

The Emerging Challenges To Civil Society

By

P. Chidambaram

Home Minister, Govt. of India

**The Sixth Nani A. Palkhivala
Memorial Lecture**

5th October 2009



Published by
Nani A. Palkhivala Memorial Trust

NANI A. PALKHIVALA MEMORIAL TRUST

We hardly need to introduce you to the life and work of the late Nani A. Palkhivala who passed away on 11th December 2002. He was a legend in his lifetime. An outstanding jurist, an authority on constitutional and taxation laws, the late Nani Palkhivala's contribution to these fields and to several others such as economics, diplomacy and philosophy, are of lasting value for the country. He was a passionate democrat and patriot, and above all, he was a great human being.

Friends and admirers of Nani Palkhivala decided to perpetuate his memory through the creation of a public charitable trust to promote and foster the causes and concerns that were close to his heart.

The main objects of the Trust are the promotion, support and advancement of the causes that Nani Palkhivala ceaselessly espoused, such as democratic institutions, personal and civil liberties and rights enshrined in the Constitution, a society governed by just, fair and equitable laws and the institutions that oversee them, the primacy of liberal economic thinking for national development and preservation of India's priceless heritage in all its aspects.

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NANI A. PALKHIVALA

16th January 1920 - 11th December 2002

NANI ARDESHIR PALKHIVALA

In 1972-73 the full Bench of thirteen judges of the Supreme Court of India heard with rapt attention a handsome lawyer argue for five months before them that the Constitution of India, which guaranteed fundamental freedoms to the people, was supreme, and Parliament had no power to abridge those rights. The Judges peppered him with questions. A jam-packed Court, corridors overflowing with members of the Bar and people who had come from far-away places just to hear the lawyer argue, were thrilled to hear him quote in reply, chapter and verse from the U.S., Irish, Canadian, Australian and other democratic constitutions of the world.

Finally came the judgment in April 1973 in *Kesavananda Bharati v. State of Kerala*, popularly known as the *Fundamental Rights* case. The historic pronouncement was that though Parliament could amend the Constitution, it had no right to alter the basic structure of it.

The doyen of Indian journalists, Durga Das, congratulated the lawyer: "You have salvaged something precious from the wreck of the constitutional structure which politicians have razed to the ground." This "something precious" - the sanctity of "the basic structure" of the Constitution - saved India from going fully down the totalitarian way during the dark days of the Emergency (1975-77) imposed by Mrs. Indira Gandhi.

Soon after the proclamation of the Emergency on 25th June 1975, the Government of India sought to get the judgment reversed, in an atmosphere of covert terrorization of the judiciary, rigorous press censorship, and mass arrests without trial, so as to pave the way for the suspension of fundamental freedoms and establishment of a totalitarian state. Once again, braving the rulers' wrath, this lawyer came to the defence of the citizen. His six-page propositions before the Supreme Court and arguments extending over two days were so convincing, that the Bench was dissolved and the Court dropped the

matter altogether. Commented a Judge: "Never before in the history of the Court has there been a performance like that. With his passionate plea for human freedoms and irrefutable logic, he convinced the Court that the earlier Kesavananda Bharati case judgment should not be reversed."

This man who saved the Indian Constitution for generations unborn, was Nani Ardeshir Palkhivala. His greatness as a lawyer is summed up in the words of Justice H.R. Khanna of the Supreme Court: "If a count were to be made of the ten topmost lawyers of the world, I have no doubt that Mr. Palkhivala's name would find a prominent mention therein". The late Prime Minister, Morarji Desai, described him to Barun Gupta, the famous journalist, as "the country's finest intellectual". Rajaji described him as, "God's gift to India".

Nani A. Palkhivala, who passed away on 11th December, 2002, was for four decades one of the dominant figures in India's public life. An outstanding jurist, redoubtable champion of freedom and above all a great humanist.

Born on 16th January 1920, Nani Palkhivala had a brilliant academic career. He stood first class first in both his LL.B., (1943) exams and in the Advocate (Original Side) Examination of the Bombay High Court.

His expositions on the Union Budget in Mumbai and other places were immensely popular and attracted attendance in excess of 1,00,000. He eloquently espoused the cause for a more rational and equitable tax regime.

Nani Palkhivala was Senior Advocate, Supreme Court of India; Professor of Law at the Government Law College, Mumbai; Tagore Professor of Law at the Calcutta University; and a Member of the First and Second Law Commissions. He was elected in 1975 an Honorary Member of the Academy of Political Science, New York, in recognition of his "outstanding public service and distinguished contribution to the advancement of political science."

