

# Report

Second National Convention  
Mangalore, February 18-20, 2005

## Them Accountability in Governance



INDIAN LIBERAL GROUP

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Mangalore, February 18-20, 2005

*Theme*

Accountability in Governance



INDIAN LIBERAL GROUP

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Kashmira Rao, Executive Secretary

INDIAN LIBERAL GROUP

Sassoon Building, 1st Floor

143, Mahatma Gandhi Road,

Mumbai 400 001.

Phones : (0091 22) 2284 3416 ● 2284 1340

Fax : (0091 22) 2284 3416

E-mail : [freedom@vsnl.com](mailto:freedom@vsnl.com); [ilg@vsnl.net](mailto:ilg@vsnl.net)

Website : [www.liberalsindia.com](http://www.liberalsindia.com)

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Telefax : (0091 22) 2284 26 19 ● E-mail : [kotaknet@mtnl.net.in](mailto:kotaknet@mtnl.net.in)

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# Preface

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We have pleasure in presenting this Report of the Second National Convention of the Indian Liberal Group held in Mangalore on February 18, 19 and 20, 2005.

52 out of the 319 members on the rolls of the ILG as on February 18, 2005 attended the Convention as against 100 out of 434 members who attended the first National Convention in Hyderabad (for details see Annexure 3). The President's Report catalogues in some detail the organisational problems ILG has had to contend with in the period between the two conventions and which was reflected in the reduced attendance at Mangalore.

Before we come the inaugural session proper, there were some preliminaries that were attended to. The first was a sad one: mourning the passing way of a stalwart Liberal. Dr. Mme Louella Lobo Prabhu – as she liked to be addressed – who was to have shared the dais today. She was also to have delivered the valedictory. But these were not to be. She died on January 31, almost on the eve of the Convention. The other sad duty was to mourn the death of thousands of Tsunami victims which shook the earth on December 26, 2004.

The third task was a pleasant duty – to honour the memory of ILG's founding member the late Minoo Masani. This is his birth centenary year. We dedicated the Convention to take forward the liberal values he so tirelessly preached and practiced, particularly at a time when to do so was to court criticism not to mention political unpopularity in a statist society.

The second National Convention got off to a grand start. The open inaugural session was held at the state-of-the-art T. V. Ramon Pai Convention Centre. The 300 plus audience consisting of delegates and invitees were in for an intellectual treat. A fascinating play by the students of St. Agnes Special School – a school for handicapped children – of a play in Kannada entitled of Beggar Who Would Be King, provided a fitting finale for the inaugural session.

Former Chief Vigilance Commissioner Mr. N. Vittal, who has continued his crusade against corruption and corrupt babus even after retirement, delivered the inaugural address, which was punctuated by repeated applause from an appreciative gathering. Dr. S. P. Sathe is a humanist and Honorary Director of the prestigious Advanced Institute of Advanced Legal Studies, Pune. His speech on the theme of the Convention, 'Accountability in Governance' was a masterly analysis of the subject and listened to with rapt attention and with thunderous applause when he concluded. 'Promoting Liberalism Globally' was the theme of the speech by the Chief Guest Mr. Hubertus von Welck, Regional Director, South Asia of the Friedrich Naumann Stiftung, the German Liberal Foundation. His speech was informative and elicited appreciation from the intelligent audience.

Mr. T. Subbaya Shetty, Chairman of the Reception Committee, delivered the welcome address. In his address Mr. G. Giridhar Prabhu, president of the ILG's Mangalore Chapter and Secretary of the ILG at the national level said that it was appropriate for the ILG to hold the convention in Mangalore where the spirit of free enterprise is very strong. He also recalled that the doyen of pioneer of free market economics in India, Prof. B. R. Shenoy, was born in a village not far from Mangalore.

In his presidential Address, Mr. S. V. Raju dwelt on the role of the ILG in reviving the Liberal dialogue in the public discourse of the country's economic and political policies. On the role of the ILG in India's politics Mr. Raju reiterated the ILG's stand that while it would make its presence felt in issues of politics, it would not convert itself into a political party. On the other hand it ought to be ready to be the midwife to birth of a Liberal Party. Such a party, Mr. Raju affirmed, was sorely needed in the present context.

Ms. Claret D'Souza, Secretary of the Mangalore Chapter proposed a vote of thanks.

The Delegates Sessions the following two days transacted the business of the Convention. A perusal of the contents of this Report will give the reader an idea of the business conducted at the Delegates Sessions.

A word of appreciation for the excellent work done by the office bearers of the Mangalore Chapter will not be out of place. The Convention was made possible, thanks to the efficiently managed and tremendous efforts put in by Mr. Giridhar Prabhu, Mr. T. Subbaya Shetty, Dr. S. L. Shanbhogue, Mr. M. R. N. Pai, Ms. Claret D'Souza, Dr. Satheesh Rao and Mr. K. Prakash Rao.



Shri N. Vittal lighting the lamp. Others in the picture (L to R): Dr. S. P. Sathe, Mr. S. V. Raju, Mr. H. von Welck, Ms. Claret D'Souza and Mr. T. Subbaya Shetty.

# Accountability : The Road Map and Guarantee for Liberalism

## *Inaugural Address*

N. Vittal

Among the many leaders of India, Minoo Masani represented the spirit of liberalism in its purest form. In fact, the best way to begin our examination of the theme of this conference "Accountability in Governance" will be to recall the inimitable words of Minoo Masani on liberalism.

"The word 'Liberalism' derives from liberty. In other words, the individual is in the centre of the picture. Society is there to serve the individual and not the other way round as certain other systems of thought like communism or socialism try to make out.

"The essential elements of Liberalism are *all-pervasive* and touch every aspect of life. In so far as matters of the spirit are concerned, tolerance, particularly tolerance of dissent, is basic. Whether an issue is religious, communal, regional, national or pertains to small groupings like caste and linguistic groups, tolerance of the other point of view and willingness to argue about it are of the essence of Liberalism.

"...Another basic *characteristic* of Liberalism is its pragmatic approach to whatever problem there may happen to be at a particular time. The Liberal does not approach any problem with a dogmatic or preconceived attitude. He is open-minded on all issues.

"...The Liberal is of necessity a pluralist, *that* is, he does not accept the predominance of any one line of thought or dogma or even one class of *society*. In the Liberal's mansion, there are many chambers



**Mr. N Vittal, IAS**, retired as India's Chief Vigilance Commissioner. Earlier he was Chairman of the Public Enterprises Selection Board. In an earlier tenure as the secretary of the Telecom Commission he won his credentials by introducing many revolutionary policies. He was well known for his championing the deployment of information technology in government and later as an intrepid crusader against corruption. His tenure as Chief Vigilance Commissioner secured him nationwide attention and admiration for his dogged pursuit of corrupt officialdom.

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and there is room for everything. The Liberal, therefore, believes in a pluralistic society where there are checks and balances between different organs of government, such as the executive, the legislature and the judiciary.

"...The Liberal stands for justice for the underdog, whoever he may be. Thus, he is for equality of women with men, though he may not be for Women's lib with all its aberrations. The Liberal stands up for the rights of children and decent treatment for them. So too, the Liberal pleads for sympathy for the criminal and the odd man out."

The word 'Liberalism', as Masani pointed out, is derived from the word 'Liberty'. Liberty is freedom and as the motto of the Indian Liberal Group points out, freedom can be only with responsibility. Responsibility is another word for accountability. No wonder, therefore, the theme of this conference 'Accountability in Governance' has a central and vital link with the very essence of liberalism. We will be exploring this link of accountability with liberalism. This link can be seen from two dimensions. One is that accountability can act as an insurance and guarantee for liberalism. Secondly, with the current state of affairs in the nation, if we want to realize a genuine liberal system of governance, it is accountability again that will provide the road map from here to there.

The basic principles adopted by the Indian Liberal Group on March, 5, 2000 point out:

"Liberalism believes in equality as a natural right and democracy as the only political system that enhances the values of Liberalism and maintains the dignity and sovereignty of the individual"

In his article on Liberalism, Minoos Masani, towards the end refers to Winston Churchill. "Winston Churchill was a great democrat. He was asked a question about democracy towards end of his life. After giving a little thought, Churchill said, 'Of all the known systems of government, democracy, is undoubtedly the worst except for the others!'. That great Liberal in Asia, Carlos Romulo was once heckled by some communist students, in the University of which he was President, who asked him for a declaration of policy. They asked: "Mr. President, are you going left or right?" Romulo answered: "I am going forward". That is the essence of Liberalism. Neither left nor right, but right ahead.

The basic principles of the Indian Liberal Group highlight the following in the context of the paradigm of liberalism:

1. Individual Freedom and Liberties
2. Right to Information

3. Economic Prosperity Through Freedom
4. Technology and Human Development
5. Active Citizenship
6. Rule of Law which is central for governance based on Liberalism.

Having got our ideas clear about liberalism, it is necessary that we clarify our thinking about accountability. As mentioned earlier, accountability is responsibility. Responsibility is for the action to be performed and achieving the results, which are desired. In the context of the liberal system of governance, therefore, accountability is for ensuring good governance. Because without good governance, there can be no liberal society.

#### **Four Basic Features of Good Governance**

Good governance in my view has four basic features. The most important, of course, is the rule of law. All are equal before law and should have equal opportunities. Justice must be available to all citizens. Is this being achieved? The degree to which we are able to ensure the rule of law, is the degree to which we are nearing the ideal liberal paradigm of governance.

The second important element of good governance is the dignity of the individual. As Dr. Kalam points out, God has blessed every individual with some talent or other. It should be possible for every individual to rise to his full potential. A liberal system of governance, which is good governance, which will ensure that an environment is created where every individual is given an opportunity to realize his full potential. Creating and nourishing such an environment is therefore the second important element for good governance, which is vital for liberalism.

The third element of good governance arises from the element of pragmatism which Mr. Masani pointed out. I would interpret it as an example of a pragmatic approach if we ensure optimum total factor productivity in the economy. There should be no waste of human resources, physical resources and financial resources or time. Optimum utilization of resources and ensuring optimum total factor productivity should therefore be the third important element of good governance.

How will the good governance be achieved? Or for that matter governance in any form? The Constitution of the country, particularly a country like India, provides the basic framework for governance. There are three pillars of governance. These are Judiciary, Legislature and the Executive. The Legislators makes the law. The Judiciary interprets the law and the executive, both political as well as bureaucratic implements the law. The three pillars of the governance are the instruments through which the objectives of the Constitutions of the principles of good governance can be realized. The road

map for realizing the vision of a liberal governance of the country depends on the instruments. How the instruments are formed and perform to a larger extent, depends on their sense of responsibility and accountability. We can, therefore, see that in the ultimate analysis, it is the accountability and responsibility which will decide to what extent the instruments of governance perform the tasks and results are achieved.

### **Roots of Accountability**

It is therefore, worthwhile at this stage to go deeper to see what are the roots of accountability. Ultimately, governance does not take place in a vacuum. It takes place in a nation and the nation consists of people. The first and perhaps the most important aspect of accountability therefore, is the individual's sense of responsibility. An ideal example of the individual's sense of responsibility is that of the mother. Every mother takes full responsibility for her children and makes all sacrifice to ensure that her children are brought up in the best possible manner to emerge as useful citizen of the country. A mother does this not purely from her sense of responsibility but more because of the universally admired quality of maternal love. We can therefore see that at the root of accountability and responsibility in performance lies from the individual's sense-of commitment. If that commitment is further enhanced by an additional spiritual bonus like the love of the mother, responsibility and performance in themselves become a matter of joy. Ideally, for a liberal paradigm of governance, we should be able to have institutions, which would discharge their functions with a sense of commitment and with a sense of joy.

Nevertheless, individuals alone do not function especially in a state. The instruments of the state for achieving results are mostly through organizations and institutions. So the second important root of accountability would be the spirit or the culture of the institutions. The organizational culture of the institutions is again derived from a sense of ethics or the professional codes of the people running them. In the three pillars of governance we saw earlier, therefore, there should be professional codes of conduct for legislature, executive and judiciary. These codes, in turn, can be split into codes for various professions involved. It is the responsibility of the professional bodies to set up standards and ensure that they are followed.

### **Professional Standards**

This brings us again to the essence of the professional standards. What is at the root of the standards? Professional ethics must guide the professional standards. From a pure human point of view, anything that is beneficial to the society should be ethical. One set of professional conduct is that it should not be anti social or anti environment. As far as the professions are concerned in addition to the socially desirable conduct, equally important would be maintenance of professional skills and standards. For instance, in the case of engineers, professional skills and standards must be strictly observed so that in designing buildings or highways or machines, human safety is

ensured and there is no risk for life or accidents which can cause immense danger. Equally important at the root of any professional code of conduct is the principle of integrity. Ultimately, honesty is the best policy. In practical life, there may be many situations where the principle of honesty has to be compromised and particularly in our country, we are witnessing all pervasive act of corruption, which has almost made honesty a virtue that is very rarely seen. Corruption distorts the entire process of the rule of law. If the legislators are corrupt, they are not going to make the laws, which would be in the public interest. If criminals and law breakers become law makers, they would try to justify their anti social actions and seek protection in the mere words of the law and forget the basic spirit of social welfare. The judiciary, if it is corrupt, will interpret the law in a crooked manner. Ultimately if the executive, both political and bureaucratic is corrupt, then there will be no justice at all to the citizens in implementing policies and laws. Corruption is a factor that will distort the entire process of the rule of law. We can safely say corruption is perhaps the greatest roadblock for achieving a liberal society.

### Vittal's First **Law**

The third most important element in accountability is the mechanism for enforcement. There is no point in having laws or codes of conduct, if they can not be enforced. If certain standards are expected for performance and there are violations of these standards or distortions, those who cause this violations or distortions must promptly and visibly punished. It is this lack of punishment which goes totally against realizing the ideals of good governance or a liberal society. In my more than four decades of experience in public service, I articulated in a light hearted manner, two basic laws which I would call Vittal's first law and Vittal's second law. My first law says "In any organization those who work get more work; those who do not work get pay promotion and perquisites". I recently wrote my second law, especially in the context of various scams and cases of corruption, which are engaging media attention.

### Vittal's **Second Law**

Looking at the growth of corruption and criminalisation of politics in recent times, I am now ready with my second law. Greater the publicity a case of corruption or crime receives in the media, greater the chances of acquittal of the guilty. Right now for instance, the Telgi scam estimated at Rs.30,000 crores is making the waves in the media. Applying my second law, you can be absolutely sure that nobody will be punished in this case. The same is true of every other case which is getting publicity in the media and which will get publicity in the future.

The reasons for this are simple. We are a country where we have well-established set of rules and regulations. Our constitution is based on highest principles. The principle of natural justice require that every body is presumed to be innocent till he is proved guilty. The guilt has to be proved under the law beyond reasonable doubt. It is this

very system of law, which ensures that the guilty escape. Take for example the hawala case. One of the persons concerned even confessed on TV that he took three lakhs of rupees from Mr. Jain. But the court discharged him on the ground that such confessions were not covered by the 1877 Indian Evidence Act. No wonder the conviction rate in criminal cases in Indian courts is only 6%.

The second reason for the acquittal is the very slow nature of our judicial process. It is said that if our courts were not to take any new case from today, it will take 300 years for all the present cases to be disposed of. The Harshad Mehta scam hogged yards of publicity in the media. Ultimately, before the courts could come to a decision Mr. Mehta himself died. At about the same time in the early 90s there was a case of serious fraud involving the Barings Company in Singapore. Leeson who was accused in that case was punished within two years.

The third reason is that our own system provides generous legal cushions of safety to the guilty. As CVC, I noticed that the corrupt accumulate a lot of wealth. That very wealth is utilized by them to engage the best among lawyers and laugh all the way to the bank. I wonder why it never occurs to any presiding officer in the court that if a person could engage a costly lawyer, he should have made his pile through illegal means. After all cases which receive publicity are those where VIPs or a lot of money is involved. Looking to the repeated use of money power or influence by the corrupt, as CVC I carried a sloka, parodying the old sloka which says that the gods are against the weak. The sacrifice offered to the non-vegetarian gods is not the horse, elephant or the tiger but the humble goat.

*Ashnam naiva, Gajam naiva  
Vyagram naivacha naivacha  
Aja putram balim datyat  
Devan duchala Gathoka!*

In our system,

*Secretary naiva, Chairman naiva  
Minister naivacha naivacha  
LDC balim datyat  
CVC dulchaha gathakal*

No Secretary to government is punished, no Chairman, No Minister. It is the poor Lower Division Clerk who is punished by the CVC.

There is a fourth reason; why the prosecution in the most publicized cases fail. The investigating agencies, in order to prove the guilt and perhaps subconsciously prove their skills at investigation, always bring in the element of conspiracy under section 120 IPC. This attempt to prove conspiracy many a time backfires.

Finally, there is always the real and all pervasive presence of corruption in every section of our society. This makes it easy for the guilty to escape. So, unless there is a dramatic change in our quality of governance, Vittal's second law is bound to prevail for a long long time.

We have therefore seen how accountability arises from three sources. (i) individuals, (ii) professional codes of conduct and (iii) the systems of enforcement of the codes. If we can build accountability in the system, it should be possible to realize the vision of a liberal state, which will also be an example of good governance.

### **Need for Greater Transparency**

In the case of a public servant, his accountability would be for the citizens or the stakeholders in the organization. Every public organization has a certain clientele and the public servant should be accountable to the clientele. So, how do we ensure this accountability? The first step needed is greater transparency in the functioning of government and public organizations. In recent times, there has been a demand for Right to Information Act. We have an Official Secrets Act. It should be balanced by the Right to Information Act so that every citizen knows his rights and has access to information and also knows how decisions are taken on any issue. Thanks to the development of information technology, it is possible to bring in a very high degree of transparency effectively in government and hence the concept of e-governance today is getting greater recognition. Transparency has a great advantage because it is possible to fix responsibility through transparency. Many a time, when decisions are taken in government, one does not know who took the decision. When things go wrong, the observation made by John Kennedy in the context of the Bay of Pigs fiasco becomes very relevant. "Success has many fathers. Failure is an orphan". We have, of course, bodies like the Comptroller and Auditor General of India, which try to fix responsibility in financial matters. Nevertheless, by and large, the audit has been ineffective because it is done much after the event takes place. Post audit hardly has any impact and very rarely we find that any public servant of note has been punished for failure.

### **Systemic Change Needed**

Next to transparency, what is needed also is a system by which the present extreme protection given to the public servants is removed. Article 311 needs to be drastically modified so that practically the entire set of public servants can be brought under a contract system. There could be rolling contracts so that the public servant is continuously aware of the fact that if he does not perform well and discharge his duties, his services can be terminated. Terminating the contract is much easier than operating in the present system where a lifetime employment is assured at the time of joining the service. The labour laws in our country are also such that once a person is hired it is very difficult to fire him. We have now got a government, which is definitely left of center and as a result the protection given to the employees is not going to be diluted. The challenge,

therefore, is all the more. How to bring in the sense of responsibility in a situation where the legal rights of those enforcing the accountability are highly unsatisfactory?

Perhaps, we should look at the other two springs of accountability. One would be the professional associations which lay down high standards, so that each person is automatically aware of his responsibility and discharges his function. In fact, some of the professions have recently come under scrutiny, especially professions like chartered accountants, where the need for global standards or Globally Applicable Accounting Practices (GAAP) etc., are issues that are being raised. If we could have a systematic approach of every public servant being guided by the professional associations, probably we would have taken a step towards inculcating a sense of greater responsibility.

