

THE TASKS BEFORE
A FREE PEOPLE

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By

N. A. Palkhivala

The impossible happened; and the inevitable did not happen. The triumph of the Janata-CFD party must have rung the bells of heaven the wildest peal for years. Reason, that torch of smoky pine, anticipated results which hovered between narrow victory and narrow defeat for the Congress. The difference between the expectation and the reality was the difference between a tremor and an earthquake, between a drizzle and a hurricane.

The last Parliamentary election in India was one of the most significant in the entire history of freedom. At one stroke it doubled the number of free people on earth. In the words of Bernard Levin, India voted in a manner which put ancient and sophisticated democracies to shame.

The electorate's verdict has vindicated our national motto—"Truth shall prevail"—which was wholly forgotten for 20 months. Secondly, it has once again proved that to the soul of India, sacrifice appeals more than success—the returned candidates were mostly those who had suffered and sacrificed for the good of the country. Thirdly, the "illiterate intelligence" of the masses brought about a result which the "educated incapacity" of the intelligentsia could not foresee.

A free nation can be stifled by indigenous autocrats only through its own apathy and folly—apart from brute military force. An authoritarian regime is only as puissant as the sycophants and the time-servers, the cringing and the craven, will make it. No human being can be more powerful than his henchmen will allow him to be. History will apportion the blame and the respons-

ibility among a wide spectrum of the elected representatives who betrayed their trust.

Jawaharlal Nehru's description of the condition of India under British domination must have come home with the atrocities of the Emergency to countless people:

"We seemed to be helpless in the grip of some all-powerful monster; our limbs were paralysed, our minds deadened... The dominant impulse in India was that of fear—pervasive, oppressing, strangling fear; fear of the army, the police, the widespread secret service, fear of the official class; fear of laws to suppress and of prison."

Fear, born of terror, was more acute—particularly among the innocent—during the twenty months of the Emergency than it was during the two centuries of British rule.

The first act of the liberated people should be to thank, from the depths of their souls, whatever Higher Forces they believe in—for the deliverance.

*"Above blind fate and the antagonist powers,
Moveless there stands a high unchanging Will;
To its omnipotence leave thy work's result.
All things shall change in God's transfiguring hour."*

Human propensity to err is the favourite instrument of Providence for achieving its beneficent designs. Hitler, despite his super-efficient organization, attacks Russia instead of invading Britain—and it is the beginning of the end of the engulfing night. Nixon, notwithstanding his unsurpassed political cunning, tapes his own misdeeds—and the United States enters a brighter phase. The Indian autocracy, although armed with an all-powerful and all-pervasive secret intelligence force, calls for elections at a time of seething discontent simmering under the surface—and India secures a fresh lease of freedom.

Next, since public memory is so alarmingly short, let us reiterate our gratitude to the men who suffered

in diverse ways and whose sacrifices made the restoration of freedom possible. The first name which springs to anyone's mind is that of Jayaprakash Narayan. Not since the time of Gandhiji has moral force — personified by a frail invalid — triumphed so spectacularly over the forces of evil. He changed decisively the course of history. One life transformed the destiny of 620 millions. His epoch-making work must be carried on and the process of public education must never cease. Others will have to continue to propagate the great values which Jayaprakash has taught the nation — a lesson which our people may not always remember but which they will never wholly forget.

There were of course countless others, — prominent figures as well as the humble and nameless who will never be known to the roll-call of honour. They were the ones who withstood the hundred thousand petty tyrants that mushroomed all over the country during the Emergency.

William Makepeace Thackeray observed in "Pendennis": "Men serve women on their knees. When they rise, they go away." It is the same with our electorate. They love and worship their leaders. But when the spell is broken, they unfailingly transfer their allegiance elsewhere. In history there are few more telling examples of this truth than the difference between the results of the 1971 and the 1977 elections.

Today the people are in a mood which comes rarely in the life of a country. They are looking forward, starry-eyed, to a new direction, a new era, a new life. It is time not merely for a new budget or a new licensing policy or a new price structure. It is the moment for shaping and moulding a new society, for giving a new and clear identity to the nation.

Although we developed highly sophisticated technical skills, we basically remained a feudal and caste-ridden society. A deep and sudden realization dawned on the people last month which made their vote cut across the immemorial feudal and caste lines. The election could be made the matrix of a reborn nation.

The mood of the people today clearly marks a transition from the feudal age to the modern age. The outdated values of feudalism—birth, wealth, position and power—have been drastically eroded, and the age of the common man has begun. This is the golden moment to transform our caste-ridden society into a modern society.