Nani Palkhivala argued a number of historical cases in the Courts of India and abroad, including the cases between India and

Pakistan before the U.N. Special Tribunal in Geneva and the International Court of Justice at the Hague.

He authored a number of books including *The Law and Practice of Income-Tax*, a monumental work, which is the definitive treatise on the subject. Other books included *Taxation in India*, published by the Harvard University in the World Tax Series; *The Highest Taxed Nation in the World; Our Constitution Defaced and Defiled; India's Priceless Heritage; We, the People and We, the Nation*.

Nani Palkhivala was India's Ambassador to the U.S.A. from 1977 to 1979. He was in constant demand during this period and delivered more than 170 speeches in different cities, which included speeches in more than 50 Universities, on subjects as varied as Gandhi, the nuclear issue, human rights, India's foreign policy, civil liberties in India, Indian agriculture, apartheid and the Third World.

Two American Universities – Lawrence University, Wisconsin and Princeton University, New Jersey - bestowed honorary doctorates on him. Princeton was the first to do so on 6th June 1978. The citation reads:

"Defender of constitutional liberties, champion of human rights, he has courageously advanced his conviction that expediency in the name of progress, when at the cost of freedom, is no progress at all, but retrogression. Lawyer, teacher, author and economic developer, he brings to us as Ambassador of India intelligent good humor, experience, and vision for international understanding. As we see the bonds of trust and respect grow between our two countries, Princeton takes pride in now having one of its own both in New Delhi and in Washington."

Lawrence University honoured him with a doctorate of Laws on 28th March 1979. The citation said:

"What is human dignity? What rights are fundamental to an open society? What are the limits to political power? Ambassador Palkhivala, you, more than most, have pondered these great questions, and through your achievements have answered them."

As India's leading author, scholar, teacher and practitioner of constitutional law, you have defended the individual, be he prince or pauper, against the state; you have championed free speech and an unfettered press; you have protected the autonomy of the religious and educational institutions of the minorities; you have fought for the preservation of independent social organizations and multiple centres of civic power.

As past president of the Forum of Free Enterprise and as an industrialist, you have battled stifling economic controls and bureaucratic red tape. You have always believed that even in a poor and developing country, the need for bread is fully compatible with the existence of liberty...

You are also an enlightened patriot and nationalist. You have successfully defended your country's cause in international disputes before the special tribunal of the United Nations and the World Court at the Hague.

Never more did you live your principles than during the recent 19 month ordeal which India went through in what was called 'The Emergency'. When those who had eaten of the insane root, swollen with the pride of absolute political power, threw down the gauntlet, you did not bow or flinch. Under the shadow of near tyranny, at great risk and some cost, you raised the torch of freedom..."

In 1997 Nani Palkhivala was conferred the Dadabhai Naoroji Memorial Award for advancing the interests of India by his contribution towards public education in economic affairs and constitutional law. In 1998 he was honoured by the Government of India with PADMA VIBHUSHAN. The Mumbai University conferred upon him an honorary Degree of Doctor of Laws (LL.D.) in 1998.

Nani Palkhivala was associated with the Tata group for about four decades. He was Chairman of Tata Consultancy Services, Tata International Ltd., Tata Infotech Ltd., the A.C.C. Ltd., and Director of Tata Sons Ltd. He was President of Forum of Free Enterprise from 1968 till 2000, and Chairman of the A. D. Shroff Memorial Trust from 1967 till his death.

P. CHIDAMBARAM

Born on 16 September 1945, Mr. Palaniappan Chidambaram was educated at Madras University, Chennai, Harvard University, Boston, Massachusetts (U.S.A.).

He is presently the Home Minister, Government of India.

He has been continuously elected to the Parliament from the Sivaganga Constituency, Tamil Nadu, since 1984.

He has earlier been the Finance Minister, Minister of State for Commerce (Independent charge), Minister of State for Personnel, Administrative Reforms, Training, Public Grievances and Pensions.

He is also a Member of the All India Congress Committee (A.I.C.C.). He is a Trustee of the Rajiv Gandhi Foundation and Ilakiya Chintanai (Literary Association), Chennai.

Mr. Chidambaram is regarded as one of the architects of the economic liberalization of India in 1991 along with the then Finance Minister and now the Prime Minister, Dr. Manmohan Singh.

