of roster system, nor any accelerated seniorty.

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Accelerated Seniority of SC/STs

When the Supreme Court of India gave its verdict that accelerated promotion of a candidate belonging to the SC/ST category would not give accelerated seniority to him, it was a day of jubilation for the general category candidates, but a day of gloom for the SC/ST candidates. Sometime later, the Government reversed the law on this issue, and introduced article 16 (4A) in the Constitution to the following effect:-

"Article 16 (4A). Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which in the opinion of the State are not adequately represented in the services under the State."

In principle, this provision in the Constitution is fully justified. Seniority in a service is always a consequence of promotion, and, therefore, a promotion must confer consequential seniority to an individual. However, seniority of a SC or ST candidate should have no comparison or relationship with the seniority of a general category candidate. In that situation, there will not be any super session, or any heart-burning. Let the Government issue an O.M. (Office Memorandum) to the effect that there shall in future be two separate seniority lists of the promoted employees; (i) One list of Mainstream employees (including the employees of SC/ST employees promoted on merit by rubbing shoulders with employees of the general category); and (ii) Second List of SC/ ST employees promoted on the basis of roster point. Further promotions of these two categories of employees should be to the posts falling within their own quotas. No employee in the

Second List shall thereafter be allowed to compete with the employees in the Mainstream List. That is the only solution that may meet the aspirations of employees of both the communities.

48

Lecture Shortage

The Rules regarding minimum percentage of attendance are a constant source of litigation in the courts. Besides, the discretion to waive shortage of lectures etc. has given rise to arbitrariness and misuse of these provisions. The ability of a candidate has nothing to do with percentage of lectures attended by him. It is, therefore, suggested that the provisions regarding the requirement of a minimum percentage of lectures for appearing in examination should be done away with, and it should be substituted by a system of giving weightage for the lectures attended by a student, and the marks secured by a student on the basis of the percentage of lectures attended should be added to the marks obtained by him in the relevant examination. This system would eradicate all the evils emanating from the existing system requiring a minimum percentage of lectures for eligibility to appear in examination, and the attendance of the students shall also improve.

49

Paper Leaks

The PMT paper leaks are quite common these days. Recently, one such leakage of question paper was detected at Lucknow, and also at Faridkot (in Punjab) leading to the cancellation of pre-entrance examination at the eleventh hour. Such incidents are a constant reminder about the degeneration of our value-system, and lead to loss of faith by the examinees in the examination system itself. One wonders why a simple fool-proof method of setting up four sets of question papers at a time, is not adopted in the PMT, so that no examinee knows in advance as to which question paper would be given to him. If this system is adopted, no examinee would pay through his or her nose for getting all the four question papers in advance, while not knowing which question paper would determine his own fate. On the other hand, if he purchases all the four question papers, and prepares all the questions appearing therein, that would not be worth the value of money paid, more so, in view of attendant risks. Leakages of question papers would be reduced to minimum with this small and simple measure.

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Common Entrance Test

The order dated 27.6.2005, passed by the Madras High Court quashing the G.O. issued by the Tamil Nadu Government, in relation to abolition of the CET, appears to be fully justified. The holding of such CET where the qualifying examination is conducted by more than one Education Board/ University/ CBSE etc., is a must for ensuring uniform standards for admission into professional courses. However, the procedure involving grant of admission in such courses merely on the basis of marks obtained in such a CET is also not fool proof, since many brilliant students for one reason or the other (including for not being able to fully prepare for such an examination, due to holding of several such CETs by different institutions almost simultaneously at various places in the country), can not secure high marks in such a CET. It is, therefore, suggested that for balancing the equities between the students who may secure high marks in the qualifying examination and those who may secure unduly high marks in the CET, the merit list for giving admission into professional courses should be prepared by giving fifty percent weightage to the marks obtained by a student in the CET and an equal weightage to the marks obtained by such student in the qualifying examination. Such a system would be welcomed by the students and their parents, and is likely to be upheld by the Courts of law.

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ABOUT THE BOOK

This book is a collections of thoughts that came to the mind of the author during meditative thinking about the problems of the Nation.

ABOUT THE AUTHOR

The author of this book is a disciple of Swami Vishvasji and has no other special qualification for authoring such a book.

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