Ultimately, the best method of accountability may be to see whether jobs can be made inherently interesting like the example of mother's love we discussed earlier. Can the performance in public administration itself be made into a creative and enjoyable activity so that the sense of accountability is enhanced automatically? Perhaps, here we will have to look at human behaviour and see how psychology can be effectively used to modulate organizational behaviour. The British system which we adopted after independence was based on a system of mistrust. Is it possible to replace it with a system of trust so that every person feels that he is believed and he could take a decision? Our audit approach is also such that if somebody makes a mistake, he is punished and his career is ruined. This creates a culture by which people do not want to take any decision and lack of decision making itself becomes a virtue. We had a Prime Minister who once said that not taking a decision itself is a decision! But such an attitude of not taking a decision also encourages a culture of avoiding decisions and pushing responsibilities either upward, downward or sideward in an organization, Indian administration is 'action shy'.

Yet another reason for lack of accountability is that many a time objectives are not clear. If the duties are clearly defined and objectives are clear, then accountability can easily be fixed. That is why we find that even though our administration is generally perceived to be non performing, lethargic and so on, at the time of crisis like natural calamities or elections we find that the same system works better. It is so because during times of crises, the objectives are very clearly defined and hence accountability can be more clearly enforced. Parkinson's law leads to overlapping of functions, and dilutes accountability.

### **Change in Culture Needed**

We may have to evolve a strategy for promoting a culture of accountability by understanding the forces which promote it and design our systems and procedures in such a way that these forces are strengthened. Ultimately, what we must aim at is bringing a change in culture. What we have probably in administration today is a culture for

power. Every person, however small he is, thinks he has the power and the idea of service is lacking. So how to bring in this change of culture is an issue all of us should think of. Long ago, L. K. Jha observed that we probably made a mistake by calling our public servants as government servants. As a result they became only high priests serving the all-powerful entity called government and ceased to serve the public, which in a democracy is all the more necessary.

Where there is no vision people perish. Minoo Masani was a visionary leader who gave us a vision of liberalism and articulated it so well. We have examined one aspect of liberalism in the context of governance and tried to see how accountability can ensure and guarantee good liberal governance. If we are able to focus on inculcating and institutionalizing accountability we can also develop a road map for realizing the vision of liberal good governance.

I have placed before you some of my ideas on the subject. In a convention like this there is an excellent opportunity to practice what the Taitreya Upanishad advises as the method of finding solutions to the problems for realizing vision:

Let us come together. Let us enjoy together, Let our strengths come together. Let us move from darkness to light. Let us avoid the poison of misunderstanding and hatred. That way lies progress

Sahana vavatu Sahanau bhunaktu  
Saha Viryam kara va vahai  
Tejas vina maditha vastu  
Ma vidh visha vahai  
O m Shanti! Shanti! Shanti

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Shri N. Vittal addressing the Inaugural Session. Others in the picture (L to R): Ms. Claret D'Szoua, Mr. H. von Welck, Dr. S. P. Sathe, Mr. S. V. Raju, and Mr. T. Subbaya Shetty.

# Accountability in Governance

## Keynote Address

S. P. Sathe

Democracy – By the people, for the people and of the people

Democracy is government through representatives elected by the people. These representatives and all other functionaries who run the state, have to be accountable to the people. The Constitution usually speaks in the name of "the people" and therefore the State has to be accountable to the people. The Constitution of India says that the State shall promote the welfare of the people and take steps to secure a just social order.<sup>1</sup> The State consists of three organs – the legislature, the executive and the judiciary. In a federal constitution, two governments, the federal and of the units derive their powers directly from the people. Each is sovereign within the field allotted to it. The legislature consists of representatives elected through adult franchisee. It makes policies and supervises over the executive in respect of the administration. The legislature also makes laws. The executive is supposed to implement the laws and carry out the administration. The executive usually consists of the Prime Minister/ the Chief Minister and the other members of the Council of Ministers and the bureaucracy (civil servants). The judiciary decides disputes between private individuals and between the State and the individual. It performs judicial review of the acts of the other organs of the State, viz. the legislature and the executive to ensure that they function within the limits drawn upon their powers by the Constitution. The judiciary also protects the rights of the people given by the Constitution. The judges interpret the Constitution and the laws and thereby umpire the federal-state relations as well as the State- individual relations. Each of the organs of the State is accountable to the people who are the authors of the Constitution. Such accountability is implicit in the oaths which members of the legislatures, ministers and judges have to take in accordance with the Constitution.<sup>2</sup>

### Accountability – Concept

Accountability is essentially a moral concept. Constitutional/liberal democracy is essentially a moral system. A constitutional government functions according to law and morality. Law and morality together constitute constitutionalism. Those who govern have to



Dr. S. P. Sathe currently Honorary Director, The Institute of Advanced Legal Studies, Pune, is a highly regarded teacher of Law. He was earlier principal of the ILS Law College for over 15 years. He has been a National Fellow, University Grants Commission and Pro-Vice Chancellor University of Poona. For 17 years he was with the Department of Law, University of Bombay first as Lecturer and later as Reader. His most recent concerns have been in the area of judicial activism and accountability in governance.

show constantly that they act in the interest of the people, and they perform the tasks assigned to them by the Constitution and by the laws. This is what I mean by accountability. No government can function merely by coercion. It functions only by sustaining its own legitimacy. Legitimacy means belief among the people that the government acts in their interest, and it is their duty to obey it. The difference between an authoritarian government and a democratic government is that the former rests entirely on coercion whereas the latter invokes coercion exceptionally. Professor H.L.A. Hart makes a distinction between "being obliged" and "having " an obligation". The former is an act under fear while the latter is in pursuance of a self perceived duty.<sup>3</sup> Accountability is a method of sustaining legitimacy. An act may be valid legally and yet it may not be legitimate. The Nuremberg tribunal which decided cases of genocide against Nazi officials, did not accept the plea of commands of the superior as a defence. It invoked the higher principle of natural law to hold them guilty. The 1975 emergency declared by Mrs. Indira Gandhi's government was legally valid because it had been passed in accordance with the letter of the Constitution. The curbs on freedom which it imposed were also legal, but they lacked legitimacy because neither the government nor the people believed that they were right. Even the Supreme Court which upheld the draconian powers of the emergency regime<sup>4</sup> had lost its legitimacy and it had to make effort to regain its legitimacy through post-emergency judicial activism<sup>5</sup>. Obedience to the law out of fear has to be distinguished from obedience to the law out of volition. The second is a case of legitimacy.

### **Constitutionalism**

It is not enough to have democracy. It must be a constitutional democracy. The Nazis also came to power through winning the elections. Socrates was compelled to drink poison by the prevailing democracy in Greece. Constitutional democracy essentially means (a) the rule of law; (b) utmost regard for individual liberty; and (c) an independent judiciary. Constitutionalism is sustained not only by law but by morality. In England, parliamentary democracy mainly lives on unwritten conventions which are binding because they are legitimate. England does not have a written constitution because English democracy evolved over centuries, and conventions became the flesh and bones of the system. In countries like India where democracy came before constitutionalism was established, one finds variance between conventions of parliamentary democracy and the accepted values of the political players. The Constitution of India is detailed and specific and yet it left certain matters to conventions. Some conventions were put into writing such as that the Council of Ministers is collectively responsible to the Lower House of Parliament;<sup>6</sup> a minister is appointed by the President/Governor on the advice of the Prime minister/ chief minister<sup>7</sup> and holds office during the pleasure of the President/ the Governor.<sup>8</sup> But unlike in Australia and Canada where unwritten conventions got internalized, in India we have been witnessing the process of conversion of unwritten conventions into written rules of law. I will give the following illustrations to highlight this:

In England, the Crown is supposed to act on the advice of the Council of Ministers. It is a mere figurehead. In India, since we became a republic, we could not accept the Crown's sovereignty which Australia, Canada and New Zealand accepted. We therefore

provided for the office of the President who is elected by members of Parliament and members of the State Legislatures<sup>9</sup>. An indirect election of the President was purposely provided to make him amenable to the advice of the Council of Ministers. But the Constitution did not say so specifically, and therefore a controversy arose whether the President was bound to act on the advice of the Council of Ministers. Dr. Rajendra Prasad, the first President, raised this question. There were differences between him and Prime Minister Jawaharlal Nehru on various matters. The Attorney General Mr. Setalwad gave opinion that the President was bound to act on the advice of the Council of Ministers. Later, even the Supreme Court endorsed that view.<sup>10</sup> But the controversy continued. Politically, opposition parties tried to put in their own person in the Rashtrapati Bhavan so as to checkmate the existing Prime Minister. Presidential elections were therefore fought vehemently. Ultimately, the Constitution was amended and it was made clear that the President shall act on the advice of the Council of Ministers."

The Constitution requires that a minister should be an elected member of one of the Houses of the Legislature. As an exception, it provides that a person who is not a member of the legislature may be appointed as minister, but she cannot continue unless she is elected to the House within six months.<sup>12</sup> A cunning politician could use this provision to get herself appointed again and again by taking care that she did not complete the tenure of six months at a time. The Supreme Court made it clear that such appointment could be made only once.<sup>13</sup> Further, the Court also clarified in another case that a person who was disqualified to be a member of the legislature under a law could not be appointed as minister even for six months under the above provision<sup>14</sup>.

Defections means leaving a political party on whose ticket she was elected and joining another party. This is a peculiar Indian phenomenon. Mature democracies have not witnessed this problem. Occasionally members have resigned from their party due to ideological or policy differences. In India, however, members cross over from one party to another, not out of any ideological differences, but purely for personally gain. This phenomenon is known as Ayaram Gayaram. This introduced considerable instability of governments. It also led to severe form of corruption because members were almost for sale. The Constitution therefore had to be amended to disqualify persons who crossed the floor and joined another political party. It was provided that such a person would be disqualified from being a member of the Legislature unless she was elected afresh on behalf of another party to which she had defected.<sup>15</sup> An exception was however made in the case of a group of members consisting of not less than 1/3<sup>rd</sup> of the total number of members of that party in the Legislature defecting from their party and either merging in another party or remaining separate<sup>16</sup>. Disqualification would also not be attracted if two parties amalgamated into one. The provision permitting one-third members to defect without incurring disqualification led to a great abuse such as horse trading and corruption. Recently, the Constitution was amended to remove the above exception in respect of 1/3<sup>rd</sup> of the members." Now the position is that if any one leaves her party and joins another, she loses her membership of the Legislature, and she will have to get herself elected again from another party. Two parties merging into one however does not attract the disqualification.

Despite such constitutional amendment, the political class continues to find spaces for its unconstitutional behaviour as was evidenced from the events in Goa when the Parrikar government failed because of defections. The Speaker of the House has a sacred duty to conduct the proceedings in an impartial and impassioned manner. After becoming the Speaker, she is supposed to disconnect herself from the political party to which she belonged at least while she is the Speaker. This restraint has, however, been disregarded by successive speakers and presiding officers of legislatures. Under the Anti Defection Law introduced by the Fifty-second amendment, the Speaker was given the power to decide issues of disqualification of members on the ground of defection. Persons who held that office however showed themselves entirely incapable of discharging that responsibility in an objective and fair manner. The Supreme Court held that the Speaker's decisions on disqualification on the ground of defection were subject to judicial review.<sup>18</sup> That decision was generally welcomed because of the loss of credibility by the Speakers.

The size of the cabinet has never been a problem in other countries. But in India, since the emergency of coalition government, the size of the cabinet went on expanding. In order to accommodate various constituents of the coalition, ministerships were given to a large number of people. This imposed a heavy burden on the public exchequer. A constitutional amendment has now imposed a ceiling on the size of the cabinet. It cannot exceed 15% of the total membership of the House<sup>19</sup>.

### **Accountability of Elected Representatives**

The Constitution has mentioned who can be a member of the Legislature<sup>20</sup>. A member is disqualified if she holds office of profit under the State.<sup>21</sup> Such a provision excludes the possibility of a member being a beneficiary of the State largess. Recently a committee, appointed by the Supreme Court to examine the distribution of petrol pumps, has expressed an opinion that members of legislatures should be disqualified from obtaining the allotment of a petrol pump. Distribution of such a largess often is tainted with favouritism and bias. Distribution of petrol pumps was vitiated under the regimes of both the Congress party and the National Democratic Alliance Under the Congress rule. Satish Harma was indicted by the Supreme Court for making allotments on partisan considerations.<sup>22</sup> Under the NDA, petrol pumps were given to persons associated with a political ideology. The Supreme Court, however, objected to the wholesale cancellation of such allotments because it affected the allotments made in favour of the victims of Kargil war also.<sup>23</sup>

Representation of the People Act, 1951, imposes several disqualifications. Section 8 (2) provides that if a person is held guilty of an offence and sentenced to not less than two years' imprisonment, she shall not stand for election to a legislature six years since the completion of her sentence. For certain offences such as rape, dowry or sati, a sentence of six months' imprisonment disqualifies a person from being a member for six years since the completion of the sentence. Section 8(4) provides that the above disqualification would not apply to a sifting Member for 3 months, and if she appeals against the decision of the Court until the decision of the Appellate Court confirming her conviction. Sitting members took

advantage of this provision since the judicial process is time consuming. They could remain as members for a long time despite such a stigma. Such a person could also file her nomination for next election upon the expiration of her current term. The Supreme Court has held that this provision would not apply to members who had completed their term since they were no longer members.<sup>24</sup> They would not be able to file nomination for election unless the Appellate Court decides in their favour. In another case, the Supreme Court held that if a member, against whom a warrant of arrest is issued, absconds and does not submit to arrest, her nomination for election will be invalid.<sup>25</sup> A person dismissed from government service for corruption or disloyalty is disqualified for contesting election for a period of five years since the date of conviction.<sup>26</sup> Persons in contractual relations with government<sup>27</sup> and those holding office under a government company<sup>28</sup> are also disqualified. Why should persons dismissed from government service on the ground of corruption or disloyalty be disqualified only for five years since the date of conviction? They should have been treated on par with those who have been disqualified for being convicted for an offence carrying a sentence of more than two years imprisonment. In fact, such persons should be disqualified for ever. A person who was guilty of corrupt practices in election as defined by S. 99 of the RPA, was also disqualified for six years since the date of such a finding by a court. But that law was amended after Prime Minister Indira Gandhi was held guilty of corrupt practice by the Allahabad High Court. Under the amended law, the case of such a person is referred to the President for determination of whether and how long should such a person be disqualified from being elected as a member of the legislature. The period of such disqualification, however, should not exceed six years. Before giving a decision in this regard, the President has to obtain the opinion of the Election Commission and act according to it.<sup>29</sup> In my view, such a provision flies in the face of the right to equality. Certainty of the law is necessary in such situations. I do not understand why the Supreme Court did not object to the validity of the amendment which made such disqualification depend on the discretion of the Election Commission.<sup>30</sup>

However, such legal restraints are not enough. There have to be healthy precedents, e.g. in England when Profurno, a Finance minister was accused of leaking out the budget to his mistress, he had to resign. Since then, he did not come back. As against that, even after Mr. Antulay was held guilty of malafide action in respect of the distribution of cement, he did not resign until Mrs. Indira Gandhi forced him to do so. Mrs. Gandhi also forced him to resign only after sufficient public displeasure was expressed through media and other channels. Even after a temporary exist, such politicians have come back and enjoyed fresh tenure as ministers.

Once a person is elected, there is absolutely no check on him for the period of five years. There is no provision for recall. I am not sure that such a provision would be successful in India. It may not necessarily be invoked against a bad person. The prescribed number of signatures could be procured even against an honest person. As long as the moral sense of the people does not get aroused, such provisions cannot work efficiently. Why do people elect a person who is known to be corrupt or criminal? We have seen people who have earned a bad name getting elected because they extend facilities to their constituency. There

are Robin Hoods who earn through corruption, but give charity to the poor. Loyalty to a constituency or a caste or a religion unfortunately prevails over the loyalty to democracy and to the nation.

### **Empowering Civil Society**

It seems that Indian politics is shifting from charismatic leadership to a performing leadership. The populist promises are having lesser influence. We do not know how far the electorate in Maharashtra was influenced by the promise to give free electricity to farmers because both the competing coalitions had given that promise. The elected representatives are not as sure of their return in the next election as they used to be in the past. In other words, they can no longer take people for granted. The main problem is how do we empower our civil society so that it could exert greater pressure on the elected representatives? Education of society is necessary to reduce the impact of charismatic leadership or populist politics. Transparency in governance is a sine qua non of honesty as well as efficiency of government. Civil society must act more positively and exercise vigilance over the ruling elite and over the institutions of democracy such as the legislature, the executive and the judiciary. One of the most important devices for empowering the civil society is to vest in them the right to information. I shall briefly survey the efforts made so far in that direction.

### **Information About Candidates Standing for Elections**

The Supreme Court commanded the Election Commission to seek information from every candidate filing in her nomination papers information regarding her assets and liabilities, past prosecutions and convictions / acquittals, and pending prosecutions if any.<sup>31</sup> Almost all political parties unanimously opposed this decision. An ordinance was issued to deny such power to the EC. This was later converted into the RP Amendment Act 2003. The Supreme Court struck down that ordinance and the Act as being violative of the right to information, which was a fundamental right included within the right to freedom of speech guaranteed by article 19(1)(a) of the Constitution.<sup>32</sup> The Court observed that the people, who constituted the electorate, had a right to know the antecedents of the candidates who stood for election. No law could be passed to annul it. Therefore the RPA amendment which negated the giving of such information was held unconstitutional. This has had some effect on the elections. The Association for Democratic reforms in a report observed that there was a decline in the number of candidates with criminal record in the elections after the above Supreme Court decision. In the Gujarat election held in 2002 such candidates constituted 18% of the total number of candidates. In the elections held in 2003 in Rajasthan, Delhi, Himachal Pradesh and Madhya Pradesh, the number of such candidates came down to 9%. In 2004, Lok Sabha elections, the numbers of persons with criminal record from among 542 MPs elected were as follows - Cong 10%; BJP 19%; BSP 37%; CPI (M) 12%; NCP 56%; RJD 40%; DMK 13%; Shiv Sena 33%.<sup>33</sup> In the elections to the Maharashtra Legislature held in October 2004, out of the total number of 2678 candidates who contested election, 1,625 had submitted their antecedents. According to a survey made by the Association for Democratic reforms,

out of 1625 candidates, 22.5% (366) were such against whom criminal cases were pending. The party-wise break up of such candidates with pending criminal prosecutions was as follows - Cong 19%; BJP 40%; NCP 25% and Shiv Sena 56%. The wealth of such candidates ranged between 1 crore to 100 crores.<sup>34</sup>

In a recent study of the affidavits submitted by 541 contesting candidates in the 2004 Lok Sabha election, profiles of members of Parliament have been analyzed. Assets declared by candidates show that many members are affluent. An average wealth of a candidate party-wise was as follows : Congress 3,10,76,000; BJP 96,91,000; CPI (M) 22,95,000; Bahujan Samaj 1,19,83,000; CPI 25,40,000; Samaiwadi 1,53,78,000; RJD 56,19,000; DMK 1,05,06,000; Shiv Sena 1,51,29,000 and BJU J. 53,51,000. The average assets reported by the SC and ST members are less than one third of the assets reported by the rest. The average value of the assets of the non SC ST MPs is Rs. 2 crores.<sup>35</sup>

Nearly half of all the MPs have outstanding debts in excess of Rs. 10 lakhs. 13.6 % have debts below 1 lakh. Debts below 1 lakh are owed by 5.4%. The total outstanding debts of these MPs amounts to Rs. 413 crores. The party-wise break up is as follows : Cong 45%; though they comprise less than 30% of MPs; BJP 23%. Larger debts exceeding Rs. 10 lakhs are owed by Shiv Sena 41.7 %; DMK 20%; Cong 17.9%; BJP 12.5%. Dues on telephone charges, taxes, rent, electricity are owed by 13% MPs. Dues in excess of 1 lakh are owed by 8.4%. Total government dues amount to Rs.7 crores.<sup>36</sup>

The party-wise break up of persons without any criminal record is as follows : Cong 120 out of 145 (82.80%); BJP 110 out of 138 (79.70%); CPI (M) 35 out of 42 (83.30%); Bahujan Samaj Pary 11 out of 19 (61.10%); CPI 8 out of 10 (80.0%); Samaiwadi 25 out of 39 (69.40%); RJD 13 out of 23 (56.50%); DMK 10 out of 15 (66.70%); Shiv Sena 5 out of 12 (41.70%); BIJU J 10 out of 11 (90.90%). Other smaller parties 66 out of 88 (75.01 %). This shows that there is substantial number of MPs with criminal records and they exist almost all the political parties.