INTRODUCTION

The Nani A. Palkhivala Memorial Trust was privileged to have Shri P. Chidambaram deliver the Sixth Nani A. Palkhivala Memorial Lecture on the subject "The Emerging Challenges to Civil Society."

In a brilliant lecture, Shri Chidambaram has identified as the central challenge the need for a shared idea of India to emerge from a society which has individuals of diverse ideologies, cultures and religious denominations. He forcefully argues that, to that end, it is imperative that we identify common strands that will bind us together as one nation and one people. Unless this is done, it will not be possible to build a modern and strong India.

In a response of this central challenge Shri Chidambaram makes two fundamental propositions. First, equality of status and opportunity alone can bridge the many divisions in our society and until that is achieved, we will always remain an unequal and divided society. Second, a high growth strategy will have no meaning unless this growth trickles down to those at the bottom of the pyramid. It is, therefore, necessary to modulate the growth process so that the very poor can be a part of the growth from the very beginning, instead of waiting for a pot of rice at the end of the growth process.

Both these propositions are argued with impeccable logic and a sound factual basis together with a passion which reveals Shri Chidambaram's deep commitment to the cause. These arguments will surely strike a most responsive chord in the hearts and minds of all right-thinking individuals.

Shri Chidambaram also identifies perhaps the most formidable challenge facing our nation, namely, the challenge of internal security. According to him this challenge has two

dimensions. First, the fact that we have a police system which is completely outdated and a police force which is ill-trained, ill-equipped and ill-paid. Second, the growing challenge of insurgency in the North Eastern States, the under-appreciated threat from the Naxalite movement and finally cross-border terrorism and the existence of terrorists cells and the modules based in India.

Shri Chidambaram's critical analysis of the issues he has raised and his new thinking on each of these critical areas need to be widely considered and debated. The Nani A. Palkhivala Memorial Trust has great pleasure in publishing this thought-provoking lecture and giving it the widest possible distribution. The Trust hopes that it will generate a public debate and influence both public and private thought on these issues which are so vital to the stability and development of our society.

Mumbai,
10th November 2009.

Y. H. Malegam
Chairman
Nani A. Palkhivala Memorial Trust

THE EMERGING CHALLENGES TO CIVIL SOCIETY

by

P. CHIDAMBARAM*

I am honoured and deeply grateful for the invitation to deliver the Sixth Nani Palkhivala Memorial Lecture. I do not know in what capacity of mine the trustees thought that I was qualified to deliver the lecture. Nani Palkhivala was a legal giant, a successful business leader, a diplomat and a powerful advocate of noble causes. I am no longer a practising lawyer, I have never tried my hand at business, I have never been a diplomat, and I often find myself as a target of advocates of noble causes. The last of course, is the occupational hazard of being a minister. Nevertheless, I shall try to do justice to the confidence reposed in me.

On the midnight of August 14 -15, 1947, Pandit Jawaharlal Nehru spoke of India's "tryst with destiny." That has become the most commonly used phrase in our social and political discourse. Whenever we dream of the future or we speak of the challenges that we face from time to time, we refer, in a matter of fact manner, to India's tryst with destiny. Did Jawaharlal Nehru believe in a destiny? By all accounts, he was an agnostic and could not have believed in a pre-determined destiny. I read the speech again and I think what he had in mind was a *destination* rather than a destiny. In fact, it would be appropriate to say that his emphasis was

** The author is Home Minister, Govt. of India. The text is based on the Sixth Nani A. Palkhivala Memorial Lecture delivered in Mumbai on 5th October 2009 under the auspices of the Nani A. Palkhivala Memorial Trust.*

on the *journey* to the destination rather than a fixed *destination*; and he was preparing the nation for the challenges that we would face during that journey.

The starting point

On that day, or at about that time, India's population stood at 320 million. 83 per cent of the people were illiterate. Life expectancy was 32 years. There were few schools, fewer colleges and only a handful of universities. The total number of students enrolled in colleges and universities was 238,398. India had 54,916 kms of railway track and 400,000 kms of roads. The number of automobiles was 306,000. The country's installed capacity of power was 1362 mw and it generated 11.16 MUs a day. Only 1500 villages had electricity. Practically, none of them had potable drinking water or sanitation. A lesser man would have been overwhelmed by the challenges and a government of lesser men and women would have crumbled under the weight of poverty, disease and deprivation.