Our people take their morals and their mores from their leaders. What can selfless leadership, imbued with vision and understanding, with knowledge and dedication, not do for this country at this historic juncture? We have in Shri Morarji Desai a Prime Minister who is a firm believer in moral values and high principles, and a Cabinet with vast talents and high administrative competence. All the auguries are auspicious for tackling the daunting tasks.

The first task is to have leadership at all levels—from the Prime Minister's to the panchayat's. True leadership is the exact opposite of the concentration of all power and decision-making authority in one individual. To be a true leader is to unleash the full power of the organization and to release the potential and energy in the rank and file by means of personal impact. Given selfless and dedicated leadership at this juncture, the objective, in the Janata Party Manifesto, of removing destitution within ten years can be achieved. We have to motivate the people so that they put the national interest above the sectional interest. It would be a tragedy if, having regained our freedom, we do not use it wisely and well and allow democracy to degenerate into mobocracy.

The crying need of the hour is self-discipline and self-restraint. During the post-war period, trade unions in Germany voluntarily applied a wage-freeze on themselves, on condition that industry ploughed back its profits to increase the output and create further employment. The consequence of this self-imposed wage-freeze was more and more investment, resulting in more and more employment. Real wages per person were steady during this recovery period, but real wages per family increased because of more employment. In a country

where all the groups function harmoniously, the results are fantastically gratifying—totally out of proportion to the inputs. Germany and Japan are examples of the synergistic effect of such harmonious co-operation. Great Britain and Italy serve as warnings of the consequences of its absence.

Plato thought poorly of democracy because it always degenerated into mobocracy. On the other hand, Gandhiji had great faith in the masses and believed that given the right leadership they were capable of self-restraint and self-discipline. Let us so conduct ourselves that we prove Gandhiji right and Plato wrong.

At the Centre we must establish Government of India Limited—limited not in responsibility, but limited by the rule of law, by the discipline of the Constitution, and limited in its capacity to release an unending torrent of ill-digested laws on the people. The last Government treated the Constitution of India as its private property and dealt with Indian law as its personal backyard. Between 1971 and 1976 it made 19 amendments to the Constitution, passed 463 statutes, promulgated 96 Ordinances and 30 Regulations, and enacted 114 President's Acts for the States under Presidential rule. For good measure the Law Ministry drafted 36,515 Rules, Orders and Notifications.

One of the first tasks is obviously to undo the mischief perpetrated by the 42nd Amendment—that monstrous outrage on the Constitution. Our original Constitution provided for stability without stagnation and growth without destruction of human values. The recent amendments have only achieved stagnation without stability and destruction of human values without growth.

On 9th December 1946, Sachchidananda Sinha, in his Inaugural Address as Provisional Chairman to the Constituent Assembly, quoted the words of Joseph Story (with reference to the American Constitution) which have proved truly prophetic:

“The structure has been erected by architects of consummate skill and fidelity; its foundations are

solid; its compartments are beautiful as well as useful; its arrangements are full of wisdom and order; and its defences are impregnable from without. It has been reared for immortality, if the work of man may justly aspire to such a title. It may, nevertheless, perish in an hour by the folly, or corruption, or negligence of its only keepers, *the people*. Republics are created—these are the words which I commend to you for your consideration—by the virtue, public spirit, and intelligence of the citizens. They fall, when the wise are banished from the public councils, because they dare to be honest, and the profligate are rewarded, because they flatter the people, in order to betray them.”

The Government need not worry about getting a two-thirds majority in both the Houses of Parliament to nullify the worst features of the 42nd Amendment. The Supreme Court can do the job equally effectively in appropriate proceedings taken by a citizen.

The Supreme Court held in *Kesavananda Bharati's* case that, while Parliament has the power to amend any part of the Constitution, the power cannot be so exercised as to alter or destroy the basic structure of the Constitution. This is the law of India today and it is binding on every authority throughout India, including Parliament. Following that decision, the Supreme Court can and should hold those provisions of the 42nd Amendment to be void which alter or destroy the basic structure of the Constitution.

In four respects at least, the 42nd Amendment does alter or destroy the basic structure of the Constitution. First, it overthrows the supremacy of the Constitution and installs Parliament (a creature of the Constitution) as the supreme authority to which the Constitution is to be subservient. The instrument becomes the master, and the master the instrument. Secondly, the Amendment enacts that the eternal values enshrined as fundamental rights in the Constitution will no longer be justiciable or operate as brakes on legislative and executive action in most fields. Thirdly, the balance between the executive,

the legislature and the judiciary is rudely shaken, and the executive at the Centre gains enormously in power at the expense of the other organs of the State, particularly the judiciary. Fourthly, the Amendment envisages the enforcement of laws even after they are held unconstitutional by a majority of the Supreme Court or the High Court. These provisions are clearly *ultra vires* the amending power of Parliament and should be struck down by the Supreme Court as void.