This study observes that there is convergence between money power and criminality. Nearly one fourth of the MPs have criminal cases registered against them. A large proportion of MPs who are less educated are richer than the better-educated MPs. They are also ahead in criminal matters. Out of 132 MPs who are under-graduates, 30% have criminal records. Out of the remaining MPs, 21% have criminal record.<sup>37</sup>

## **Behaviour in the House**

Adversarial politics has affected the conduct of the legislative proceedings. Often members have disrupted the work of the House on slightest excuse. Question hours are often suspended and walk-outs by opposition parties or jumping into the well of

the members in protest against the ruling of the Speaker have become common occurrences. The house is adjourned too frequently and even budgets are passed without any discussion. There are few members who study and offer valuable comments on the government's policies. Members of the ruling party blindly support the government and those of the opposition oppose for the sake of opposition. So much time of the house is wasted causing incalculable loss of money. Mr. Fali Nariman, a senior advocate of the Supreme Court and a member of the Rajya Sabha has proposed a bill providing that no member would draw his daily allowance if the House adjourned without dispensing any work. Such a bill will not be passed because all members of all the parties will unanimously oppose it. Do they not all vote in favour of increase in their allowances and perquisites? The Speaker Mr. Somnath Chatterjee has now thrown open the proceedings of the Houses for being televised. How many people will watch the proceedings? The television viewers are more interested in watching serials of extra-marital relations rather than proceedings of the House. Some Social watch reports have in recent years thrown light on the performance of the Legislatures and their members. An audit of their performance is necessary to bring in accountability.

Corruption of members has been a perennial problem. Unfortunately very few have been successfully prosecuted for corruption. The Supreme Court held that MPs and MLAs are public servants for the purpose of the Prevention of Corruption Act. Under this Act, a public servant cannot be prosecuted unless a sanction is obtained for such prosecution from government. This provision exists in the Code of Criminal Procedure<sup>38</sup> as well as the Prevention of Corruption Act, 1988.<sup>39</sup> It intends to protect honest officials from vexatious proceedings. Sanction is not for protecting a dishonest or a corrupt official. The sanction giving authority must ascertain whether there is a prima facie case. If there is, it should allow the prosecution to proceed thereby leaving the decision regarding the guilt to a court. Often such sanction does not come easily. It is either delayed or is rejected. Two ministers who had allowed release of 7.5 acres of land illegally to the earlier owners even though the same had been acquired by the Indore Development Authority were sought to be prosecuted. The Lokayukta had opined that there was prima facie case. The Council of Ministers however refused to accord sanction for prosecution. The Governor on being satisfied that prima facie case had been made out, accorded sanction for prosecution. This decision of the Governor was challenged by the ministers. The Supreme Court upheld the decision of the Governor holding that that was a matter within the Governor's discretion. Under article 163 of the Constitution, the Governor is required to act according to the advice of the Council of Ministers except in matters requiring her to act in her discretion. The Court held that the giving of sanction to prosecute was a matter that fell within the Governor's discretion, and therefore she was the competent authority to give sanction for prosecution. This decision has made a dent into the absolute power to give or not to give sanction for prosecution.

Some times it is provided that prior sanction is required even for investigating a

crime allegedly committed by a public servant. The Supreme Court expressed its disapproval of such a provision in Vineet Narain's case.<sup>40</sup> Now, the Central Vigilance Commissioner can deal with cases of corruption. Whistle blowers have been protected and the CVC can make meaningful investigations.

### Freedom of Speech and Immunity From Prosecution

The Constitution gives to every member of the legislature freedom of speech within the house. She enjoys immunity from any legal action for what she says in the House.<sup>41</sup> Freedom of speech and immunity from legal action are complementary provisions. One would be a nullity without the other. In *P. V. Narsimha Rao v. State (CBI/SPE)* these provisions came up for interpretation. Some members of the Zharkahnd Mukti Morcha had been alleged to have taken bribe for voting against the no confidence motion moved against the Rao government in Parliament. The bribe was alleged to have been given by the members of the Congress party. Both the bribe givers as well as the bribe takers were prosecuted. The members of the ZMM filed a writ petition in the Supreme Court challenging their prosecution on the ground that since they enjoyed freedom of speech within the House and could not be held liable for whatever they spoke, they could not be prosecuted in respect of voting in the House. Voting, it was contended, was an aspect of freedom of speech and was therefore protected by the immunity granted by the Constitution. The Supreme Court by a majority held that while members who gave the bribe, and those who received it but did not vote, could be prosecuted, those who were alleged to have received it and had voted could not be prosecuted because in their case how they voted would be enquired into and that would offend the immunity granted to them by the above provision of the Constitution. The minority judges, however, held that such an interpretation would run contrary to the spirit of the Constitution. Freedom of speech was given to a member in order that she should perform her duty as a member without any fear or favour. It was her duty to represent the people who elected her as a member. Freedom of speech of a member was coupled with a duty not to barter away such freedom. If a member spoke out of fear or for a consideration, did she not commit a breach of her duty to represent the electorate in the House? Freedom of speech given to a citizen by article 19(1)(a) was not constrained by any such duty except that it could be subjected to reasonable restrictions imposed by law in the interests of sovereignty and integrity of India, security of the State, public order, decency and morality and by the law of defamation or contempt of court permitted by cl.(2) of that article. Since a member's freedom was free from such restrictions, it must be conditioned by her duty to exercise it in the interest of her constituency. The scope of such freedom must be interpreted in the light of the purpose for which it is given.

### Accountability of Civil Servants

In a parliamentary democracy, civil servants are supposed to be committed to the government but not to any political party. A civil servant is supposed to advise the Minister

on matters of administration. She is duty bound to execute the policies adopted by the government. In the spoils system, the elected executive appoints its own secretaries who share its bias and policies. The civil service in the parliamentary system is permanent and does not come and go with the elected executive. Civil servants have a reasonable security of tenure. Although in England, theoretically they work during the pleasure of the Crown, in practice they cannot be removed except for a cause and that too after a fair enquiry.<sup>42</sup> Under the Indian Constitution also, although civil servants work during the pleasure of the President / the Governor,<sup>43</sup> they cannot be dismissed, removed or reduced in rank except after a fair hearing.<sup>44</sup> These provisions have over protected the civil servants. Such excessive security robs them of any initiative. Ministers on the other hand expect them to be personally loyal to them and those who fail to measure up to their expectations of such loyalty are harassed. They are transferred to inconvenient places and at times demoted. Indirectly, the spoils system has been incorporated. This has caused demoralization of the honest officials. Bureaucrats are often seen doing things out of the way to please their masters. Civil servants are also not free from corruption and abuse of power. What is most concerning is the growing fidelity of the civil servants to the ruling political party. The worst affected are the police. The police are not only politicized but also communalized. Their partisan attitude was reflected in the Delhi carnage against the Sikhs in 1984 as a reprisal for the assassination of Mrs. Indira Gandhi by two Sikh bodyguards, in post Babri Masjid demolition communal carnage in Mumbai in 1993<sup>45</sup> and in the post Godhra genocide in Gujarat in 2001-2002.<sup>46</sup> Civil servant's fidelity to an individual politician and their desire to please such a person endangers the rule of law. Civil servants must be loyal to the State and to the Constitution. Their loyalty to a minister is only to the extent it serves her loyalty to the State and to the people. Bureaucrats joining a political party after retirement have become quite common. Even judges of the Supreme Court and High Courts have joined political parties after retirement or even by taking premature retirement. I shall deal with the judges in another section.

In recent years, we have witnessed the desecration of most coveted positions such as of the chairperson of the Public Service Commission, the vice chancellors, high police officials and even judges.

### **Transparent Governance**

Even more than fifty four years since the end of colonial rule, India still continues to be administered by colonial governing culture. Discretion is vested in government officials in terms unintelligible to the common man. Despite judicial review, abuse of discretion is quite frequent.<sup>47</sup> Unpredictability of how decisions would be taken creates uncertainty in the minds of the people, who become either servile or corrupt. Various colonial laws such as S.123 of the Indian Evidence Act, 1872, or the Official Secrets Act, 1923, or the Atomic Energy Act, 1962, preclude transparency. S.123 of the Evidence Act gives a privilege to the government to withhold disclosure of documents from a court that pertain to the affairs of the State if their disclosure in its opinion is likely to prejudice public interest. Earlier the Supreme Court had held that the power of judicial review extended only to ascertaining that

the document withheld pertained to the affairs of the State. Whether its disclosure would prejudice public interest was entirely for the government to decide. However, during the Eighties when the Court became activist, it held that it would decide whether a document pertained to the affairs of the State and whether its disclosure would prejudice public interest not merely from the affidavit presented to the Court by the State, but by examining the document in camera.<sup>48</sup> This interpretation of S. 123 is more consistent with the Constitution. It has significantly diluted the totalitarian character of the government's power. However, the Official Secrets Act still remains. It prohibits disclosure of any official information. Since the right to information is now a fundamental right, such an omnibus provision in the OSA is clearly against the Constitution. The Supreme Court has yet not held it invalid.

In the meantime, there has been a demand for legislation on the right to information. Peoples' movements such as those of the Kisan Mazdoor Sangathan of Rajasthan or Anna Hazare in Maharashtra have mobilized public opinion in favour of such legislation.<sup>49</sup> It was felt that such a legislation would go a long way towards empowerment of the people. Information is power and if people have a right to information, it would lead to a more participatory and accountable governance. Although some states have enacted the laws providing the right to information, the Centre is yet to do so. In fact such legislation has been talked about since 1989.<sup>50</sup>

The Thirteenth Parliament passed the freedom of Information Act, 2003 which has yet not been brought into force.<sup>51</sup> The Act made several exceptions to the liability to give information. The UPA government has now introduced another bill in its place. It will take some time for this Central law to get passed and be executed. It is not an accident that laws such as of the right to information or of the Lokpal have been making several rounds since the last twenty years and yet have not been passed.<sup>52</sup> That shows the stiff resistance the present establishment of *Netas* and *Babus* is putting forth to such legislation. Various states have appointed their Lokayuktas. Lokayuktas are usually retired judges of the High Court, Upa Lokayuktas are retired civil servants who have worked as secretaries. Lokayuktas have done a good job in some states, particularly Karnataka and Maharashtra. However, their reports are not very promptly attended to by the government. Further, their reports do not become available to the public until they are laid on the table of the House. Many a times, they gather dust and are not laid before the House for a long time.

Another legislation which is awaited is legislation to protect the whistle blowers. Such legislation would also promote transparency in governance. The National Human Rights Commission (NHRC) has done a good job since its inception. It was at its instance that cases of the accused involved in the Gujarat communal carnage were ordered to be retried. They were also transferred out of Gujarat as the witnesses felt apprehensive of the communal elements. I do not understand why the Chairman of the NHRC must be a retired Chief Justice of India. Does this not belittle other judges of the Supreme Court and the High Courts? Becoming a Chief Justice is a matter of accident because it is done only on the basis of seniority. There have been excellent judges who did not become the Chief Justice of India, for example Justice B. Lentin of the Bombay High Court, Justices O. Chinnappa

Reddy, Justice D.A. Desai, Justice V.D. Tulzapurkar of the Supreme Court of India, each one of them would have made a good Chairman of the NHRC. The annual reports of the NHRC again suffer from opaqueness because they cannot be made available to the public until they are laid on the table of the House of the Parliament. Since Parliament takes a long time to attend to them, they come to the knowledge of the people rather too late. Violations of human rights are mostly caused by lethargy and negligence of the governments. How do people suffer from malnutrition? Why are juvenile offenders treated so cruelly in the remand homes? How are prisoners treated? The live burning of school children in Kumbakonam in Tamil Nadu was due to allowing a school to be held in a place which was potentially dangerous. No human rights commission can adequately deal with such large scale violations which are caused by mal-governance.

### Judiciary and Public Interest Litigation

In recent years and particularly since after the emergency of 1975, the Supreme Court of India became activist. Its activism was in two directions – (1) it interpreted the provisions of the Constitution liberally so as to expand the rights of the people; (2) it facilitated access of the common man by relaxing the rules of the adversarial process. Under the adversarial process, only an 'aggrieved person' could move the Court and she had to show that her own right had been violated or her own interest had been jeopardized. This rule was alright for societies in which awareness of the rights was widespread. In a country like India, where even now, upto 45% people are illiterate and women's illiteracy is far greater, the above rule resulted in denial of the rights to the poor, the illiterate and all other powerless sections. They lacked not only the knowledge but also the resources required for invoking the jurisdiction of the Court. The Court therefore held that a public spirited person could move the Court on behalf of such victims provided she had no personal axe to grind. This significantly facilitated the access to the Court. Issues involving environment and governance were brought before the Court and this came to be known as public interest litigation.<sup>53</sup> The judicial process is now no longer merely adversarial; it became polycentric. The Supreme Court also legislated to fill in the gap left by the law. For example, it gave directions as to how inter-country and intra-country adoptions should be channelized.<sup>54</sup> In the absence of any law, children were likely to be exploited.

In another case, the Court laid down directions as to how women workers could be protected against sexual harassment at work place.<sup>55</sup> This was totally contradictory to the traditional concept of separation of powers. The Court did encroach upon the spheres supposed to be occupied by the legislature and the executive. The Court however did not usurp the power. It said in its judgment that its directions were to operate until Parliament legislated. It is unfortunate that Parliament has not legislated on either of the issues. Several issues such as food security<sup>56</sup> or deaths of 25 chained inmates in the Asylum Fire in Tamil Nadu<sup>57</sup> were taken up by the Court.

Public interest litigation has at times been abused, for example, a petition asking the Court to substitute "Kashmir" in place of Sindh in the National Anthem, in my submission, is ridiculous. But a careful scrutiny of such petitions at the threshold could prevent such an

abuse. Public interest litigation has definitely enhanced accountability of the government and other decision making authorities. The government is no longer a mere adjudicator of disputes; it also makes law through interpretation and has contributed to the advocacy of human rights culture. It has also facilitated greater public participation in the making of policy. The Court's judgments are discourses in liberalism.<sup>58</sup> It is interesting that the CPI (M) which went in appeal against the decision of the Kerala High Court declaring bands unconstitutional invoked the very decision against Mamata Banerji's proposed Bandh. The decisions of the Court are doubtless inspiring greater conformity with the Constitution!

Judges : To whom are they Accountable?

Sometimes independence of the judiciary is understood as unaccountability of the judiciary. I do not agree. In view of the larger role of the Court, it must be accountable in the same way as any other democratic institution is. The judiciary's accountability is not subject to elections or to popular vote because the judiciary is essentially counter majoritarian. Judges are usually responsive to peer group control. Such peer group control needs to be strengthened. The Bar reacted strongly against the supercession of the judges in 1973. Justice Ray who was appointed as Chief Justice in preference to those three judges, could never feel composed during his tenure as the CJI. He always suffered from the complex that he had been favoured by the government. Judges are obeyed not because they have power to punish, but because the people feel that they decide rightly, that they are independent and fearless. The judges' accountability means their legitimacy, and such legitimacy is required to be constantly sustained. Judges are appointed by the President after consulting the Chief Justice of India.<sup>59</sup> The Supreme Court has held that the advice of the Chief Justice of India taken after consulting two senior-most judges of the Supreme Court is binding on the President.<sup>60</sup>

In an advisory opinion given on the President's reference, the Court held that the CJI's opinion must be given in consultation with the collegium of four seniormost judges of the Supreme Court.<sup>61</sup> This is not a very happy position. While power must not rest entirely with the government, the Chief Justice and other judges also must not have a vote. The appointment procedures need to be democratized. Barring the instances of supercession which the Indira Gandhi government did in 1973 and in 1977, appointments of judges until 1973 had been made by the President on the advice of the Council of Ministers. All great judges of the Indian Supreme Court such as Gajendragadkar, Subba Rao, Hidayatullah, J. C. Shah, Krishna Iyer, Bhagwati, had been appointed by the government. Although the CJI's opinion was not the last word,<sup>62</sup> it was given maximum deference. The political process involved in the removal of a judge has also its drawbacks, which became obvious from the way Justice Ramaswamy was bailed out by Parliament. There are some things which cause concern. There are various post-retirement opportunities for the judges. They can be appointed on various commissions and regulatory authorities. How are these appointments be made? Some judges have joined politics after retirement. This could compromise their independence. If the judges of the Supreme Court are not permitted to practise in any Court,<sup>63</sup> why should they be permitted to take up political appointments?

Why should they be considered for ministerships, Vice-Presidentships or even for President's position. Justice Subba Rao was a candidate for President's post and Justice Hidayatullah actually became the Vice-president of India. These are certainly examples of very good judges whose independence had been robust, but the possibility of getting post-retirement positions could result in a compromise.

The Court must be subjected to juristic criticism. In all advanced countries, juristic criticism helps in ensuring accountability of the judges to the Constitution. There has unfortunately been a weak tradition of juristic criticism in India. Judges are often praised by lawyers and even academicians. Their decisions are seldom subjected to critical analysis not only from the standpoint of logic but also policy.

### The Subordinate Judiciary

Subordinate judiciary should cause greater concern. It seems that the entire system of justice is collapsing. The law of liability in India is in a very bad state. India is constantly facing human rights violations through mass disasters and accidents. Several people are killed in road accidents and they are hardly paid any substantial compensation. It is not compensation that matters. One who loses her son or daughter, cannot be compensated. Better road administration, greater care in giving driving licences would bring down such tragic events. A theatre called Upahar caught fire while the cinema show was on. Several people were killed. After about eight years of litigation, ultimately the Delhi High Court granted compensation to the relations of the deceased and the victims who had survived. The Supreme Court upheld the competence of the Delhi High Court to entertain such claim for compensation in a writ petition. A civil suit would have taken much longer for disposal.<sup>64</sup> The Court not only held the cinema owner liable but it also held the Delhi Municipal Corporation liable for granting exhibition licence without ensuring that proper safety devices had been installed in the theatre. The rule of law is in a pitiable condition. Therefore innocent citizens suffer and the rule breakers go scot free.