That did not happen. The journey since 1947 has been long and arduous; yet we have overcome many of the challenges that faced India at that time. Poverty still afflicts many millions of Indians, but many millions have been lifted out of abject poverty. Diseases are prevalent, but we have wiped out plague, kala-azar, elephantiasis and small pox. The war against illiteracy has been long drawn out, but we seem to be on the final battlefield now, with only 8 million children out of school. The abiding lesson of the 62 year journey is that there is no challenge that cannot be overcome, no goal that cannot be achieved, and no system that cannot be reformed and made to deliver better results.

Nani Palkhivala – the ultimate defender

Early in the journey we crossed a historic milestone when the people of India gave to themselves a Constitution. The

Constitution was and remains – despite 94 amendments – a remarkable living document. While there have been many milestones during our journey as a nation, I cannot think of any other of more enduring value than the adoption of the Constitution. Even as we crossed more milestones, we also stumbled and fell on occasion. Two occasions come to mind immediately: the first, the utter lack of preparedness, both at the policy and at the practical levels, that led to the humiliation of the India-China war in 1962 and, the second, the misguided adventure into amending the Constitution in 1976. On both occasions, we were pulled back from the brink by a band of patriotic men and women, too numerous to be recalled here. Yet, two names stand out. One was Sam Manekshaw and the other Nani Palkhivala. It is a strange but delightful coincidence that they shared a common faith and, in a sense, common ancestors. We are gathered here to pay tribute to Nani Palkhivala. My lecture is a humble contribution; what is more important and heart-warming is the presence of so many distinguished men and women from different walks of life. If Dr. Ambedkar was the creator of the Constitution, Nani Palkhivala was its ultimate defender. The best tribute to him is to never forget that the Constitution is the ultimate protector of our Republic and our way of life.

The foremost challenge: The Idea of India

That Republic – and that way of life – faces many challenges today. In my talk, this evening, I wish to focus on some of the emerging challenges. Foremost among them is the challenge of the idea of India. Does not each one of us have an idea of India? We do, and we draw that idea from our own circumstances – birth, family, upbringing, education and the like. That idea is also shaped by our experiences like success and failure, joy and sorrow. It is also influenced by others such as family members, friends, adversaries, colleagues and superiors. Ultimately, each one of us forms an idea of

India. In the case of most people, the idea of India is vague, undefined and with barely visible contours; yet with a little prodding, it is possible to draw out every person to define his or her idea of India. Given the fact that we are 1.1 billion strong, it is not at all surprising that there is a bewildering range of ideas that compete for the pride of place as the idea of India. Thus, we have believers and apostates. We have secularists and religious supremacists. We have democrats and those who believe in armed liberation struggle. We have liberals, conservatives and primitives. We have capitalists, conservatives, free marketeers, social democrats, socialists, communists and Statists, and many who fall between two shades of opinion. It is perhaps ambitious or naïve to expect that we can fashion an idea of India that we can all share. But, I am afraid, without such an idea of India, and without a shared idea of India, it is not possible to build a modern and strong India. However many and deep-rooted our differences may be, it is imperative that we identify common strands that will bind us together as one nation and one people.

Why is it important to share a common idea of India? Because, without a shared view, it is not possible to advance any of the noble principles enshrined in the Constitution. Let me take one example: equality. It is enshrined in the Preamble which speaks of equality of status and of opportunity. Equality finds a mention in Article 14 and in many other Articles. It is also implicit in many Articles. Of all the pillars that hold up the democratic system, I cannot think of anything more important than equality of status and of opportunity. Yet, to my dismay, our social, economic and political systems continue to deny equality of status and of opportunity to millions of our fellow citizens. Any attempt to correct this distortion is met with stiff resistance. What is reservation in educational institutions and jobs if not an instrument to correct the historical denial of

opportunity to many sections of the people, especially dalits, scheduled tribes and the backward classes? Reservation may be a blunt instrument, but no one has suggested anything better. When we found that reservation had an unintended consequence of limiting the opportunities for meritorious students and decided to expand the capacity of our institutions manifold, even that was opposed on the dubious ground of dilution of the so-called excellence of our institutions. Reservation in jobs is opposed on the ground that it is antithetical to merit. This is a fallacious argument. How can merit among vast sections of first generation job seekers be discovered if they are denied the opportunity of holding jobs? Reservation for women in elected bodies is opposed. Special provisions for dalits, scheduled tribes and minorities are opposed. The result is that we remain an unequal and divided society. It is the persistence of historical inequalities that have led to so much conflict and tension in our society.