The only remaining question is whether the Supreme Court is debarred from declaring the 42nd Amendment to be void by reason of the clauses added to Article 368 which are to the effect that no amendment "shall be called in question in any court on any ground" and that "there shall be no limitation whatever on the constituent power of Parliament to amend . . . the Constitution . . .".

The correct position in law is that the above-quoted arrogant provision is itself void. *Kesavananda Bharati's* case makes it clear that if Parliament's original power was limited, it could not be enlarged or made plenary by any exercise of that very amending power. How can Parliament, whose amending power is limited, rationally or validly enact that any transgression of the limits of its power shall not be called in question in any court? How can the donee of a limited power enlarge its own power? To any logical mind, the answer is beyond the pale of controversy.

The members of the last Parliament, after taking the oath of true faith and allegiance to the Constitution, had no compunction in altering or destroying its basic structure. The members of the present Parliament, who took the pledge at Rajghat on 24th March 1977 "to uphold the inalienable rights to life and liberty of the citizens of our republic", cannot fulfil the pledge unless they are prepared to accept the supremacy of the fundamental rights in the Constitution. It is not the MPs, dressed in brief authority, who are supreme. It is the Constitution which is supreme. It is the eternal human freedoms which are

supreme. It is the people who are supreme and it is they who have given the Constitution unto themselves.

The facile assumption that the will of Parliament is the will of the people has never been so violently exploded as at the last election. It was Parliament which passed the 42nd Amendment and also approved of the proclamation of Emergency. Did it represent the will of the people? The people have given their resounding verdict on those misguided representatives who claimed to be supreme over the Constitution and over basic human values.

The Australian electorate has approved only five of the thirty-two changes in the Constitution proposed by their Parliament in the last seventy-seven years. At the end of 1973 the Australian Parliament passed by an impressive majority two proposals for constitutional amendment, but both the proposals were rejected (on a referendum) by equally impressive majorities by the people in every single State of Australia.

It is to be hoped that the present Government will pass such laws and take such executive action as are not meant merely to provide for the exigencies of the moment but calculated to ensure the good of the country in the long years ahead. Though the present electoral system has brought the Janata Party to power, the party would be rendering a lasting national service by effecting electoral reform. Despite its shortcomings, proportional representation would, on the whole, be more just and fair than the present system of "first past the post".

The Janata Party Manifesto is admirably drafted. With the amount of zeal and dedication that we have in the Cabinet today there is every hope that the Manifesto will not remain a historic parchment in a glass case but will be translated into action with all convenient speed.

There can be no two opinions on the point that the topmost priority must be given to amelioration of the lot of the 40 percent who still live below the minimum subsistence line. Our first concern must be to look after the weakest—the man who is bowed by the weight of

centuries, stolid and stunned, "dead to rapture and despair, a thing that grieves not and that never hopes".

There are at least 40 million unemployed today—in a country which cannot and does not afford any social benefits.

Poverty is cruel, but it is curable. The only known cure is economic rationalism instead of economic theology. In the field of economics the tree of ideology has never borne any fruit. All "isms" are lethal.

In a poor country like India, there can never be social justice without economic growth. We have countless chances for development. Opportunities multiply when they are seized; they die when neglected.

We have barely tapped our immeasurable potential for growth. Immense man-power, superb skills and enterprise are to India what oil is to the Middle East. At least 250 million of our citizens are contributors to the national product. There is one way, and one way only, in which India can banish poverty, and that is by putting to the maximum productive use the 2,000 million man-hours which fleet over India every day, never to come again. To every economic policy and legislation we must apply the acid test—how far will it bend the talent, energy and time of our people to fruitful ends and how far will it dissipate them in coping with legal inanities and a stumbling bureaucracy.

"Much to cast down, much to build, much to restore;

Let the work not delay, time and the arm not waste;

Let the clay be dug from the pit, let the saw cut the stone;

Let the fire not be quenched in the forge."

Irrigation has been sadly neglected during the last thirty years. On an average, India receives 3,000 million acrefeet rainfall in a year,—sufficient to submerge the entire country in a 45 feet deep layer of water. The total

area under cultivation was about 422 million acres in 1975-76. Of this area, only about 111 million acres (or 26.3 percent) was provided with irrigational facilities. At the rate of extension of irrigational facilities achieved in the last fifteen years, we shall not be able to bring even half the arable area under irrigation till 2007 A.D.