In the last three decades, practically in every decade, a communal genocide has taken place. It happened in Delhi 1984 to which reference has already been made before in 1992-93 in Mumbai and in 2001-02 in Gujarat. Not only the State failed to prevent it, it looked the other way while such carnage took place. In Gujarat, the government was actively involved in supporting the criminals. What causes concern to us is that even the judiciary was not free from this blemish. In *Zahira Habibullah v. Gujarat*,<sup>65</sup> the Supreme Court heard a petition asking for transfer of the trials of the accused out of the State of Gujarat. The petitioners alleged that the trials which had resulted in acquittals had not been fair. The witnesses had been threatened and the Court was over technical. While ordering the retrials in a place outside Gujarat, the Supreme Court observed:

If one even cursorily glances through the records of the present case, one gets a feeling that the justice-delivery system was being taken for a ride and literally allowed to be abused, misused and mutilated by subterfuge. The investigation appears to be perfunctory and anything but impartial without any definite object of finding out the truth and bringing to book those who were responsible for the crime. The Public Prosecutor appears

to have acted more as a defence counsel than one whose duty was to present the truth before the Court. The Court in turn appeared to be a silent spectator, mute to the manipulations and preferred to be indifferent to sacrilege being committed to justice.

## Conclusion

Good governance is required more by the poor than by the rich. It is the poor, the minorities, women, children and all powerless groups who need the protection of the rule of law. It is only an honest and efficient government which can sustain and strengthen the rule of law. Governance will be reinvigorated when the rulers become accountable to the people. An accountable and transparent governance is necessary even for social justice. The rule of law is the most essential requisite of a just society.

<sup>1</sup> Article 38

<sup>2</sup> Third Schedule of the Constitution.

<sup>3</sup> Hart, *The Concept of Law* p. 19 [ELBS OUP 1970]

<sup>4</sup> A.D.M. Jabalpure v. Shiv Kant Shukla AIR 1976 SC 1207.

<sup>5</sup> S. P. Sathe, *Judicial Activism in India :Transcending Borders and Enforcing Limits* p. 262 ( Second paper back ed. 2003 OUP India).

<sup>6</sup> Article 75 (3) Center; Art.164 (2) states.

<sup>7</sup> Art.75(1); Art.164(1)

<sup>8</sup> Art.75(2); Art.164(1).

<sup>9</sup> Art.54

<sup>10</sup> Samsher Singh v Punjab AIR 1974 SC 2192..

<sup>11</sup> Art.74(1) was amended by the Constitution (Forty-Second Amendment) Act, 1976 to make explicit that the President shall act according to the advice of the Council of Ministers. This clause was further amended by the Constitution (Forty-fourth Amendment) Act, 1978 which permits the President to send back an advice to the Council of Ministers for reconsideration. However, if the same advice is tendered again, the President is bound to act according to it.

<sup>12</sup> Art.75 (3) for Central Government and Art 164 (4) for state government.

<sup>13</sup> S. R. Chaudhury v. Punjab (2001) 7 SCC 126.

<sup>14</sup> B R. Kapur v. Tamil Nadu (2001) 7 SCC 231 .

<sup>15</sup> Para (2) of the tenth Schedule inserted by the Constitution fifty-Second Amendment) Act, 1985.

<sup>16</sup> Para (3) of the Tenth Schedule. Ibid

<sup>17</sup> Para (2) of the Tenth Schedule inserted by the Constitution (Ninety-first Amendment) Act, 2003.

<sup>18</sup> Kihota Hollohon v. Zachilhu (1992) 1 SCC 309

<sup>19</sup> Clause 1A was added to article 75 by s.2 and clause 1A added to article 164 by s. 3 of the Constitution (Ninety-First Amendment) Act, 2003.

<sup>20</sup> Art.84 - Parliament; Art.173 - State legislature

<sup>21</sup> Art.102(1) (a) Parliament; Art.191(1)(a).

<sup>22</sup> Common Cause v. India (1996) 6 SCC 530,593, AND (1999) 6 SCC 593.

<sup>23</sup> Onkar Lal Bajaj v. India (2003) 2 SCC 673.

<sup>24</sup> Indlaw.com Jan.12, 2005

<sup>25</sup> From newspaper in the case of Poppu Yadav.

<sup>26</sup> S.9

<sup>27</sup> S.9-A

<sup>28</sup> S.10.

<sup>29</sup> A.8-A introduced by S.2 of the R.P.A. Amendment Act, 1975

<sup>30</sup> Indira Gandhi v. Raj Narain AIR 1975 SC 2299.

<sup>31</sup> India v. Association For Democratic Reforms (2002) 2 SCC 294.

<sup>32</sup> P.U.C.L. v. India (2003) 4 SCC 399.

<sup>33</sup> EPW Sept. 11-17 (2004) p. 4136

<sup>34</sup> The Indian Express 5-10-2004

<sup>35</sup> EPW opp. cited.

<sup>36</sup> Ibid.

- 37 Ibid.  
 38 S.497  
 39 S.9 of the P.C.A.  
 40 Vineet Narain v. India (1998) 1 SCC 226  
 41 See articles 105 (1) and (2) for Parliament and articles 194 (1) and (2) for state legislatures.  
 42 Ridge v. Baldwin (1964) AC 40  
 43 Art.310  
 44 Art.311.  
 45 "Damning Verdict" Report of the Justice B.N. Srikrishna Commission of Inquiry (Sarang Communications and Publishing Pvt. Ltd.). The Commission said:  
 "The bias of policemen was seen in the active connivance of police constables with the rioting Hindu mobs on occasions, with their adopting the role of passive on-lookers on occasions, and finally, in their lack of enthusiasm in registering offences against Hindus even when the accused were clearly identified and post haste classifying the cases in "A" summary." Ibid p.24.  
 46 Justice Krishna Iyer et al "Crime against Humanity" – An inquiry into the Carnage in Gujarat – Findings & Recommendations, published for Citizens for Justice and Peace 2002  
 47 S. P. Sathe, Administrative Law chapter 8 [7<sup>th</sup> ed.2004 Butterworths India] Hereinafter cited as Sathe, Administrative Law (2004).  
 48 S.P. Gupta v. India AIR 1982 SC 149.  
 49 Harsh Mander and Abho Singhal Joshi, The Movement For Right to Information in India: Peoples' Power for the Control of Corruption [CHRI] Vikram Khub Chand, Legislating Freedom of Information in India in Comparative Perspective [CHRI]  
 50 This writer delivered three lectures at the University of Delhi mapping out the theoretical canvas of such a right. See S. P. Sathe, The Right to Know (Tripathi-Butterworth 1991)  
 51 Usually a statute contains a provision giving power to the government to bring the Act into force from a date to be announced by it in a notification. Such a provision is required for supplementing the Act with subordinate legislation to be made by the government. However, the government takes unusually long time to do so. Some times it kills the legislation by not bringing it into force at all. This happened with a provision of the Constitution (Forty-fourth Amendment Act 1978 The Supreme Court has expressed its inability to mandamus the executive to exercise such power. See A. K. Roy v. India (1982) 1 SCC 271. See for other cases S. P. Sathe, Administrative Law p. 33-34. (2004)  
 52 A bill for Lokpal was introduced in 1971 by the Indira Gandhi government. Several incarnations of that law have appeared in Parliament since then.  
 53 See S. P. Sathe, Judicial Activism in India supra n.5  
 54 Laxmikant Pande v. India AIR 1987 SC 232  
 55 Visakha v. Rajasthan (1997) 6 SCC 241  
 56 PUCL v. India [http://www.right\\_to\\_food.com](http://www.right_to_food.com)  
 57 (2001) 3 SCC 31  
 58 For example, it declared that a bandh is unconstitutional. See Communist Party of India (M) v. Bharat Kumar (1998) 1 SCC 201  
 59 Art.124  
 60 Supreme Court Advocates on Record Association v. India (1993) 4 SCC 441.  
 61 S.P. Gupta v. India AIR 1982 SC 149  
 62 In re Art.143 of the Constitution, Presidential Reference (1998) 7 SCC 739.  
 63 Art.124 (7)  
 64 Green Park Theatres Association Ltd. v. Association of Victims of Uphar Tragedy 2001 6 SCC 663.  
 65 (2004) 4 SCC 158 at p.197

### Session Report

*The speech was delivered for the Inaugural Session. However not being a member of the ILG and as he had already left Mangalore, Dr. Sathe did not participate in the Delegates' Session the following day. Dr. Mary Thomas (Mumbai) initiated the discussion. She was followed by Dr. S. L. Shanbhogue (Mangalore), Mr. Jagdeep Chhokar (Ahmedabad), Mr. Rajesh Singh (Patna), Mr. S. Arunajatesan (Chennai), and Prof. Vijay Sinha (Mumbai). The paper received general acceptance from the Delegates as reflecting the Liberal Position.*

# Promoting Liberalism Globally

## – The Mission of the FNSt

### Address by Chief Guest

**Hubertus von Welck**

Before I begin I would like to congratulate Dr Sathe for his strong, convincing and informative presentation. In parts it sounded like a satire, but it seems to be Indian reality.

It is a great pleasure for me to be with you on the occasion of the 2<sup>nd</sup> National Convention of the Indian Liberal Group here in Mangalore. I convey to all of you the best wishes from the Board of Directors of the Friedrich Naumann Stiftung in Germany.

I have learned that Mangalore is a city of colleges, a city with many young people, a city of entrepreneurs, a city with a harbour opening up to the world - in short the right environment for Liberals to come together and to work out new strategies for action.

The organizers have given me the task to speak on "Promoting Liberalism Globally - the mission of the FNSt".

I will tackle that task in three steps. First I will give you some information on the Foundation itself, secondly I will talk on the goals we pursue globally and thirdly I will introduce our focal themes which we apply in our work.

### **The Friedrich Naumann Foundation (FNF)**

The Friedrich Naumann Foundation has been set up in Germany on 19<sup>th</sup> May 1958 by a group of liberal minded personalities under the guidance of the first president



Mr. Hubertus von Welck with a Masters in Public Administration from the University of Konstanz, Germany, has been with the Friedrich Naumann Foundation since 1979. Starting as a Programme Officer in their Africa Department, Mr. Welck has been successively FNF's Project Director in South Africa and Zimbabwe; Assistant to Deputy Chairmen and Head of International Programmes, later Head, Human Resources at the FNF's Head Office. He has been in India since 1998 as Regional Director South Asia, FNF Regional Office, New Delhi, responsible for the coordination and development of FNF's country programmes in India, Pakistan, Afghanistan, Nepal, Bangladesh as well as Sri Lanka. Mr. von Welck has co-edited two books with Dagmar Graf von Bernstorff, *Tibet in Exile* (in German) and *Exile as a Challenge: The Tibetan Diaspora* (English).

of the Federal Republic of Germany, Mr. Theodor Heuss. He, Mr. Heuss, gave the Foundation the name – in an Indian context you would say – of his "guru", his teacher and mentor, Friedrich Naumann (1860-1919), who himself was a pastor and politician at the beginning of the twentieth century.

What were the reasons for Heuss to make Friedrich Naumann the patron of the Foundation? Without going into the details of the life and work of Naumann, the most important legacy is his vision on 'civic education'. He had developed the plan for a "Free Academy for Politics", a plan for a citizens' academy that would serve to educate for democracy. Please do not forget at that time the German empire had just collapsed, the World War I was lost and the Republic was in its infant stage. Naumann had already at that time the vision of a participating democracy which requires responsible and educated citizens! He not only dreamt of his vision, but also implemented it and established a series of citizens' courses with the support of this friend, the well-known entrepreneur Robert Bosch. It was not to be a school of a political party; rather, it was to create fora for open dialogue for the use and benefit of the young democracy. In 1920, after Naumann's death, the "Academy for Politics" developed out of it. The work of the Friedrich Naumann Foundation stands in that tradition of Friedrich Naumanns Citizens' Academy.

Today the Friedrich Naumann Foundation is the foundation for Liberal politics in the Federal Republic of Germany. As such we aim to promote the goal of making the principle of freedom valid for the dignity of all people and in all areas of society, both in Germany and abroad.

At home, e.g. in Germany, the Foundation offers diverse fora, mostly for young and talented people, for the exchange of information and experience in present-day contexts. Its main focus is to promote a greater understanding of politics – certainly from a liberal point of view – and to inspire citizens to take active part in political processes.

In Germany we have a counterpart in the political field, which is the Free Democratic Party (FDP), the Liberal Party of Germany. The task of the party is to be engaged in day to day politics, our task as a foundation is to promote liberal values through civic education.

Let me now come to The Goals of the Foundation

As pointed out our overriding goal is to promote the principle of freedom!

We are convinced that

**Freedom promotes development**

For us as a liberal foundation development and freedom are inseparable. This

is not merely a value-based conviction; it also emerges from empirical observation.

- ❖ Freedom means that we believe in free markets. Economic development and overcoming poverty in particular, are only possible in a free economic order. Free competition, which is part and parcel of free markets, has unshackled human initiative and creativity, while free international trade has resulted in increased prosperity. These are, ultimately, the driving forces of economic and social development. It is an established fact that the degree of market freedom not only correlates positively with economic growth, per capita income and the human development index, but also with the absolute and relative levels of income of the poorest groups in a country (for further details and the empirical data I recommend you to see the Annual Report of the Economic Freedom of the World, published by the Fraser Institute, Canada. It has last year also been published in India. This publication includes a CD to make it easier to apply the data provided.) The same positive correlation exists between these key development indicators and the degree of trade openness practiced by national economies. Thus market freedom and freedom of trade are the first key component of a liberal development strategy.
- ❖ The second component is the rule of law, in fact in two aspects. For one, it represents a purpose in itself for guaranteeing civil liberties and limiting state power. But it is also an essential prerequisite for a functioning market economy. The market can not function without a regulatory framework (that regulates and guarantees e.g. property rights, laws of contract, competition, liability, obligation etc.). The rule of law is thus not merely the classic liberal achievement *per se*; it is also the primary prerequisite for development.
- ❖ Human rights form the core of the rule of law. Human rights here are understood as the classic rights of freedom and defence against state power. They are constitutive for civil liberties, which are both goal and prerequisite for successful development policy in any form. It is these liberties that allow the productive and creative potential of citizens to unfold in the first place. We are convinced that

#### Freedom promotes peace

In addition to the rule of law within a country, the supremacy of law is also becoming increasingly relevant in international relations. Combating terrorism and securing peace require that norms based on the principle of the rule of law are both recognized and implemented. Thus:

- ❑ Democracy is a bulwark against war
- ❑ Democracy is a safeguard against hunger, and by corollary against primary breeding ground for extremism and aggression
- ❑ Democracy deprives extremist, fundamentalist and terroristic tendencies of potential breeding grounds resulting from suppression, defenselessness and the lack of responsibility

- Openness towards interaction, trade and peaceful competition promotes peace per se.

On this basis of these goals and convictions the Friedrich Naumann Foundation undertakes activities in other countries to strengthen liberalism as an ideal and as a politically effective force worldwide. With this we pursue the following :

- Firstly to popularize liberal ideas and concepts.
- Secondly to strengthen liberal organizations (especially liberal political parties, if those exist).
- Thirdly to transfer liberal approaches from other countries back to the German political debate. You see, we also want to learn from our partners!

### Instruments of the FNF

In its work the Foundation utilizes the following instruments, which also represent the core activities of the Foundation:

- Political or civic education. It involves imparting political skills and knowledge through partners by means of instruments that have been developed and made available in close cooperation with the Foundation. This education is not value neutral. It is intended to promote acceptance of liberal values and goals among the target groups. Civic education is an attempt to place more and more people in a position to understand and actively participate in politics. Here you will note we do stand in the tradition of our patron Friedrich Naumann (participatory approach)

- Political dialogue

Political dialogue is the exchange of political ideas and experiences among experts and the elite. The Foundation offers a forum to project and dialogue partners with the objective of developing liberal approaches by learning from the experiences of the participants. This also contributes to consolidating and widening the network of the Foundation and its partners. We set up in Germany an International Academy of Leadership to allow and promote political dialogue between participants from Asia, Africa, Latin America and Eastern Europe. Many participants find out, that the problems as pointed out by Dr. Sathe will prevail in many countries.

- Political consultancy

Political consultancy serves to impart skills and knowledge to political organisations and political decision makers. The objective is to support liberalism in becoming an effective political force. One of the tools we recommend is to work out strategies with vision, mission, measurable objectives, target image, target groups, communication strategy and time action plan. This allows concentrate, to focus and thus to be more effective.

To ensure that we in the Foundation focus in our work our board of directors works out focal themes from time to time. For the period of 2004 to 2007, the focal themes are the following:

### 1. Globalisation and Development

1. We see globalization as a great opportunity for economic, social and cultural advancement in the world.
2. Free trade and free markets are the most important elements of any development strategy.
3. Both must be institutionally secured and legitimised by the rule of law and democracy.
4. The legally secured right to private property plays a key role in development, as it is the only expeditious way to consolidate capital formation. If you do not create wealth, you have nothing to distribute or to invest.

### 2. Education as the basis of a free society

1. Education develops the personality of the individual; cultural and ethical aspects are vital components of education.
2. School education must once again have the capacity to impart skills and knowledge to children and young people, enabling them to become active members of society and to hold their own place in the economic sphere.
3. The liberal goal in this context is to nurture the ability to constant change. Instead of the passive accumulation of knowledge, people should be exposed to a lifetime of learning to enable them to be actively involved in economic and social changes.
4. We strive for a system with educational institutions based on self-responsibility at all levels. The state should limit itself to setting the framework conditions and, where necessary, financing the educational system.
5. Fundamental reforms are required in the financing of universities. The funding must create strong incentives to guarantee high-quality education for students and achievement of the highest standards in research. The state should focus more on subject funding (e.g. education vouchers) than object funding (e.g. subsidies to educational institutions).

### 3. Peace-building and conflict prevention

1. For Liberals, peace means that human rights are secured.
2. Respect for divergent opinions and values promotes the peaceful resolution of conflicts among individuals, groups and states
3. However, the quest for compromises and peaceful solutions should not be confused

with the tendency to avoid conflicts at any cost. Limits on the willingness to compromise when implementing human and minority rights, as well as the democratic rules governing life and action within the state, are clearly defined by the fundamental values of a liberal democracy.

4. Open markets and economic integration promote peaceful development.
5. The capacity of multilateral institutions that ensure peace must be strengthened. (UN, WTO, ICC)

#### 4. Active citizenry and local politics

1. 'Active citizenry' in liberal civil society means that citizens actively participate in local self-administration, occupy honorary posts, shoulder social responsibilities and execute certain appropriate tasks. This eases the strain on the local self-government and allows it to better address its core tasks.
2. The division of labour between citizens and municipalities – as outcome of active citizenry – promotes competition for formulation and implementing better solutions to local problems and also strengthens the sense of community and the citizen's trust in their political representatives. Thus active citizenry helps to combating political apathy and supports the citizen's 'yes' to his or her state. Consequently the state can return to his core tasks.
3. At the local level, the citizen directly experiences the social value of the liberal link between freedom and individual responsibility: this is a voluntary show of solidarity as concrete and everyday solidarity on the basis of subsidiarity. Here I can once again refer to Naumann who said: "In a democracy, every citizen is a bit of the state."