One of the emerging challenges that we will face in the 21st century will be the challenge of keeping nearly 1.5 billion people as one nation. Equality of status and of opportunity alone can bridge the many divisions in our society. My idea of India is that India must be an inclusive nation; India must celebrate its diversity; and all Indians must be encouraged to develop an Indian identity even while each Indian is free to be proud of his or her language or religion. My idea of India is an India where we make a conscious effort to make our society more equal and more united. It will not be easy. It will mean that those who have enormous wealth must be willing to share with others who have little or nothing. It will mean that those who have large incomes must be willing to pay more taxes. It will mean that we frown upon ostentation and vulgar display of wealth and endorse austerity and simplicity. It will mean that we amend the rules to accommodate more dalits, scheduled tribes and minorities. It will mean that we consciously forsake any claim to a religion or language or

caste being superior to any other. It will mean that each one of us has to give more before we ask for more. Please reflect on what I have said. Despite what your first impressions may tell you, the challenge of the idea of India is actually more acute and formidable.

The challenge of inclusive growth

The second challenge is the challenge of inclusive growth. One would have thought that, in a poor country, the imperative of inclusive growth is a self-evident truth. Alas, it is not. Although the 1980s witnessed an average growth rate of 5.5 per cent, the first real trigger to high growth was the reform and liberalisation programme that was launched in 1991. In the early years of reform, as expected, the annual growth rate was uneven. This was due to the structural constraints in the economy. As these structural constraints were eased, growth picked up. For example, the repeal of Sections 20 to 30G of Chapter III of the Monopolies and Restrictive Trade Practices Act encouraged companies to scale up their operations and to leverage the strengths of group companies. The repeal of the Foreign Exchange (Regulation) Act and its replacement by the Foreign Exchange (Management) Act contributed to increased inflows of foreign exchange. The ~~decriminalisation of violations of export-import regulations~~ gave an impetus to foreign trade. However, not all structural constraints have been removed yet. The worst thing that we can do is to bask in the glory of 9 per cent growth during a 4-year period and go back to lazy reforms. As the second fastest growing large economy in the world, this is our opportunity to press the accelerator on reforms – especially in foreign direct investment, mining and exploration, education and the financial sector.

In the post-1991 period, we saw that greater economic activity generated more investment, more jobs, better incomes, more savings, the last leading to more investment

and thus completing the virtuous cycle. However, greater economic activity took within its embrace only those who had the means and the opportunity to participate in the freer market. Millions, however, remained outside the market economy, and do so even today. Among them are landless peasants whose labour is often under-priced. There are small farmers who have little or no surplus produce and hence cannot benefit from higher prices for agricultural products. There are artisans like potters and cobblers, blacksmiths and goldsmiths, and weavers, whose products are replaced by the products of organised industry. And, finally, there are the millions who live on the margins of society such as forest-dwellers, the disabled and the destitute. Besides, a free and fiercely competitive market may drive many people to the margins and beyond. As there are success stories in the era of liberalisation, there are as many failures too.

At the turn of the century India was poised for high growth. Crucial decisions that promoted greater investment, higher productivity and carefully targeted social expenditure took the Indian economy to a new plane of growth beginning 2004. A higher rate of growth is, however, not a panacea. Growth does not automatically trickle down to those at the bottom of the pyramid. It is necessary to modulate the growth process so that the very poor can be a part of the process rather than wait for a pot of rice at the end of the process. That is the compelling argument in favour of inclusive growth.

While we may have understood the need to promote inclusive growth, I wonder whether we have fully understood the obligations that go with it. Inclusive growth, especially in a country where the number of poor runs into millions, means that we must subsidise food, even if the pundits disagree. The alternative is that many poor people will go without food, especially cereals, and many more millions will be malnourished. We must subsidise fuel, especially fuel for