Three-fourths of the total flow of our rivers is wastefully emptied into the seas. Out of our groundwater resources of an estimated potential of 86 million acres, barely half is being utilized. How much greater would be our agricultural output, with a reduction in prices on account of economies of scale, if irrigation plans were vigorously pursued.

In the Fifth Plan only 0.83 percent of the total public sector outlay is earmarked for roads, and even out of this paltry percentage three-fourths is intended to cover those road projects which have spilled over from the Fourth Plan. Few countries of the world are so poor in market roads. Road construction is one of the best ways to generate employment and to stimulate agricultural output by opening up enormous new markets.

As regards industry, those laws should be scrapped which obstruct progress and constrict growth without any countervailing public benefit.

While direct taxation on individuals has been brought to a reasonable level, the burden of indirect taxes is ridiculously high on many commodities. Out of the price paid for a truck by a consumer as much as 57 percent represents the burden of various indirect taxes levied at different stages. The excise on airconditioners is at the unconscionable level of 100 percent *ad valorem* on the wholesale price. The excise on cement is as much as 50 percent of the retention price allowed to the manufacturer. The Finance Minister has a great nation-building task ahead of him.

An honest and efficient Government should be able to contain inflation and stop anti-social activities like smuggling, without suspending the rule of law. Now that the rule of law has been restored, prompt measures will

have to be taken to deal with inflation which is raging at 15 percent per annum. An index to the revival of smuggling is provided by the fact that whereas during the last twelve months there was no depreciated rate for the rupee against foreign currencies in the free market, within a week of the election results a black market sprang into existence. For instance, whereas at the beginning of March the Singapore dollar fetched Rs. 3.45 (the official rate) in the free market, now the Singapore dollar quotes at Rs. 4.50. The remittances from Singapore and Malaysia to India through the official banking channels have now dwindled to just a trickle.

The country can never prosper or be saved through the efforts of only ministers and civil servants. The people must be associated at all stages with the formulation and implementation of policies. We can have a truly participating democracy for the first time in India. Under the last regime, the Government and the people virtually became two hostile armed camps. Now we can have an exciting joint venture between the Government and the people. There should be no obsession with either the public sector or the private sector. The concept would be that of only one sector—the national sector. Pragmatism is all.

The first major economic measure of the Government will be the budget. Millions of man-hours, crammed with intelligence and knowledge, — of tax gatherers, tax payers and tax advisers—are utterly wasted every year in grappling with the unmanageable spate of amendments. A stable fiscal policy is to a nation what a stable family life is to an individual. The rates of direct taxes should be fixed in advance for three to five years, as they are in other countries like the U.S.A. and Canada.

There is no need for the outdated and ridiculous shroud of secrecy which envelops every budget — except as regards changes in customs and excise rates. Many progressive nations have a free and open public debate on budgetary proposals before the Bill is introduced in the legislature.

It would be a historic event if under the present Government the Union Budget ceases to be an annual

scourge and partakes of the nature of the presentation of annual accounts of a partnership between the Government and the people. Every budget contains a cartload of figures in black and white—but the stark figures represent the myriad lights and shades of India's life, the contrasting tones of poverty and wealth, and of bread so dear, and flesh and blood so cheap, the deep tints of adventure and enterprise and man's ageless struggle for a brighter morn.

The very enormity and variety of the challenges facing the country are such as to touch the least tender to tears and the most incredulous to prayer. Shall we maintain discipline—or shall we witness revival of the barbarous *Bandhs* when government ceased to govern, mobocracy displaced democracy, and cities were paralyzed by groups of men who regarded themselves as above the law? Shall we increase production, create national wealth and settle industrial disputes in the forums provided by the law—or shall we abuse our regained freedom by nine *morchas* a day?

The nation is mature enough, and the Prime Minister and his colleagues are experienced enough, to ensure the rule of law while providing liberty under law. Those who talked of chaos as the alternative to authoritarianism overestimated their own calibre and underestimated the intelligence of our people.

The Government should have the fullest co-operation from all quarters in the epochal demonstration—watched by the whole civilized world—that liberty is not an "optional extra" in a democracy, that human rights are not a luxury intended merely for the elite and the affluent, and that our people, poor and downtrodden, are as intensely committed to the free way of life as the richest under the sun.

(Based upon the public talk in Bombay on 13th April 1977 and An Open Letter to the Prime Minister published in the Illustrated Weekly of India of 17th April 1977.)

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