#### 5. Human rights, **the** rule of law and constitutional reform

Liberalism is uncompromisingly in support of the protection of human rights.

1. We advocate a constitutional state based on the rule of law in order to protect the individual's right to freedom.
2. The legal and constitutional mechanisms in use for the protection of the individual's freedom have often failed – sometimes overtly and sometimes not so obviously, and to varying degrees. Therefore, liberals support the expansion of and strengthening of constitutional mechanisms for the protection of human rights.
3. Subsidiarity plays a vital role in implementing the ideals of freedom, human rights and the rule of law. It underscores the primacy of the individual and voluntary associations over the state and the preference for levels of governance closest to the citizens over more centralistic claims to power.

And finally as cross-sectoral the theme

## 6. The liberal information society

1. Modern IT tools allow the individual much more freedom and choice but their usage is greatly determined by the user's level of education and willingness to explore and experiment. It is therefore important to promote these two factors to the greatest extent. This must constitute a core area in liberal education policy.
2. IT often provides decentralized solutions for an increasingly efficient global economy and offers novel access opportunities to market players from so far underprivileged regions. Liberal development policy targets this potential for promotion, also against the protectionism of the industrialised countries.
3. Liberals are particularly sensitive to the erosion of freedom and reject the electronic surveillance of citizens whether in its infancy or in the later stages of its expansion. This applies in equal measure to censorship and other methods that hamper a citizen's legitimate access to information.

Ladies and Gentlemen, before I close let me read to you a quote from Jonathan's Guiding Principles as published in "The Adventures of Jonathan Gullible – A Free Market Odyssey" by Ken Schooland. The book has been recently also published in India.

### "Jonathan's Guiding Principles

My philosophy is based on the principle of self-ownership. You own your life. No other person, or group of persons, *owns* your life nor do you own the lives of others.

The harvest of your life is your property. It is the fruit of your labour, the product of your time, energy, and talents. Two people who exchange possessions voluntarily are both better off or they wouldn't do it. Only they may rightfully make that decision for themselves.

You have the right to protect your life, freedom, and justly acquired possessions. You may rightfully *ask* others to help protect you. You do not have a right to initiate force against the life, freedom, or possessions of others. Thus, you have no right to designate some person to initiate force against others on your behalf.

You have a right to seek leaders for *yourself*, but have no right to impose rulers on others. No matter how officials are selected, they have no rights or claims that are higher than those of any other person. You cannot give them any rights that you do not have yourself. Regardless of the imaginative titles, officials have no right to murder, to enslave, or to steal.

Since you own your life, you are responsible to your life. You choose your

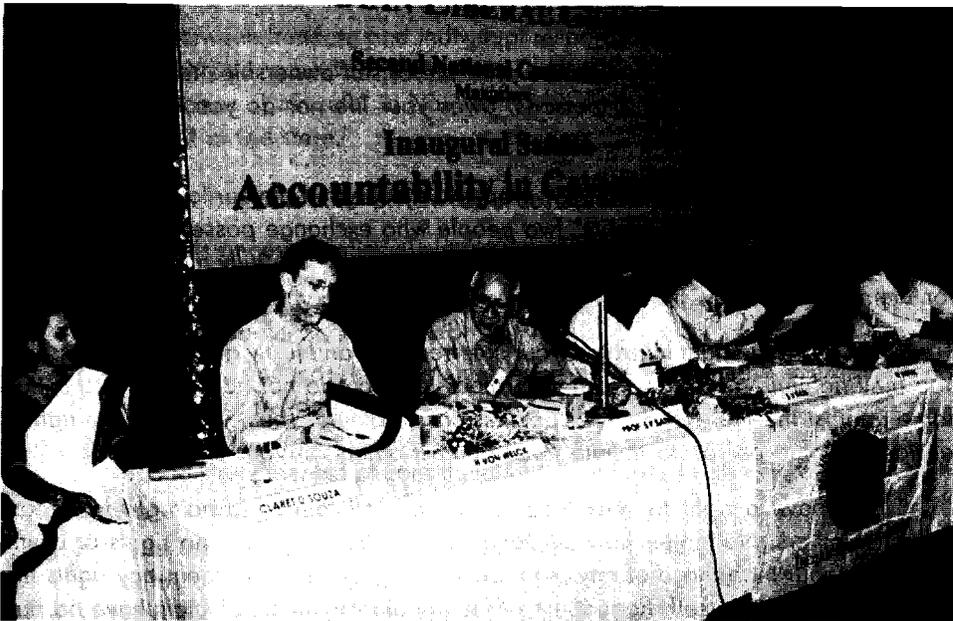
own goals based on your own values. Success and failure are both the necessary incentives to learn and to grow.

Your actions on behalf of others, or their actions on behalf of you, are only virtuous when they come from voluntary, mutual consent. For virtue can only exist when there is free choice. This is the basis of a truly free society. It is not only the most practical and caring foundation for human action, but it is the most ethical."

What a different world would we live in, if everyone could follow those principles.

Ladies and Gentlemen, one last reference to an active liberal politician Graham Watson, Member of the European Parliament and Leader of the Alliance of Liberals and Democrats Europe (ALDE). He points out that liberals in most times and places will be in favour of the freedom of the individual, civil and political rights protected by the law, open markets, tolerance and diversity, secular government, protection of the weak and the disposed. But for him these are abstractions, not political actions. Politics is about political actions. So for him "applied liberalism" means transforming these ideas into workable politics and political actions. That is the challenge before the Indian Liberal Group in the next few days – to turn liberal ideas into action!

Thank you for your attention and I wish you a successful convention.



At the Inaugural Session

(L to R): Ms. Claret D'Souza, Mr. H. von Welck, Dr. S. P. Sathe, Mr. S. V. Raju, Mr. N. Vittal,  
Mr. T. Subbaya Shetty and Mr. G. Giridhar Prabhu

## INAUGURAL SESSION

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### Reviving the Liberal Dialogue in Contemporary India Why India Needs a Liberal Political Party – The Role of the Indian Liberal Group

#### *President's Address*

S. V. Raju

The purpose of the Indian Liberal Group in seeking to revive the Liberal Dialogue in Contemporary India is not an end in itself. It is the means to the end which is the restoration of liberal values in our public life. Perhaps the time is now opportune to start thinking of others means to support the effort of the Indian Liberal Group. One such could perhaps be the emergence a political party based on liberal principles and values.

Arising from this, my talk is addressed to the younger generation - those between 21 and 40 who constitute 70% of India's population – that part of the population which in current lingo is referred to as GenerationNext. GenerationNext needs to know the reasons why India continues to be called a 'developing country' (a euphemism for a poor country) even 58 years after freedom, who are those who are responsible for leading India into the present situation marked by corruption, nepotism and now, crony capitalism masquerading as liberalisation; where criminals have all but hijacked many of the institutions that are pillars of our democratic system particularly parliament and the legislatures and whose hallowed precincts have been defiled by rascals and crooks and others posing as politicians but sadly there because of us. Without our votes they wouldn't be there.

I would like to impress on 'GenNext' why India needs a cleaning up of its political system before it is too late. Why it is important that in addition to being hep, technology savvy, less weighed down by customs, beliefs and practices that are not very relevant today, they should, in their own interests take more interest in public and community affairs.



Mr. S. V. Raju is the President of the Indian Liberal Group; Director, Project for Economic Education and editor of the Liberal Quarterly *Freedom First*. With a Masters in political science from the Bombay University, Mr. Raju was Executive Secretary of the Swatantra Party at its National Headquarters between 1959 and 1973. Thereafter he held executive positions at the corporate level before retiring in 1996. He has co-authored with Dr. S. P. Aiyar a book on the Emergency "When the Wind Blows – India's Ballot Box Revolution" and edited a volume entitled "Democracy and *Development*".

The freeing of the economy, relatively speaking and the impact of globalisation have already created an environment of apparent prosperity and well being. Banks for instance are on an advertising spree offering low interest loans for a variety of reasons, from acquiring new homes to holidays overseas; from scooters and motor bikes to higher studies within the country and overseas.

Politically speaking on the surface, contemporary India is a success story. It is a success story because it has managed to **survive** as a democracy and has developed the 'fine art' of holding elections whenever called for – elections which we Indians can say with some pride, are by and large free and fair. In fact since 1952 when the first general elections were held, India has had 14 elections to parliament and any number of elections to the various legislatures and union territories now numbering 28 and 7 respectively. .

Another feature that sets Indian democracy apart, a fact much appreciated by the casual foreign observer, is the manner in which a multiethnic, multicultural, multiracial and multi-religious population of a billion people has managed to live in relative peace and harmony despite the recent communal holocaust in Gujarat, which has served as a warning that our secular nature is very ephemeral and needs constant nurturing. It also means that the meaning of this word needs to be liberated from the meaning generally attached to the word in our country. Here is a task for the liberal who believes in the separation of the Church and State and not *Sarva Dharma Sama Bhava* as it is commonly understood.

After emerging from colonial rule in 1947 we gave ourselves a Constitution drafted by some of the keenest and tallest minds in the country, which gave many assurances to the common people of India. These assurances which almost amount to promises are contained in the chapter called the Directive Principles of State Policy. Promises which, for very good reasons, are not legally enforceable but which in a manner of speaking amount to an assurance. But the Constitution also contains numerous provisions that are calculated to provide good governance on the one hand and to pull the country out of the paralysis of 200 years of colonial rule, on the other.

When freedom came, there was great enthusiasm and expectations among the people. Between 1949 and 1956 – the period after the adoption of the Constitution and the end of the First Five Year Plan – it did look as if the people's expectations were on the road to fulfillment. And then, in 1957, came the Second Five Year Plan. The Second Plan was a radical departure from the First, drawing its inspiration from the Soviet Union, emphasizing the role of the State in economic development and the primacy of heavy industry as against consumer goods industry and giving agriculture low priority. Beginning 1957 it was made clear that the State would occupy the commanding heights of the economy and exercise total control. The ruling Congress

Party made it clear that its policy was to work towards a Socialistic Pattern of Society. This prescription turned out to be a deadly brew that pauperized the country and destroyed its moral fabric in less than forty years.

All kinds of walls were erected to protect this so-called socialist regime. So called because, as Minoo Masani used to often say, we have no quarrel with the socialist end of social justice but with the means used. These walls had no doors, only little windows to take bribes and disburse buff coloured papers in the form of licences, permits and quotas. Without these papers it was not possible for any Indian citizen to carry on any kind of business or trade. On the other hand these papers, most often purchased from *sarkari babus* at very high bribes, fetched higher premiums in the informal market (those days it used to be called 'the black market'). There was more trading in these buff coloured papers than in industrial activity. To prevent foreign goods from coming in (though you could get almost any foreign goods in the black market) high tariff walls were built. Among the words in vogue those days were 'self sufficiency' and 'import substitution'. While industrial growth suffered two 'professions' prospered under the socialist regime: 'fixers' and 'smugglers'.

Numerous other walls also came up all with the single intention of preventing free commerce within and without the country and keeping the people poor. In addition to reorganizing India on the basis of linguistic states, another division was created the division of India into zones. These zones were created expressly to control the movement of goods. These came to be known as zonal restrictions. These restrictions were to prevent the free movement of foodgrains from one state to another. I remember that in those days good quality rice was a rarity in Mumbai. What was available in the ration shops was of terrible quality. So each time I went to Delhi I would return with a kilo or two of good quality rice. There were inspectors at the railway station to seize contraband. And so two kilos of good quality rice bought from the government owned Sahakari Bhandar in Delhi and 'smuggled' to Mumbai as personal baggage was, in terms of the zonal restrictions then prevailing, considered contraband!

So we had the unhappy situation of plenty in one state and scarcity in the adjoining one. The movement of manufactured goods from one part of the country to another was not banned but subjected to all kinds of taxes (a form of import duty within the country if you like). But the farmer was denied movement of his grain to another part of the country, even on payment of a levy, where his produce could fetch a better price. The communists who called themselves socialists were and are no friends of the small peasant proprietor because a farmer owning even a small patch of land loves his land and will doggedly cling to it. And so the Indian farmer's plight from 1957 till today continues to be miserable. Communism may have gone the way the Soviet Union did, but the farmer continues to suffer its aftershocks. Our farmers continue to be the stepchild of the Socialist, Secular, Democratic Republic of India.

Other enemies of the socialist regime were the traders, the merchants, the entrepreneurs and the businessmen because all of them worked for profit and profit was a dirty word in the socialist vocabulary.

But the socialist system was very indulgent towards the elected representatives. Once these MPs and MLAs found themselves in positions of power, they discovered that they possessed a combination of economic and political clout that opened up possibilities of enriching themselves, and their progeny to come, for the next three generations! But they needed the support of the government bureaucracy and willing accomplices from among those in trade and industry. And so developed a cozy arrangement – the ganging up of the corrupt politician, the corrupt bureaucrat and the corrupt businessman based on the simple principle 'you scratch my back and I scratch yours' emerged as the New Class of exploiters. In India, after 1957 the New Class thrived, while the common people suffered.

This went on until the mid-eighties when the country went bust and we begged the World Bank and the IMF for help. And the IMF and World Bank said reform or else.

The tribe of the tall and the mighty that participated in the freedom struggle and gave us the Indian Constitution were already in their forties, fifties and sixties at the dawn of Independence. They have all but disappeared (dead or incapacitated by old age). Even though some of them fell victim to the socialist regime and lost their missionary zeal, a majority continued to be imbued with a sense of service and considered elective office an opportunity to serve the nation.

The new crop of post independence members, when they came of age, soon caught on to the fact that membership of parliament and legislatures held the key to untold wealth and there were scrambles for 'tickets' every time there was an election – not only to the Lok Sabha but to an elective body at any level. An added advantage is that to hold an elective post, it is not necessary to be qualified. The only qualification to be an MLA or MP is that the candidate should be an Indian citizen.

There were many aspirants but limited number of seats to legislatures and parliament. The law of demand and supply came into operation! The costs of contesting these elections went up astronomically. If they were in lakhs of rupees in the early sixties, they run into crores today. Also, most men with political aspirations not being able to afford the costs of electioneering were content to be merely front-men for crooked businessmen and industrialists and the mafia who fund such candidates were content to remain backstage. Not any more. They want to be MPs and MLAs themselves. So we had a further devaluation of our democracy when lawbreakers became lawmakers!

The honest and the qualified dropped out because they could not afford the

cost of elections and were replaced by the dishonest and the rapacious. Any wonder that our Houses of Legislatures including the two Houses of Parliament are of such poor quality and have, in recent years been witness to rowdy behaviour where microphones are used not to make a verbal point but as weapons of destruction. So, today, along with politicians, parliaments and legislatures too have lost their credibility in the eyes of our people. No one in his or her right mind will look to our legislatures and legislators to provide good governance. Perish the thought.

Changes of ministers (not only governments) brought in their train, transfer of bureaucrats. Ministers (many with criminal records) want pliant civil servants and civil servants, generally play safe by going along. Survival is the name of the game. Bureaucrats with minds of their own are considered foolhardy if not stupid and transferred to innocuous positions where they can do no 'harm'. Good governance has been the victim.

As for the judiciary it is common knowledge that the lower judiciary have already fallen prey to corruption and have followed in the footsteps of the politician and the bureaucrat. Mercifully the High Courts and the Supreme Court, barring the occasional hiccup! have not yet fully succumbed.

India's Armed Forces continue to be apolitical and under the control of civil authority. Here another kind of insidious development, reared its head during the regime of the NDA led by Mr. Vajpayee – the misuse of religion to brainwash our soldiers. Soon after the Kargil conflict, there were reports of obscurantist organisations visiting soldiers in hospitals distributing religious scriptures and offering prasad – for reasons not difficult to guess. It is not as if they were not aware that the armed forces have their arrangements to satisfy the religious requirements of their soldiers.

Meanwhile tens of millions of our people remain below the poverty line; primary health facilities are practically absent in large areas of the country; primary education is in an equally appalling state. While the godowns of the Food Corporation of India are overflowing with rotting grain, thousands if not lakhs of people are either undernourished or starving to death. Banks which are avidly pursuing the urban middle class offering loans and credit are far less enthusiastic when it comes to the rural hinterland – our countryside.

Many years ago, through the nineteen sixties, the Swatantra Party which swept like a meteor across the Indian political sky (for all of fifteen years) only to disappear, had demanded the dismantling of the permit-licence-quota raj as the solution for the country's economic ills. The Party believed that the dismantling of the elaborate network of controls and their replacement by policies based on pragmatism would lead to what it described as 'prosperity through freedom'. As a strong votary of decentralisation, the Swatantra Party hoped that one-party dominance would end and that coalition governments would truly represent the diversity that is India.

The Party also demanded a change in the election law so as to make the legislatures reflect more accurately the people's will. In other words it did not view economic reforms in isolation. It had to be accompanied by reforms to the political system and the repeal of laws that retarded growth. This was from a party that believed in a free market in a free society. The party was reflecting the Liberal position. These were Liberal solutions offered almost thirty years ago when such solutions invited ridicule, if not hostility.

Ironically it is the emergence of coalition governments at the Centre and in many of the states that is putting the brakes on economic reforms. But what kind of parties are these which form part of coalitions. Almost none of them have any principles worth mentioning. Most of them revolve round persons who are themselves dissidents from other parties who formed breakaway parties to retain power. They managed to get an MP here or an MLA there, simply because of the vagaries of the present election system of the first horse past the post. And they name their price to keep supporting the government of the day.

It is now universally acknowledged that the 'U-turn' in economic policy, first taken by the Congress Government led by Narasimha Rao and whose Finance Minister is today's Prime Minister; continued by its successor NDA government (the BJP led coalition) and now by its successor government (the Congress led UPA government) is here to stay and there can be no going back to statist rule. Yet, the present coalition has to contend with considerable resistance to economic reforms from the communists (under the pseudonym 'Left Parties') than it was under the previous NDA coalition which kept the communists in their place. And yet their own leftist government in West Bengal is turning right – they way they are wooing industrialists by promising to keep the unions at bay!

We have the economy moving in the direction that the Liberals have always advocated. But in most other areas of governance the situation has not improved much. For the Liberal a liberalised open economy is important but not in isolation. Liberal values have to permeate all areas of governance. And this is where the Indian Liberal Group has been seeking to push its message across. Hence the theme of this 2nd National Convention, 'Accountability in Governance'.

How can the ILG help in making coalition politics more purposeful and effective and less self-centred and mainly concerned with political survival. Every political party in India other than that of the communists (it must be conceded) is personality oriented. Is there, in such an environment, political space for a Liberal Party? Can a party like the Swatantra Party (though not necessarily a revival of the Swatantra Party) be able to secure even a handful of seats in the Lok Sabha? And what about the State Assemblies? For it must be accepted that we are moving towards a federal structure with states playing an increasing role in determining not only policies in their own states but influencing the complexion and policies of governments at the Centre.

Should the Liberals form a new party assuming the Representation of the People Act is amended to remove the insistence on political parties explicitly swearing allegiance to socialism? Ideally the answer should be in the affirmative. Very difficult but not impossible.