transport. Otherwise, millions of people cannot travel even by public transport and their ability to participate in the market economy will be severely constrained. Inclusive growth will entail many such obligations and call upon the government to take many unorthodox measures. Last year we wrote off the loans of farmers to the tune of Rs.65,000 crore. It was resisted, initially, by the bankers. It was severely criticised by the economists. It was lambasted by the opposition as a populist and vote-catching measure. Few among them paused to ask the question how many crores of rupees of non-performing loans were written off for big industries. Let me give you the answer. Between 1999 and 2004 alone, banks wrote off Rs.47,123 crore that had been given to industries. It benefited a few hundred industrialists and maybe a few thousand jobs too were saved. On the other hand, the much criticised loan waiver scheme benefited 36.8 million farmer families and lifted a huge burden off their shoulders. It turned out to be a prescient move for, within a year of the write-off, India faces a 23 per cent deficiency in rainfall. Mercifully, many farmers do not have any accumulated debt. Orthodoxy has no place if it is our intention to promote inclusive growth. For example, in an economic downturn, conventional wisdom will urge business persons to lay off or retrench workers. An unconventional business person would use the downturn to freeze wages, retrain the workers, cut back costs, improve efficiency and productivity, and remain prepared when the upturn begins. I know of a software company that did not layoff or retrench anyone but actually hired 2800 new workers during the critical 18 months beginning April 2008. Public Sector Banks also hired many thousands of people during this period.

Inclusive growth will also mean that the government must have more resources to promote such growth. That means – and when I say this I know it will make me unpopular in this

audience – given the capacity to pay, people must pay more by way of taxes. After five years of high growth and after fine tuning the tax laws and tax rates, we were able to raise the central taxes:GDP ratio from 9.2 per cent in 2003-04 to 12.6 per cent in 2007-08. If we take both central and state taxes, the ratio rose from 15.0 per cent to 18.9 per cent. That might appear to be a dramatic jump, but it is not. In most developed countries, the tax-GDP ratio falls between 30 per cent and 40 per cent. Who pays more taxes? More income tax is paid only if one has more income, and even after paying more tax he or she will retain 70 paise in the rupee. More excise or customs duties are paid only by those who consume more goods and services. So, why grumble?

Inclusive growth will also mean that no one should ask for a disproportionately large share of the pie and, if he or she does, he or she must pay more for that share. In Delhi, in what is known as the Lutyens zone, the per capita availability of water is 310 litres per day, whereas in the resettlement colony it is 200 litres per day, but even that is a questionable estimate. In the same Lutyens zone, the per capita consumption of electricity is 500 units per month, whereas for all of Delhi the per capita consumption is 150 units per month. What is wrong therefore in asking those who have a larger share of the pie to acknowledge that it is disproportionate and to either consume less or pay more for their consumption?

As the economy steams ahead in full throttle and high growth rates become a regular feature, the demand for inclusive growth will become louder and more insistent. As a nation, we must be prepared to respond to the legitimate and anguished cry of the very poor and disadvantaged sections of the people. Hence, we must make larger allocations for education and health care; for rural infrastructure such as rural roads; for drinking water and sanitation; for subsidies

on food and fuel; and for cash support to certain sections of the people such as the aged and the disabled. Inclusive growth is a not-so-glamorous process that has the average poor person at the centre of all policies, but that is what we will need for the next 40 years or so if we are to win and retain support for economic reforms and liberalisation.

The challenge of internal security

The next and perhaps the most formidable challenge is the challenge of internal security. Over the years, old problems have festered and new problems have erupted. The challenge of internal security has two dimensions. The first is the state of our police system. That system is completely outdated and our police forces are ill-trained, ill-equipped and ill-paid. Adding to these woes are the short-sighted policies followed by governments with the objectives of control and patronage. Let us take the average constable. He is perhaps the most used, misused and abused person ever to wear a uniform. He works, on an average, 12 – 14 hours a day; generally 7 days a week, and throughout the year. Since he is drawn from the common stock of people, his behaviour and attitude reflect that stock: only a feeble attempt is made to improve his behaviour or change his attitude. When he travels from his home (in 80 per cent of the cases, it is not official accommodation) to the police station and back to his home, he transits from one cultural milieu to another. At the end of the day, he brings the culture of his home and neighbourhood to his work place. He is perhaps the most reviled public servant in India. From a violator of traffic laws to a rich man whose family member has run over several hapless persons sleeping on the pavement, everyone assumes that the average policeman can be cajoled, bribed, bought over, threatened or bullied into submission. The people's estimate of the average policeman is low; the self-esteem of the average policeman is even lower. It is this police force that

is our frontline force to provide internal security and it is this police force that we have to work with. Nevertheless, it is this police force that rises to great heights in a time of crisis. How many of you still remember Tukaram Ombale who grabbed the barrel of the gun and took the bullets on his chest in order to help his fellow policemen overpower Ajmal Amir Kasab? In the first eight months of this year alone 320 men and women belonging to the security forces have laid down their lives in the course of discharging their duties. Let us spare a thought and a prayer for these brave-hearts and their sorrowing families.