More importantly what kind of a party should such a Liberal Party be. In the first place it should be founded by those who believe in, and are committed to, the Liberal philosophy. And what may such a philosophy be? Central to the Liberal philosophy of such a party would be its belief in freedom and the liberty of the individual vis a vis the State and society. The system that enables the individual to make his or her own choices and live a life in dignity and a society based on the Rule of Law. This is the core belief that unites all liberals. In economic affairs such a party swears by the dictum 'the business of government is government, not business' even while accepting the proposition that the business of government includes not only the maintenance of law and order and safeguarding the country's security, within and without, but also accepting responsibility for providing social services like primary education, primary health care and the provision of basic needs like potable water for drinking and infrastructure like roads, railways, bridges and the like.

Is there room for such a party in the emerging pattern of coalition politics in India? Until recently it was my view this is not the opportune time but in the last few months I have started thinking differently Why? I think it is crucial for the early emergence of a party wedded to the liberal philosophy ASAP before parliamentary democracy collapses due to unprincipled political opportunism on the one hand and the subversion of the system by criminals and gangsters.

When did this re-think on my part begin? It began with the public debate on the right of the citizen to cast a negative vote. The Indian Liberal Group publicly supported this concept in Mumbai on the eve of the last general elections drawing attention to a little known provision in the Conduct of Elections Rules that a voter who did not wish to vote in favour of any of the candidates listed on a ballot paper, would have the right to cast a negative vote by stating that he did not wish to vote for any of the candidates. The Election Commission of India came out in support of this, particularly when the Peoples Union for Civil Liberties filed a PIL in the Supreme Court that ballot papers should, after listing the names of all the candidates and their symbols, have a last one with the phrase "None of the above." On the eve of the last elections there was public discussion in some of the newspapers in Mumbai. The idea found many supporters – and not surprisingly most of them from the young. But this is not making a choice. A negative vote is not a real choice and by itself not enough to improve matters, and unlikely to compel the present breed of politicians to sit up, take notice and mend their ways. Witness the manner in which politicians of all hues were united in opposing the Supreme Court's decision on declaration of assets by candidates because this affected them personally. The voter needs to be given a real choice by being provided

with candidates of calibre and integrity. This can be only done by a party based on liberal values.

Apart from a belief in liberal values, this party has to be founded and led by the young. This should be the starting point. While the Indian Liberal Group cannot and should not convert itself into a political party because it comprises of members from different parties and a *majority* who do not belong to any party, there will be nothing wrong if it takes on the role of a midwife to help the creation of a liberal party. If the process starts today it would take two or three years to actually establish such a party and another five to ten years before the party makes its appearance in parliament and the legislatures.

The ILG can make a beginning by drafting a set of new policies around which a Liberal party can be formed, and, identify and train potential leaders for such a party who would be motivated by values and the public interest and not private gain. Alongside, the ILG should keep up its effort to keep alive the liberal dialogue. The agenda of this Convention is part of this effort.



The audience comprising delegates and invitees at the Inaugural Session

## President's Report on Organisation

S. V. Raju

This report which covers the period December 8, 2002 – February 15, 2005 is largely a factual statement. Even so, the responsibility for whatever is contained in this Report is that of the President as it has not been found possible to place this Report before the National Executive owing to the absence of any meeting in advance of the Convention and the fact that it is due to meet right on the eve of the Convention on February 17.

The First National Convention held in Hyderabad on December 6 & 7, 2002 carried out significant amendments to the ILG's constitution in order to streamline the structure for more effective functioning. The amendments made Local Chapters the driving force in the organisation.

This had a salutary effect, at least in the first eight or nine months of 2003. There was a noticeable increase in activities including regular monthly Local Chapters meetings. Unfortunately by the end of 2003, the momentum created by the amendments began slowed down. Attendance at Local Chapters meetings got poorer.

It became evident that while our members continued to be committed to the ILG, most of them were busy with their professional work and their other commitments. This became evident from the fact that while an appeal to our members for donations to fund the national convention elicited an encouraging response, they were less generous with their time!

In the course of 2003/2004, ILG's National Headquarters (ILG-NHQ) organised as many as three workshops to devise strategies to secure greater involvement of members in the ILG's work.

The first workshop on ways to strengthen the ILG was held at the LSP Centre in

Devlali in June 2003. This worked out programmes and strategies that the Local Chapters would undertake during the year. The meeting imparted training on the techniques of organisation and how to successfully execute programmes undertaken. A Management Consultant was retained to conduct the programme.

The second workshop was in March 2004 also at the LSP Centre in Devlali. This workshop decided that instead of insisting on Local Chapters meeting once a month as required under the ILG constitution, the focus would now be on specific activities that involve member participation.

From the ILG's rich talent bank, members were identified to lead such programmes. Even a target was set: that by December 31, 2004 the ILG should have at least 50 Chapters and 500 members.

The workshop in which over 20 members from various parts of the country participated, drew up a 'wish list', based on participants' preparedness to undertake various activities. These would be:

**1. Youth Related Activities:**

- Organising Youth Groups and inculcating Liberal values
- Programmes on Education for Employment
- Secondary Education – Looking at text books particularly History and Civics text books from the Liberal perspective and, to begin with, preparing model text books in these subjects.

**2. Agrarian/Rural India Related Activities**

- Rural Poverty and Indebtedness
- Agriculture Marketing Reforms

**3. Accountability of Elected Representatives**

**4. Local Self Government and Panchayat Raj – Strengthening the foundations of Indian Democracy**

**5. Judiciary and the Rule of Law**

- Setting up a Legal Help Desk – awareness of citizens rights and remedies available to citizens when their human rights were violated.
- Preparing easy to read booklets on Terrorism, the rights and duties of citizens guaranteed by the Constitution; and organising discussions on public-police cooperation
- Assisting the Patna Chapter in its proposed campaign to restore the rule of

law in Patna through an ILG sponsored 'Forum Freedom Movement'

The Liberalisation of the Economy – specifically the Union Budget which reflects the nature and priorities of Government's economic policies

- Agriculture with specific reference to Rural Indebtedness which had resulted in a large number of farmers committing suicide.
- The Administration of Justice – the appalling judicial delays and corruption which, in more ways than one, had made a mockery of the concept of the rule of law.

The absence of accountability in governance with particular reference to the country's elected representatives.

While as a follow up of the above, there was plenty of activity which brought us welcome visibility, we are not only far behind our target of 50 new Local Chapters and 500 members, but also the number of Local Chapters have come down from 15 to less than 10 and of these only just 2 or 3 can be said to be really functional.

Wherein lies the problem and how do we develop the organisation commensurate with our activity initiatives. This led us to a third workshop. On our request, the Friedrich Naumann Stiftung placed at our disposal the services of Mr. Peter Traub a consultant and trainer. He conducted the workshop in two parts. Both were held in Mumbai. The first in October 2004 and the other in early February 2005. Working on a five-year vision for the ILG, Mr. Traub through highly interactive brainstorming sessions, guided the participants to draw up a plan of action for the next five years. Implementing this plan to achieve organisational effectiveness will be a key activity in the next five years. The detailed steps that were worked out by the participants with Mr. Traub's guidance are outlined in Annexure I

As already mentioned, while the ILG was having organisational difficulties, there were plenty of activities. The themes of the many seminars, programmes and meetings organised by the ILG in 2003/2004 in association with the Project for Economic Education (PEE) and other like-minded organisations were based on, what had been worked out at the first two workshops as the following narration of programmes conducted by ILG-NHQ will testify. A detailed Local Chapter-wise account of activities is attached to this report (Annexure 2).

### The Liberalisation of the Economy

This activity of the ILG was perhaps the most rewarding in 2004. Not only did it enable the ILG get visibility, but also, for the first time after many years, the Liberal Position on the economy with special reference to the budget making process formed part of public debate, though in a small way – but a beginning nevertheless.

Entitled "The Liberal Budget – Building an Equitable Society" the first Liberal Budget (LB1) was released at a press conference in New Delhi on June 23. ILG Vice-President Dr. Y. Sivaaji handed over a copy to the Prime Minister. Copies were distributed to the Finance Minister, the Deputy Chairman of the Planning Commission, the former Finance Minister and currently leader of the Opposition in the Rajya Sabha and to a large number of civil servants including the Governor of the Reserve Bank and others. The document which elicited much interest was viewed as a positive contribution since it offered alternatives even while being critical of current policies.

To mark the start of the Birth Centenary Year of Minoo Masani, we held a discussion on the Liberal Budget at the Pune University on November 20, 2004. The meeting was well attended and well reported. We also released the Hindi and Marathi translations of LB1. The Pune press covered the event fairly well.

Encouraged by the response, we repeated the effort a year later in February 2005 with the second Liberal Budget (LB2) entitled: "The Liberal Budget 2005-06 : "The Way Forward"

Supplementing our work on the Liberal Budgets we decided to partner the Press Institute of India (PII) in a series of workshops to educate and inform journalists on "Emerging Economic Issues" to get a better understanding of the reforms process. The first of these workshops was held at the Indian Institute of Science Campus in Bangalore on November 3, 4 and 5, 2004. The participants were mainly journalists from the southern states of Karnataka, Kerala and Tamil Nadu, this workshop is the first of a number of such workshops to be held in 2005 in other parts of India.

### **Agriculture and Rural Indebtedness**

A workshop organised by the Tirupati Chapter of the ILG at a village near Tirupati on February 20, 2004, on farmers' problems brought together farmers in that area who were typical of those in deep debt. A questionnaire that was distributed revealed, yet again, that government's agricultural policies were of little help to the farmers.

This was followed by a National Seminar on Indian Agriculture and Rural Indebtedness held at Guntur on July, 25 and 26. The seminar was a joint effort of the PEE, ILG and the Virginia Tobacco Growers Association of India (VTGAI). A number of senior civil servants, agriculturists, agriculture scientists and economists participated in the deliberations. Based on the proceedings a paper on Agriculture Policy is under preparation and will be presented to the Convention for discussion.

### **The Administration of Justice**

A national seminar on the Administration of Justice was held in Mangalore on

August 6 and 7, 2004. The seminar focussed its attention on:

- a) the increasing activist role of the judiciary
- b) the long delays in the delivery of justice
- c) threats to the independence of the judiciary, and .
- d) drawing up an action plan for reforms in the judicial system as part of a Policy Paper on Judicial Reforms.

A qualified faculty (3 retired high court judges, a constitutional expert and a human rights lawyer) took part in this seminar. The inaugural session which was open to the public was well attended.

Taking forward the suggestions made at this seminar will, hopefully, be a major activity of the ILG in 2005. Liberalism without the rule of law is inconceivable. Hence the importance of this subject for the ILG.

### **Accountability of Elected Representatives**

The importance the ILG attaches to this aspect of governance is evident from the fact that the theme of this National Convention is "Accountability in Governance". Two eminent personalities: Mr. N. Vittal the retired Chief Vigilance Commissioner delivered at the Opening Session, the Inaugural Address on "Accountability: The Road Map and Guarantee for Liberalism" and Professor S. P. Sathe delivered the keynote address on "Accountability in Governance".

A Discussion Paper on this subject is also under preparation and, hopefully, could be a major activity of the ILG in 2005.

### **What India Needs - A Seminar**

On September 27, 2003, a seminar was held in Mumbai on the topic 'What India Needs'

The aim of this seminar which was sponsored by the ILG in association with the Liberal Quarterly Freedom First was to analyse and comment on the current situation in the areas of governance and politics, economy and social justice with a view to suggest the kind of policies India needs. There have been debates on what is wrong with the system. This seminar sought to suggest some solutions – what needs to be done to try and improve governance. The seminar discussed the needs from four perspectives: Governance; Economy; Politics and issues of Social Justice.

### **The General Elections of 2004**

On May 2004, in association with the Project for Economic Education and Freedom

First the ILG organised a well-attended discussion on the General Elections of 2004. The focus of the discussion was on the organisation and conduct of the elections by the Election Commission; the issues that dominated the election campaign 'interpreting the verdict; and the impact of the results on India's polity.' Held at the Xavier's College in Mumbai the faculty comprised Prof. Nagindas Sanghavi, retired professor of Political Science, Mr. Ashok Karnik formerly a senior police official, Dr. Uttara Sahasrabudde, Reader at the Mumbai University and Mr. S. V. Raju. The proceedings were reported in detail in the Freedom First issue of April-June 2004.

### **Minoo Masani Birth Centenary Year**

November 20, 2004 – November 20, 2005 is being observed by the ILG and the various organisations founded by Minoo Masani as the Minoo Masani Birth Centenary Year. Meetings are being held to pay tribute to his memory as also to discuss topics that typified the man – his Liberal philosophy, as a politician and parliamentarian.

The ILG marked the commencement of the centenary with a seminar in Pune on November 20, 2004. Pune is where Gopal Krishna Gokhale one of India's great Liberals of the early 20<sup>th</sup> century established the Servants of India Society. The venue was the University of Pune. Professor S. P. Sathe, an eminent jurist and Honorary Director of the Institute of Advanced Legal Studies delivered the keynote speech on the "Accountability of Elected Representatives". Mr. S. V. Raju spoke on Minoo Masani as a principled politician and an honest and dedicated parliamentarian. The event was well-reported in the local press.

### **A Roadmap for Indian Democracy and a National Dialogue for Peace and Harmony**

Seminar (October 17 & 18, 2004) : *A Liberal Roadmap for Indian Democracy*

Public Meeting (October 18, 2004) : *A National Dialogue for Peace and Harmony*

With a number states then facing elections, anti-social elements would be tempted to fan the flames of communal passions. To counter their efforts to create an atmosphere of disharmony and hatred among communities and help as best as one can to maintain peace, the ILG, in association with three other voluntary organisations, organised a public meeting to sound a note of caution to the voters at large. Prof. Amlan Datta, economist, educationist, writer and former Vice Chancellor of Viswa Bharati University at Shantiniketan, Kolkata delivered the keynote speech.

### **Teaching of History and Civics in Secondary Schools - A Workshop for Teachers**

Education is central to any Liberal agenda. One of the greatest challenges, faced by India's Liberals is in the field of education. Forces that are destructive of liberal

values threaten our educational system. Textbooks are being revised and new courses being introduced by governments of the day to suit their own perspectives and political needs and which, if allowed to go unchallenged, can destroy Indian democracy. This was so during the previous coalition government's policy. Though they are now in the opposition, the threat persists, this time from the communists who support the present coalition from outside and who would like to emphasise the Marxist-Stalinist perspective.

A workshop organised by the ILG in association with the Indian Secular Society and the Mumbai based Indian Education Society was held at the LSP Centre in Devlali between the 28th and 30<sup>th</sup> of November 2003. The objective of this workshop in which all the 20 plus participants were schoolteachers was to give participants a broader perspective of some of the themes in History and Civics which they teach in their classes.

Arising from the two-day discussions, ILG has initiated a project to prepare secondary school texts in History and Civics which reflect Liberal values. What is important about this project is the fact that this has been entrusted to a committee of three teachers of History and two teachers of Civics and supervised by Prof. V. K. Sinha himself an educationist and a member of the ILG.

### **Training Programme for NOCER-India Members**

The purpose of this training programme organised by the Project for Economic Education at the LSP Centre in November 2003 was to train members of NOCER-India – two from each of the fourteen districts in Kerala. These members are grassroots level workers who needed exposure to liberal thinking, economic reforms and liberalisation and be able to recommend policies based on liberal values when participating in activities at the village panchayat level.

### **Second Mino Masani Memorial Lecture**

The Second Mino Masani Memorial Lecture was held at the Bharatiya Vidya Bhavan auditorium in Chennai on November 20, 2003. Mr. N. Vittal, former Chief Vigilance Commissioner delivered a Lecture on "Corruption Mocking Liberalisation" Veteran Liberal and industrialist Mr. G. K. Sundaram chaired the meeting. The speeches of Mr. Vittal and Mr. Sundaram have been published. A question-answer session that followed Mr. Vittal's speech has also been separately published.

### **Understanding Rajaji**

On the occasion of the 127th birth anniversary of Shri C. Rajagopalachari, the Indian Liberal Group in association with its Chennai Chapter organised a day-long seminar on December 10, 2004, entitled "Understanding Rajaji". The seminar with around 50 plus participants covered the economic, political and social philosophy of Rajaji. Liberal historian Ramachandra Guha delivered the keynote address, S. V. Raju gave a first person account of Rajaji's last ten years in politics; former Tata Economic

Advisor, J. K. Mukhopadhyay spoke on Rajaji's economics and Dr. R. Srinivasan, retired professor of political science, University of Murnbai spoke on Rajaji's social reforms.

## Membership

	As on Nov.30, 2002 (On the eve of the 1st National Convention)	As on Feb.15, 2005 (On the eve of the 2nd National Convention)		As on Nov.30, 2002 (On the eve of the 1st National Convention)	As on Feb.15, 2005 (On the eve of the 2nd National Convention)
<b>Andhra Pradesh</b>	<b>97</b>	<b>55</b>	<b>Kerala</b>	<b>42</b>	<b>23</b>
Eluru			Ayloor	4	2
(West Godavari Dist.)	1		Kannur	-	12
Guntur	33	21	Kochi	8	3
Hyderabad	23	16	Kollam	1	1
Kharnrnarn	1	1	Kottayam	21	5
Maddi Padu			Ranny	5	-
(Prokasam Dist.)	1		Trivandrum	3	1
Nandyal	5	1	<b>Madhya Pradesh</b>	<b>1</b>	<b>1</b>
Pantala P.O.			Indore	1	1
(Krishna Dist.)	2		<b>Maharashtra</b>	<b>94</b>	<b>87</b>
Rajahmundry			Gondia	1	-
(East Godavari Dist.)	2		Kolhapur	15	13
Tirupati	20	10	Murnbai (incl.Thane		
Vijayawada	7	5	& Navi Murnbai)	54	62
Visakhapanarn	2	1	Nagpur	9	3
<b>Bihar</b>	<b>11</b>	<b>9</b>	Nashik	6	3
Patna	7	7	Pune	5	5
Paliganj	1	1	Sangli	1	-
Sarnastipur	2		Sindhudurg	1	-
Vaishali	1	1	Wardha	1	-
<b>Delhi</b>	<b>8</b>	<b>9</b>	Warora (Chandrapur)	1	1
Delhi	6	7	<b>Orissa</b>	<b>1</b>	<b>1</b>
Gurgaon	2	2	Bhubaneswar		1
<b>Goa</b>	<b>1</b>		<b>Rajasthan</b>	<b>1</b>	<b>1</b>
Margao	1		Jodhpur	1	1
<b>Gujarat</b>	<b>13</b>	<b>10</b>	<b>Tamil Nadu</b>	<b>116</b>	<b>76</b>
Ahmedabad	5	5	Chennai	105	67
Anand	1		Coirnbatore	1	1
Ankleshwar	1	1	Ooty (Incl.Coonoor,		
Baroda	5	2	Lovedale)	6	5
Rajkot	1		Konchipuram		1
Surat	-	2	Madurai	2	1
<b>Karnataka</b>	<b>43</b>	<b>39</b>	Trichy	1	-
Bangalore	21	21	Virudhnagar	1	1
Belgaurn	1	1	<b>Uttar Pradesh</b>	<b>1</b>	<b>1</b>
Bijapur	1	1	Kanpur		1
Kolar	2		<b>West Bengal</b>	<b>3</b>	<b>6</b>
Mangolore	8	14	Kolkata		6
Mysore	2	1	NRI (USA)	1	1
Turnkur	7				
Ujire	1				
Udupi	-	1			
				<b>434</b>	<b>319</b>

## Networking

We have networked with the following organisations:

- Association for Democratic Reforms (ADR), Ahmedabad
- Catalyst Trust and Citizens' Action Network, Chennai
- Friedrich Naumann Foundation, Asia Regional Office, New Delhi
- Friends of Tibet, India, Mumbai
- Institute of Economic Education (IEE), Chennai
- Liberty Institute, New Delhi
- Lok Satta, Hyderabad
- NOCER (India), Kollam
- Parivartan, Delhi
- Public Expenditure Round Table (PERT), Chennai
- Project for Economic Education, Mumbai
- Rajaji Foundation, Mumbai
- Vigil India Movement, Bangalore

ILG members, participated in the following programmes sponsored by fraternal organisations:

Dr. Amit Dholakia: In a National Workshop on " Electoral Reforms and Right to Information" at Ahmedabad in May 2003. The Workshop was sponsored by the Association for Democratic Reforms (ADR)

Mr. S. V. Raju and Mr. Sanjay Panse: In a Conference convened by the Council of Asian Liberals and Democrats in Colombo in May 2003 on "Wealth Creation and Sustainable Development – A Liberal Democratic Agenda"

Ms. Falguni Desai: In a conference convened by the Council of Asian Liberals and Democrats in Bangkok in December 2003. The Conference theme was 'Political Challenges for Economic Growth in Asia.'

Ms. Anjali Patil Gaikwad: In a Mont Pelerin Society (MPS) Special Regional Meeting in Colombo in January 2004

Mr. Sunil Bhandare: In a "National Seminar on FISC 2020 : India's Long-Term Fiscal Outlook" held at Chennai in March 2004. The seminar was organised by PERT (Public

Expenditure Round Table) and University of Madras.

At a Workshop on "Election Monitoring organised by Vigil India Movement, Bangalore in April 2004, four ILG members participated. They were: the presidents of the Bangalore and Tirupati chapters – Justice K. S. Puttaswamy (Retd.) and Mr. K. Narayana Reddy respectively, Mr. T. Lalith Kumar, Secretary-Tirupati Chapter and ILG president S. V. Raiu. Justice Puttaswamy addressed the workshop on "Money Power in Elections". Mr. Raiu initiated the discussion on "Criminalisation of Elections".

Mr. S. V. Raiu: In a Workshop and Seminar in January 2004 on "Liberal Movement Beyond 2004" at New Delhi.

Mr. Ashok Karnik: In a programme on Public-Police Co-operation organised by the Indian Merchants' Chamber, Mumbai in June 2004.

Mr. Ch. Narendra: In a National Conference on Electoral Reforms organised by the Association for Democratic Reforms (ADR) and the Centre for Public Policy, Indian Institute of Management, Bangalore in Bangalore on June 26 and 27, 2004.

### **Publications released between January 2003 and February 2005**

Development and Human Rights (Based on the proceedings of a Seminar)	edited by Munmun Jha
The Philosophy and Practice of Liberalism	by Amlan Datta
Corruption Mocking at Liberalisation (Second Minoo Masani Memorial Lecture) (Also available in Telugu)	by N.Vittal
What Happens when Corruption Mocks at Liberalisation (Q & A at the Second Minoo Masani Memorial Lecture)	by N Vittal
<i>Samajwadache</i> Rangroop (in Marathi) (The Real Face of Socialism)	by Subhash Athle and Ajit Narde
Investors' Choice – (A Survey by Student Members of the ILG in Chennai)	
Conditional Access System – (A Survey by Student Members of the ILG in Chennai)	
The costs of Formal Schooling	ILG Chennai Chapter
What India Needs – A New Path (Based on the proceedings of a Seminar)	edited by S. V. Raiu

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Liberalisation: A Balance Sheet	by Seetha P.
Accelerating Disinvestment of State Enterprises (Based on the Proceedings of a Seminar)	edited by S. V. Raju
'We Indians' (A Reprint)	by Minoo Masani
Equity and Sustainable Development	by P. V. Indiresan
The Liberal Budget -2004-2005 – Building an Equitable Society (Also available in Hindi and Marathi)	
The Liberal Budget, 2005-2006 – The Way Forward	

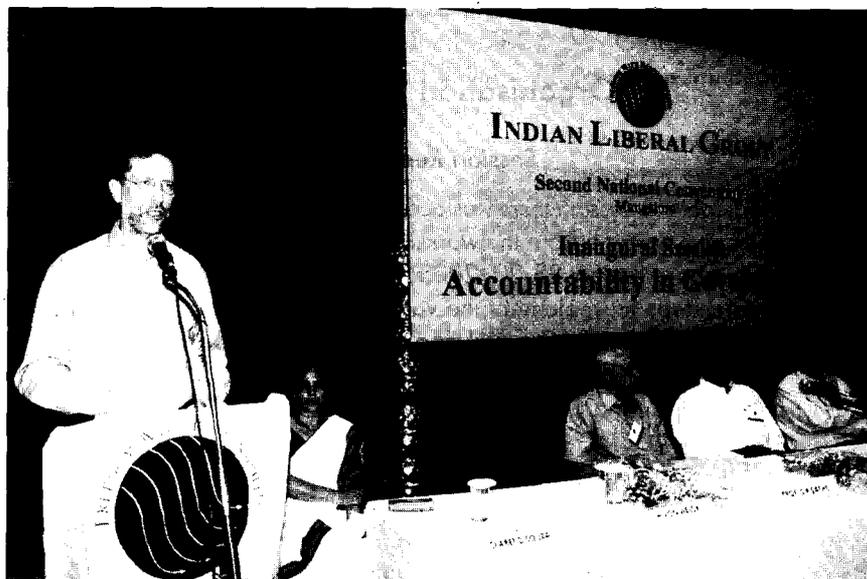
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### Session Report

The presentation of the Report was followed by a discussion in which the following members participated: Prof. *Babu Joseph (Kottayam)*, Mr. *Sharad Bailur (Mumbai)*, Mr. *Rajesh Singh (Patna)*, Dr. *Shiv Shankar (Bangalore)*, Mr. *Subbaya Shetty (Mangalore)*, Mr. *Giridhar Prabhu (Mangalore)*, Mr. *A. D. Moddie (Mumbai)*, Prof. *Jagdeep Chhokar (Ahmedabad)*, Prof. *Suresh Shirodkar (Kolhapur)*, Mr. *K. C. P. Shetty (Mysore)*.

The Report was recorded.

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Mr. H. von Welck, Chief Guest, addressing the Inaugural Session. Others in the picture: (L to R): Ms. Claret D'Souza, Dr. S. P. Sathe, Mr. S. V. Raju and Mr. N. Vittal.

# DELEGATES' SESSION

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## Amendments to the ILG Constitution

### Session Report

The following amendments to the ILG Constitution were carried out unanimously at the 2nd National Convention on February 19, 2005

#### Article 9(e) (as amended)

Attendance at the Convention shall be open to all members of the ILG. Voting will however be restricted to Life Members, Active Members and Active Student Members who have been members for two consecutive years preceding the Convention. Ordinary members are not eligible to vote.

#### Article 10 (Term of Office)

Deleted

#### Article 20 (Interim Arrangements)

Deleted

The Convention directed that arising from the amendments above, Articles 11 onwards be re-numbered.

## Organisation Strategy

### Session Report

After considerable discussion there was general agreement with the recommendations (please see Annexure 1) arising from the workshop on a "Strategy for the Indian Liberal Group" held in Mumbai, January 28-30, 2005. The president of the ILG was authorised to take appropriate steps to implement the various decisions taken by the workshop. This includes the setting up of a special coordinating group which would report to him, to oversee the implementation of the strategy, keeping in mind the various comments and suggestions made during the discussion.

The following members took part in the discussion: Dr. G. R. S. Rao (Hyderabad), Mr. K. Narayana Reddy (Tirupati), Mr. Subbaya Shetty (Mangalore), Prof. T. P. S Nair (Trivandrum), Mr. Giridhar Prabhu (Mangalore), Mr. Vivek Raju (Bangalore), Prof. V. K. Sinha (Mumbai), Mr. D. Raman (Ooty), Prof. Jagdeep Chhokar (Ahmedabad), Aruna Jatesan (Chennai), Dr. K. Shiva Shankar (Bangalore), Mr. Rajesh Singh (Patna) and Mr. Sharad Bailur (Mumbai).

## DELEGATES' SESSION

### Election of the President and two Vice Presidents

The President invited nominations for the office of the President of the ILG for the period April 1, 2005 to March 31, 2007.

Mr. S. V. Raju's re-election as President was proposed by Prof. S. Radhakrishnan, Prof. Suresh Shirodkar, Justice K. S. Puttaswamy, and seconded by Mr. D. Raman, Mr. K. C. P. Setty and Mr. M. V. Mathew (Kannur).

There being no other nominations, Mr. S. V. Raju was declared elected President of the ILG for the period April 1, 2005 to March 31, 2007.

The President then invited nominations for the office of two Vice-presidents.

Dr. Y. Sivaji's re-election as Vice-president was proposed by Mr. Narayana Reddy and Mr. Sharad Bailur and seconded by Prof. T. P. S. Nair and Justice K. S. Puttaswamy.

Dr. Mary Thomas' re-election as Vice-president was proposed by Ms. Claret D'Souza and Prof. Jaishree Iyengar and seconded by Justice K. S. Puttaswamy and Mr. V. V. S. Rama Rao.

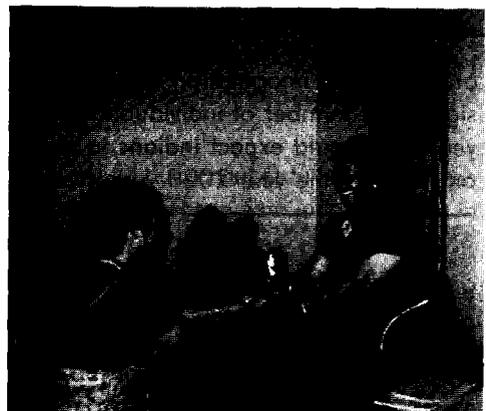
There being no other nominations, Dr. Y. Sivaji and Dr. Mary Thomas were re-elected as Vice Presidents for the period April, 2005 to March 31, 2007.

The President-elect announced that in accordance with Clause 6(c) of the ILG's Constitution he was nominating the following office-bearers of the National Executive for the period April 1, 2005 to 31 March, 2007: Mr. Giridhar Prabhu – Secretary; Mr. Sidney Pinto – Treasurer; Mr. Sharad Bailur – Advisor, Communications.

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Felicitations  
Dr. Y. Sivaji and Dr. S. L. Shanbhogue



Felicitations  
Ms. Claret D'Souza and Dr. Mary Thomas

# India's Economic Liberalisation

## The Unfinished Liberal Agenda

Ajit Karnik

I begin by making two apparently contradictory statements:

- India has come a long way since the initiation of economic liberalisation; and
- India has a much longer way to go before it can deliver the benefits of economic development to its people.

These two apparently contradictory statements contain an important lesson of history, namely, economic development is a despairingly slow process, which can take decades. And, worse, there is no guarantee of success at the end of this process. China is often cited as an example of a country achieving economic development very rapidly. While one should not belittle China's achievements, by no stretch of imagination is it a developed economy: large parts of it are still steeped in poverty even though prosperity is now spreading its warm glow over huge swathes of the country. China's poverty persists despite its astonishing growth rate of almost 10% per annum for the last 25 years. Adjusting for a population growth of about 2% population growth, China's per capita GDP will double every 9 years. In contrast, India has been growing at an average of about 6% for about 15 years; with a population growth rate optimistically assumed to be 2%. At this growth rate India's per capita GDP will double every 17 years.

Indians have an average income of Rs. 2,000 per person per month, which by any stretch of imagination is a very low. And, remember, this is an average, with a significant number of individuals earning much less. Given a doubling period of 17 years, we could expect Indians to have an average income of Rs.4,000 per month only around the year 2020. I wrote an article a few years back, which I called "Look



Dr. Ajit Karnik is Director and Ambedkar Professor of Political Economy, Department of Economics, University of Mumbai. He has been the recipient of fellowships in universities in the United States and the United Kingdom. These include the Overseas Visiting Scholarship at St. John's College, Cambridge University, UK; the Fulbright Fellowship at the University of California at Berkeley; and the Smuts Visiting Fellowship at the University of Cambridge, UK. Dr. Karnik is the author of four books and a number of research papers.

Back in Anguish" in which I had compared the divergent paths to development that India and Korea followed. The anguish stemmed from the fact that had India followed a different development strategy – a less dirigiste, less state-dominated one – we could well have had average incomes of about Rs.8,000 per month. We could have been four times better off than we are at the moment and the grinding poverty that confronts us today could have been a thing of the past.

But that was not to be. For far too long policies designed to eliminate poverty were confused with policies which are pro-poor. The distinction between the two kinds of policies is best captured by the adage that distinguishes between giving a poor person alms and giving him (or her) some education; the former will take care of his next meal while the latter will set him free from hunger. This confusion between policies has led us down the path to hell which was paved with good intentions: we sought to subsidize the consumption of the poor but did not do enough to guarantee them assured and adequate income; we protected those who had employment without sparing a thought for those who hoped to get a job; we sought to divide the existing pie equitably but did not seek to increase its size. We were enamoured (rightly so!) by the so-called socialist dream of welfare enhancement, equity, elimination of poverty, and social justice. There is no doubt that these must be the main objectives of economic development. Unfortunately, the means we employed were the biggest hindrance to achieving these objectives. It's a paradox but socialist means are the worst enemy of socialist ends! Many of the so-called socialist objectives are, of course, part and parcel of any liberal agenda (about which I shall have something to say later), the difference lying in the means employed to attain those objectives.

### Indian Economic Liberalisation

We have come a long way from the crisis of 1991 which made it necessary to launch a stabilisation programme coupled with structural adjustments. Much has been written about the achievements of the liberalisation programme. I will briefly list out those that I think are very important. I would focus on what further needs to be done to advance India along the liberal path.

- India had one of the quickest recoveries from a crisis-induced stabilisation programme among all countries that had gone down this path. There was just one year in which India's growth rate fell to under 1.5%.
- India's growth process has become far more stable in the post-1991 period and has hardly ever fallen below 5% per annum.
- The fiscal situation of the central government has improved since the 1991, but is still fragile enough to remain India Achilles' heel. The situation of state government finances, where fiscal indiscipline has plumbed new depths, has, in fact, worsened
- The external situation has witnessed a remarkable turnaround. The problem of extreme

scarcity of foreign exchange reserves has given way to a problem of plenty! Now, we do not know what to do with our overflowing foreign exchange coffers. However, if development is a continuous process of problem solving, I would much rather solve problems of plenty than problems of scarcity!

- However, by far, the most important achievement has been the reduction in poverty over the last ten years. Official estimates suggest that the number of persons below the poverty line is down to 26% from about 37% in 1993-94. Unofficial, but credible, estimates suggest that the poverty ratio may be lower still. The achievements in poverty reduction should teach us an important lesson, namely, that growth is the most important antidote to poverty. This also shows that the liberalisation followed since 1991 already had a human face and the calls by the present government to introduce reforms with a human face are just so much rhetoric. Much of course remains to be done if poverty is understood in the sense of the Millennium Development Goals i.e. a minimum income of \$1 per day per person

Impressive as India's achievements have been we still have long miles to go before we can rest. There are major issues that need to be addressed if the arduous journey is to result in genuine welfare improvement for all.

## **The Liberal Position**

While the Liberal position makes a clear distinction between the functioning of the market and the State it does not set up a false dichotomy of "State versus markets"; it rather believes in the complementarities between "State and markets". The liberal position recognizes a synergy between the State and the market, and believes that each has its legitimate area of efficient operation. Neither can, nor should, attempt to do what the other can do. For the liberals, the State and the markets have only instrumental value – to promote the welfare of all, Investing them with intrinsic value is a path that leads to ideology and dogma. It is our belief that for far too long the productive potential has been shackled in India and this needs to be torn asunder if the promise of improving the welfare of all is to be realised. It is our belief that welfare improvement is contingent on superior growth performance and, for this, the government has to create the necessary environment by creating and nurturing market-enabling institutions and implementing growth-promoting policies. However, there is quite often the danger that all individuals will not be able to benefit from the market and our system must be sensitive enough to provide a safety net for those who fall through the cracks. Only the government will be in a position to provide such a safety net for those left behind in the development process.

The liberal view of the government is captured in the oft quoted statement: "The business of government is governance and not business". This is a call for modesty in the domain of action of the government. This call springs, not from a dogmatically etched role of the state, but from recognition that the capabilities of any institution or

individual are only finite. In contrast, the planning process that was witnessed in India assumed the government to be:

- Omniscient: The government was completely aware of what was best for society and took decisions on behalf of all actors.
- Omnipotent: The government had the power to enforce its decisions throughout society

Such a view of the government leads to, what Hayek so famously called, "The Fatal Conceit", that believes that a single authority can somehow do things better than the spontaneous, unstructured, complex, and creative forces of the market. One has to consciously move away from the idea of a perfect government, while taking care that one does not touch the other extreme of assuming perfect markets. In the second best world that we inhabit, one has to live with imperfect alternatives: the search for perfection and utopias is a red herring that diverts us from what is feasible. We must steel ourselves not be seduced by such utopias much as Odysseus did in the Greek legend to escape the haunting music of the three Sirens. Hence, we must remember that there will be market failures, which will call for government intervention and there will be government failures, which require a modest role for the government.

### The Unfinished Liberal Agenda

The liberalisation that has taken place in India since 1991 has generally been in keeping with the Liberal position. However, important tasks still remain. Major market failures have still not been corrected; likewise significant government failures, arising out of acts of omission and commission, remain.

As far as the unfinished reforms agenda is concerned there are some areas where there has been a fair amount of discussion and consensus has emerged on what needs to be done. The disagreement is with respect to the speed with which this needs to be done and the sequence in which this must be done. But, at least, some of these items are on the discussion table. I will deal with such items first. However, there are other aspects of reforms that have not been fully recognised and, hence, are not part of the usual discussion. I shall call these the institutional aspects of running a market economy and shall discuss them later.

### Privatisation

The word "privatisation" is much abused and usually provokes great opposition. The guiding principle here must be the fundamental idea that the business of government is not to run businesses. Very often when a proposal for privatisation comes up, the question regarding its rationale inevitably crops up as well. I think we need to turn the question on its head: unless a strong rationale can be provided for keeping an enterprise in the public sector, it must be privatised.

There are a total of 240 Central Public Sector Undertakings and most of them have no business to be there: For instance, I cannot think of a single reason why the government should be running national or international airlines, running hotels, producing chemicals, steel, watches, tyres, automobiles, petrol or diesel. The question here is not whether the public sector companies are making a profit or not; the crucial question is whether their presence in the public sector promotes social welfare. It is also important to ask whether any of the profit making public sector companies is located in a competitive environment. If they are not, then their profit making is tantamount to exploitation of consumers. Our public sector oil companies come immediately to mind.