If the state of our police system is one dismal dimension, the other dimension is that the challenges to internal security continue to grow at a steady pace. Firstly, there is the challenge of insurgency in the North Eastern States. It is out of abundant goodwill for, and faith in, the numerous tribes in the North Eastern States that we carved out six States and gave the people Statehood. We recognised the regional aspirations of the people. We went a step further and recognised that different tribes living within a State also have aspirations for self-government. Thus, special provisions were made in the Constitution for customary law and procedure; administration of civil and criminal justice according to customary law; ownership and transfer of land and resources; delimitation and reservation of constituencies; and autonomous district councils and regional councils. Nevertheless, insurgent movements have entrenched themselves, particularly in the States of Assam, Nagaland and Manipur. Thanks to India, having an international boundary with Bangladesh and Myanmar, many leaders of the insurgent groups hide in sanctuaries in these countries. The number of cadres in most groups is quite small. A few, however, continue to recruit new cadres and their ranks have swelled. These groups are able to acquire arms from abroad

and bring them via Myanmar and Bangladesh. They indulge in extortion and kidnapping; they kill alleged police informers; they kill each other in inter-insurgent group clashes; and not all of them have formally given up the demand for an independent and sovereign nation. In recent years, Government has been able to persuade many groups to sign a Suspension of Operations (SoO) agreement but, more often than not, this has only provided the group a cover for continuing clandestine recruitment and acquisition of arms. More recently, Government has changed tack. Government has made it clear that there will be no SoO agreement with any group unless it drops the demand for secession and abjures violence. Government has also offered to talk to any insurgent group that will abjure violence, lay down arms and move its cadres into designated camps. The first big success of the new approach is the agreement reached between the DHD (J) group and the Government of Assam three days ago when 370 cadres surrendered their arms.

It is my sincere wish that more groups will follow the example of the DHD(J). I am glad to note that the Naga groups, after many years of ceasefire, have signalled a willingness to hold talks. Government is preparing for these talks which I hope will lead to an honourable and equitable settlement. Meanwhile, the security forces will continue to apply intense pressure on the leaders and cadres of defiant insurgent groups until they give up secession and violence. We could achieve better results if the hiding places of their leaders in Myanmar and Bangladesh are exposed and they are forced to return to India.

Naxalism

The other dangerous source of threat to internal security is an adversary that first reared its head in the 1960s in a non-descript village called Naxalbari in West Bengal. That

movement attracted a number of genuine ideologues, including some who even merited the description of intellectual. The rise and fall of the Naxalbari movement were rapid; ultimately, it found a solid base only in Andhra Pradesh. However, in the last 10 years, the naxalite movement has grown both in its area of influence and its capacity for violent actions. It is a sad fact that some sections of civil society continue to romanticise the left wing extremist movement. It is seen as a friend and defender of the poor. It is seen as incorruptible and motivated by the highest ideals of service. It is seen as a bulwark against capitalism and neo-colonialism. There may be some truth in these perceptions, but the few grains of truth must be seen in proportion to the mountain of deceit, violence and exploitation.

The naxalites – or the CPI (Maoist) as they call themselves – make no secret of their political goals and methods. In an extraordinarily frank document issued by the politburo of the CPI (Maoist), they have made it clear that they regard elections as ‘a meaningless, irrelevant, pseudo-democratic exercise.’ They have declared that their goal is ‘seizure of political power and establishment of base areas’ and their method will be ‘expanding our guerrilla war to new areas on the one hand and intensifying the mass resistance in the existing areas; to intensify the war in the States; and expand the area of struggle.’ The document holds out the ominous warning that ‘this time the fight will be more long drawn and more bitter than the one against the British imperialist army.’

Kobad Ghandy, a member of the politburo, who was arrested a few weeks ago, has stated on record that the naxalites will never participate in the mainstream of politics. How can a country that is democratic and republic accept these pronouncements? The Government of India and the Governments of the States are not colonial governments; they are governments elected by the people. The only way in which

an elected government can be deposed is through the ballot box. If the CPI (Maoist) has, as it claims, the support of the people, why does it not contest elections and win the right to form the government? In neighbouring Nepal, for instance, the CPN (Maoist) contested the elections and its leader, Mr Prachanda, held the office of Prime Minister for some months. If the naxalites accuse the elected governments of capitalism, land grabbing, exploiting and displacing the tribal people, denying rights of forest-dwellers etc., what prevents them from winning power through elections and reversing current policies and putting in place policies that they think will benefit the people? We have not heard a logical answer to these questions – not from the naxalites, not from left-leaning intellectuals, and certainly not from the human rights groups that plead the naxalite cause ignoring the violence unleashed by the naxalites on innocent men, women and children. Why are the human rights groups silent?

The naxalites' claim that they are pro-development is a hollow claim. In 2009 alone, they have caused 183 violent attacks on economic targets including railway tracks, telephone towers, power plants, mines, school buildings and panchayat bhavans. How do these facts square with the claim that the naxalites support development? In fact, there is irrefutable evidence that the naxalites are anti-development and, in order to sustain their misguided movement, they keep development away from the poor people, especially the tribal people.

Government has made it clear that it does not view the confrontation with the naxalites as a war against the naxalites. The naxalite leaders and cadres are Indian citizens. The poor tribals and non-tribals they mislead are also Indian citizens. No government of a civilized country will wage war against its own people. What we ask is that the naxalites should abjure violence. If they represent the poor or the tribal people of a State, certainly the Government of that State would be

willing to talk to them on their demands, listen to their genuine grievances, include them in the process of redressing the grievances, implement development schemes in the backward and neglected areas, and bring the poor and the tribal people into the process of inclusive growth. I hope that this statement will be read by the leaders of the naxalite movement and by their supporters. I also hope that leaders of civil society will prevail upon the naxalites to abjure violence and take the road of democracy and dialogue.

Terrorism

Another source of threat to internal security is terrorism – from cross border terrorist groups as well as terrorist cells and modules based in India. India has been a victim of terrorism for many years – long before 9/11 when the world woke up to the spectre of global terror. Hundreds of families in India have felt the pain of terror. Last year, this vibrant city was witness to the most horrific terror attacks. 166 persons were killed on those four fateful days. All countries in the world have declared zero tolerance to terror. So has India. Every day, every week and every month we are adding to our capacity to deal with terror. But there is a not-often-noticed significant flaw in our approach to terror. While there is no ambiguity or doubt in anyone's mind when it comes to cross border terrorism, when we apprehend home grown boys who are suspected to have committed terrorist acts, to my great dismay, I find that civil society is divided into two camps. On the one hand, there are people who will pronounce them guilty even before a trial and, on the other hand, there are people who will spring to their defence even before the investigation is completed. Both are wrong. Both take apparently righteous positions even without knowing the facts. It is these fundamentalist and righteous attitudes that come in the way of fighting terrorism. Terrorism cannot be fought through pre-judgements. It can be fought only through better intelligence,

better investigation, better policing, better prosecution and better trials in courts. There is a civilised way to battle terrorism and I am convinced that the civilised way will eventually overcome terrorism.

Conclusion

Sixty two years after the journey began, India is a stronger and more prosperous nation, but it is not yet a nation that has found peace and harmony. Nor is it yet a fair and just society. India is not unique in this respect and, therefore, there is no need to shrink in mortification. Every challenge tests the will and determination of the people. The US emerged stronger from a civil war. Winston Churchill led the British people in the defence of their island against a powerful enemy and vowed "we shall never surrender." Japan rose from the ashes to become a world economic power. Belying all predictions, the Wall was brought down and Germany was united. The peaceful rise of China is liberating millions of people from poverty. India is no stranger to the "can do" spirit; it was best exemplified by the life and work of Mahatma Gandhi who said "Be the change that you want to see." Our challenges – formidable as they are – can be overcome. We can forge a united vision of India. We can succeed in our unique model of inclusive growth. We can vanquish the forces that threaten our internal security. That is my belief, and I ask you to share my optimism and belief.

NANI A. PALKHIVALA MEMORIAL LECTURES

Date	Subject	Speaker
16.1.2004	Quest for Justice	Fali S. Nariman
12.1.2005	Prerequisites of Freedom	Arun Shourie
16.1.2006	Separation of Powers: The Myth & the Reality	Dr. Bimal Jalan
15.1.2007	Making Globalization Work for India	N. R. Narayana Murthy
11.1.2008	Judicial Activism - Boon or Bane?	Soli J. Sorabjee

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