### **Labour Laws**

We talk very proudly about the great strides we have taken in the development and export of software services as well as services in general. However, this development hides a major anomaly. The structure of the Indian economy is completely out of alignment with its levels of development. The distribution of GDP, with respect to shares of agriculture, industry and services, that India has is quite similar to that exhibited by the more developed countries. Over the last three decades, the share of agriculture has declined from about 46% to 22%, a change that would have been expected. However, what is unexpected is only a marginal rise in the share of industry: from 16% to 20%. The most significant redistribution has been from agriculture to the services sector whose share has risen from 38% to 57%. To obtain a perspective on how different this is from other developing countries consider the current shares of agriculture, industry and services in China: they are 16%, 51% and 33% respectively. The slow growth of industry in India has been coupled with the very low generation of employment in this sector. Formal sector employment has grown from 23 million in 1978 to a meager 28 million of which 19 million are employed in the public sector, yielding an increase of under 1% per annum. China's performance has once again been much better: employment over the same period has grown from 95 million to 160 million, an increase of 3% per annum. The inability of the industry sector to generate employment has meant that the pressure on agriculture has not reduced: even now more than 60% of the labour force depends on agriculture. The mainstay of employment generation in India has been the informal sector in both industry and services.

Why has this happened? Why has Indian industry been so reluctant to generate employment? Why have our production techniques been relatively more capital intensive when we are a labour surplus economy? Has Indian business been so foolish as to employ the more expensive factor of production – capital – rather than the cheaper factor, namely labour? Whenever one encounters strange economic behaviour, it makes sense to look at the incentives facing the decision maker. And this is where one does find the answer to the strange behaviour of Indian industry. Indian labour laws, as they have evolved in the formal sector, have tried to make as secure as possible the employment of those who already have jobs. In the apparent pursuit of improving the

welfare of labour, these laws made it very difficult for business to reduce employment should the situation require that to be done. Laying-off workers requires the permission of the government and this is usually never given. Hence, even though wage rates in India were low, the cost of employing labour became very high due to the very high carrying cost of labour when it was not required. Businesses, faced with these constraints, then **had** dear incentives to not employ labour and adopt capital-intensive technology.

Indian labour laws thus acted as a barrier to the entry of those who did not have a job, while it protected those who did. Hence, formal sector employment remained virtually stagnant for decades. It bears pointing out that countries which have much more flexible labour markets, such as the U.K. and the USA, have operated close to full employment levels for long stretches of time. Hence, it is fair to say that, while flexible labour laws may be inimical to those who have enjoyed the security of employment, such laws will most certainly be of enormous advantage to those who do not have jobs.

The rise of the informal sector – in services and industry – must be seen as a way of escaping the rigours of Indian labour laws. The rapid growth of the services sector is a clear testimony of this fact. Please note here that I am not arguing here for a domination of capital over labour, as is usually portrayed whenever one talks of flexible labour markets. In fact, what I have argued for is a pro-labour policy, where the term labour covers all those in the labour market and not just those in the organised sector.

## **Globalisation**

Globalisation has become a pet object of hatred for a large number of people. Whenever an issue becomes emotionally charged, as has happened in the case of globalisation, usually reason and science go out of the window. Given that globalisation has affected our lives in such a large number of ways, any ill observed in society is laid at its doorstep; the opposite is, of course, never articulated! In the debate on globalisation, I must state that I have far greater sympathy for Jagdish Bhagwati's "In Defense of Globalisation" rather than for the strident and wrong-headed criticism of Joseph Stiglitz in his "Globalisation and its Discontents". One way of systematically discussing globalisation is to separate out the various facets of globalisation, rather than pretending that it is one single monolithic phenomenon.

As far as trade liberalisation is concerned, there are any numbers of systematic studies available that show that it benefits growth and that growth unambiguously lowers poverty. Hence, this aspect of globalisation, like Indian economic reforms, already has a human face and does not need to put on a mask. Foreign direct investment, since it results in physical investment in the country, adds to productivity and employment. Further, given the constraints on availability of domestic resources for investment purposes,

FDI will play a crucial role and so far there is no evidence that it has crowded out domestic investment. As far as liberalisation of services is concerned, there are apprehensions that India will lose out to foreign competition. However, this is still in the future and at the moment is mere conjecture. However, if the robust response of Indian industry to foreign competition is any indication, many of these fears may be unfounded.

Cultural globalisation can take many forms. It can take the form of foreign symbols dominating the domestic landscape; or it can be in the form of foreign TV soap operas captivating domestic audiences; or it can be a Hollywood Terminator erasing the exquisitely wonderful Bengali Charulata or Spiderman squeezing the breath out of the Marathi Shwas. But then it can equally mean availability of regressive India soap operas on satellite channels all over the world or the mauling of a beautiful Jane Austen novel at Indian hands. All I am trying to convey is that there is a very good chance that India will not be dominated by the cultural imperialism of the west; Indian culture itself is likely to become quite mainstream in a large number of western countries.

I do recognise that there may be adverse effects of globalisation on some segments of the Indian economy; but equally some segments might genuinely benefit. The evidence that has been collected for a large number of countries, including India, suggests that the benefits outweigh the costs. However, those who suffer the costs of globalisation cannot be ignored. But the correct way is not to reject globalisation – as do the mindless yahoos that throng to protest at IMF and World Bank meetings or congregate at the World Social Forum meetings - but to devise appropriate safety nets to lend a helping hand to those who suffer. Shutting the door on globalisation would be like throwing the baby out with the bathwater.

## Government Finances

India's public finances continue to be a matter of grave concern. Even though the level of the Central Government's Gross Fiscal Deficit relative to GDP has come down, it is still quite high and its quality leaves a lot to be desired since high levels of revenue deficits are also being generated. However, if one considers the Central and State governments together, it is disconcerting to note that the levels of deficit are almost as bad as they were at the height of the crisis in 1991. Elimination of these deficits, especially revenue deficits, must be a top priority and will require attacks on the revenue and the expenditure sides of the budget.

On the revenue side, it is important to note that taxation levels in India are very low. The tax to GDP ratio is just above 10%, while, internationally, tax levels are as high as 30%. Even though the coverage of indirect taxes is all pervasive, our direct tax collections are extremely low. There is an urgent need to increase the number of income tax payers in the country and capture in the net many others, apart from the poor salary earners who have had to bear the brunt of the tax burden.

On the expenditure side as well, India's expenditure to GDP ratio at 15% is low compared to other countries. What is required is certainly, not a reduction in the level of expenditures, but a drastic change in its composition. Expenditures on the capital account have to be stepped and three specific heads of expenditure cry out for attention: (a) physical infrastructure (b) expenditure on basic health (c) expenditure on basic education. If this is to happen at the same time that deficits are eliminated, it will require a major re-orientation of the activities of the government. This will clearly be difficult since numerous vested interests, which benefit from the status quo, will resist any change. It will require that elusive quality known as "political will". To overcome the inertia of the status quo will require a change in the institutional aspects of policy-making.

### Institutional Reforms

The institutional aspects that I wish to deal with cover the following:

#### Credible Commitments & Predictability of Policy Making

When government policy impacts the decisions of millions of private sector players, it is imperative that the policy be credible and predictable. With a history of broken promises, it is difficult to believe the government when it announces a particular course of action. For instance, the Government of Maharashtra has once again stated that it is serious about setting its public finances in order, that it will reduce subsidies, that it will not be hostage to the demands of powerful lobbies and so on. The question is: How many of us believe that it will do so bearing in mind the tangle it has got into with respect to free power to farmers and the object surrender to the demands of builders for mill-land in Mumbai? When governments have a history of making commitments that they do not keep, their commitments lack credibility and policy making becomes unpredictable. If the rot is endemic, we have a situation as in Bihar and Uttar Pradesh, which sees very little domestic or foreign investment. If the rot persists in Maharashtra, investment will migrate out Maharashtra as well.

In order for the government to convey that it is serious about a particular course of action it must evolve an institutional mechanism such that it can deviate from that course only at great cost. In effect, the government volunteers to give up its discretion over policy and promises to abide by certain rules which it will not change. This is the single most important lesson to be learnt from the contributions of Kydland and Prescott, the two Economics Nobel Laureates of 2004. The best example in the Indian context of such an institutional mechanism is the Fiscal Responsibility and Budget Management (FRBM) Act that was recently passed. Within the broad context of the FRBM, I would like to see a much greater earmarking of taxes. Thus, for instance the government will make a credible commitment to spend a certain minimum amount on basic education, basic health, and ensuring nutrition to the deprived. Earmarking will serve the purpose of further reducing the discretion of the government and make availability of funds for specific sector more predictable.

## **Security of Property Rights**

Among all the institutions that contribute towards economic development, one of the most important, but quite frequently ignored and often deliberately suppressed, is that of property rights. In economics, property rights refer to the entitlements that define an owner's rights, privileges and limitations on the use of a resource. One person who has done much to drive home the importance of property rights is Hernando de Soto of Peru. He has forcefully pointed out in his book "The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else" that developed nations are able to guarantee their citizens property rights, which developing countries have not done. This means, not just having laws in place giving people right to property, but having the means to enforce those rights. It is this confidence in the ability of the government to protect their property rights that allows long-term transactions between strangers; it is this that allows sellers to accept cheques from buyers they do not know; it allows people to buy confidently over the internet without knowing the identity of the seller. In many developing countries property rights do exist, but these are not properly enforced.

Far too often it is supposed that calling for protection of property rights is, in fact, pleading the case of the rich. The truth of the matter is that government guaranteed security of property rights is far more important for the poor than for the rich. The rich have always been able to protect their property rights while the poor have been deprived of theirs with depressing regularity. When a contract labourer is denied wages by an unscrupulous contractor, his or her property rights are violated; when dalits are routinely deprived of their livelihood, it is an assault on their property rights; when women, due to our inheritance laws, are denied their lawful share, there is a violation of property rights.

It is not as if Indian laws do not have a provision for protecting property rights; it's just that these rights are not enforced. Our legal system does not deliver justice quickly enough to act as deterrent to those who will violate property rights. This inevitably leads to enforcement mechanisms that seek to substitute for courts e.g. credit card companies hire collectors to recover their debts and some others take the help of the mafia to recover their property.

## **Enforcement of Law and Order**

The constitution of any country creates the environment within which an economic system operates. For a constitution to deliver on its promise, it is best if it is incentives driven i.e. to the extent that agents self-regulate, operationalising the constitution becomes easier. Since monitoring actions of citizens is always costly and necessarily imperfect, a constitution that creates incentives for self-regulation is certainly to be preferred.

Of course, no constitution can completely eliminate the need for monitoring and

penalising deviant behaviour. To the extent that penalties for deviant behaviour are in keeping with the law, and are certain and immediate, it reduces the need for and the costs of future monitoring. Exemplary penalties for deviant behaviour can also act as powerful incentive for rule-based behaviour.

Enforcement of law and order as well as regulation has been lax in India and this has imposed an enormous cost on society. We have been loath to inflict exemplary punishment on those who break the law or violate regulations. We see this all the time on Indian roads. Even in Bombay, which is supposed to have more disciplined traffic than other cities, random signal jumping has become endemic. The penalty for this should be harsh: possibly after the second or third offence, the driver should have his or her licence cancelled. To make my point stark, we should do this even if the offender livelihood depends in driving. Yes, after the cancellation of the licence, the driver will have no source of income, his family will no means of sustenance, they might starve, and his children may not go to school. Now, am I so cruel that I think such punishment to be desirable? Consider the following situation: the driver continues to jump signals and during one such episode, knocks down a person who dies and his or her family is ruined. Now, our "humanity" in not destroying the livelihood of the driver has led to the devastation of another family. And, worse, it emboldens others to violate laws.

There is no shortage of examples where such laxity in enforcement of laws and regulation results in enormous burden on society: banks have huge non-performing loans, powerful consumers of electricity refuse to pay bills, tax evaders continue to live freely, those who burn women for dowry go scot free; the litany of woes can go on, but I think I have conveyed my point.

## Conclusion

The entire focus of the Indian liberalisation process has been to re-orient the strategy of economic development that had been followed since mid-1950s. These long decades has been a learning experience, often very painful especially for those who were left behind as the juggernaut of Indian planning marched forward. And, just as the Owl of Minerva flies at Dusk, India has at last shown the sagacity of moving down the path of liberal economic policies.

There seems to be widening consensus that unshackling the market will not let loose the horrors that Karl Polanyi so graphically and falsely painted in his popular book, *The Great Transformation*, more than half century ago. Polanyi's description of pre-market and market societies has been grist to the mill of those opposed to the economic transformation that has been taking place. The market system has been demonised as the 'satanic mill', which leads to the subjugation of society and the people inhabiting it. In contrast, the pre-market society has been romanticised as one in which 'man's economy, as a rule, is submerged in his social relationships' and as one in

which there is no threat of starvation. This, it was believed, made the pre-market society more humane than a market society. Now specious, but influential, parallels are being drawn between Polanyi's great transformation a century and a half ago and the transitions that are taking place in the former communist countries and other developing countries of the world.

In response to those who might, like Polanyi, still harbour suspicion of the liberal market economy, let me raise a question that I may not be able to answer fully. I have always wondered why it is that social scientists are so uncomfortable with the notion of the market. The discomfort with a liberal market system, possibly, stems from the fact that no one is in obvious control of what the market system does or the way it performs. It is somehow believed that a system that is controlled by human beings will do a better job of promoting human welfare. The experience of the last century suggests that this, alas, is not at all the case. In fact, most experiments with devising a system under the control of human beings have been abandoned as unmitigated failures. In spite of the wealth of experience regarding the unworkability of such systems liberals have had to continuously and persistently argue the case for the alternative liberal market economy. This persistent effort has been akin to the punishment inflicted on Sisyphus by the Greek gods, who condemned him to ceaselessly roll a boulder up the mountain.

In conclusion, let me state that I do not, even for a moment, propose that a market system does everything right: it clearly does not and this is a fact well appreciated and acknowledged by most votaries of the liberal, market economy. However, like liberal democracy, the liberal market economy, at the very least, scores over other, practically feasible alternatives for promoting social welfare.

## **SUGGESTED PLAN OF ACTION**

The main points on which action is required for furthering the Liberal agenda are as follows:

### **Privatisation**

Very often when a proposal for privatisation comes up, the question regarding its rationale inevitably crops up as well. I think we need to turn the question on its head: unless an enterprise has a strong rationale for keeping it in the public sector, it must be privatised. I cannot think of a single reason why the government should be running national or international airlines, running hotels, producing chemicals, steel, watches, tyres, automobiles, petrol or diesel..

### **Labour laws**

Indian labour laws, as they have evolved in the formal sector, have tried to make as secure as possible the employment of those who already have jobs. In the

apparent pursuit of improving the welfare of labour, these laws made it very difficult for a business to reduce employment should the situation require that to be done. Businesses, faced with these constraints, then had clear incentives to not employ labour and adopt capital-intensive technology. Indian labour laws thus acted as a barrier to the entry of those who did not have a job, while it protected those who did. What is required are flexible labour laws.

### Globalisation

The major aspects of globalisation are: trade liberalisation and investment liberalisation. As far as trade liberalisation is concerned, studies show that it benefits growth and that growth unambiguously lowers poverty. As far as liberalisation of services is concerned, there are apprehensions that India will lose out to foreign competition. However, this is still in the future and at the moment is mere conjecture. However, if the robust response of Indian industry to foreign competition is any indication, many of these fears may be unfounded. International financial flows tend to be de-stabilising and one needs to be cautious here, especially with respect to convertibility on the capital account.

### Government Finances

India's public finances continue to be a matter of grave concern. Even though the Fiscal Deficit relative to GDP has come down, it is still quite high and its quality leaves a lot to be desired since high levels of revenue deficits are also being generated. On the revenue side, it is important to note that taxation levels in India are very low. There is an urgent need to increase the number of income tax payers in the country. On the expenditure side as well, India's expenditure to GDP ratio at 15% is low compared to other countries. What is required is certainly, not a reduction in the level of expenditures, but a drastic change in its composition. The two documents of the Liberal Budget discuss these issues in detail.

### Credible Commitments & Predictability of Policy Making

When government policy impacts the decisions of millions of private sector players, it is imperative that the policy be credible and predictable. With history of broken promises, it is difficult to believe the government when it announces a particular course of action. In order for the government to convey that it is serious about a particular course of action it must evolve an institutional mechanism such that it can deviate from that course only at great cost. The most important example of this in India is the Fiscal Responsibility and Budget Management Act that was recently passed. Within the broad context of the FRBM, I would like to see a much greater earmarking of taxes. What has been stated with respect to public finances applies more generally to any form of regulation.

## Security of Property Rights

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## Enforcement of Law and Order

The constitution of any country creates the environment within which an economic system operates. For a constitution to deliver its promise, it is best if it is incentives driven i.e. to the extent that agents self-regulate, operationalising the constitution becomes easier. Since monitoring actions of citizens is always costly and necessarily imperfect, a constitution that creates incentives for self-regulation is certainly to be preferred. Of course, no constitution can completely eliminate the need for monitoring and penalising deviant behaviour. To the extent that penalties for deviant behaviour are in keeping with the law, certain and immediate, it reduces the need for and costs of future monitoring. Exemplary penalties for deviant behaviour can also act as powerful incentive for rule-based behaviour. Enforcement of law and order as well as regulation has been lax in India and this imposed an enormous cost on society. We have been loath to inflict exemplary punishment on those who break the law or violate regulations.

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## Session Report

The session began with a presentation of the "Liberal Budget 2005-06 – The Way Forward" by Mr. Sunil S. Bhandare. This was followed by a presentation of the Paper "India's Economic Liberalisation -The Unfinished Liberal Agenda" by Dr. *Ajit Karnik*.

Both presentations were discussed together. The following participated in the discussions: Dr. Shiv Shankar (Bangalore), Prof. S. Radhakrishnan (Chennai), Mr. *D. Raman (Ooty)*, Mr. S. *Arunajatesan* (Chennai), Dr. G. R. S. Rao (Hyderabad), Prof. *Jagdeep Chhokar (Ahmedabad)*, Mr. A. D. *Moddie* (Mumbai), Mr. Giridhar Prabhu (Mangalore), Prof. Babu Joseph (Kottayam), Mr. *Rajesh Singh* (Patna), Dr. *Y. Sivaji* (Guntur), Ms. *Claret D'Souza*.

Dr. *Ajit Karnik* responded to the various comments and suggestions made by the delegates. Both the "Liberal Budget 2005-06 - The Way Forward" and the Paper "India's Economic Liberalisation - The Unfinished liberal Agenda" found general acceptance.

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# Indian Agriculture and Rural Indebtedness

R. M. Mohan Rao

This is the Executive Summary of document entitled 'Proceedings of the National Seminar on Indian Agriculture and Rural Indebtedness', held at Guntur.

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### INDIAN AGRICULTURE : A BRIEF OVERVIEW

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- (iii) Measures to promote viability and profitability of farming
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The spate of suicides among farmers across the country in the post liberalization period due to growing indebtedness among others continues to be a source of major concern. Of equal concern is the failure of the Government to usher in Economic Reforms (E.R) in Agriculture though the country continues to be principally a primary producer country. What is more disturbing is that keeping agricultural sector outside E.R is not an oversight or omission but a deliberate matter of choice. Further, the E.R introduced in the non-agricultural sector has adverse impact on the agricultural sector. This is manifest in the form of a decline in institutional credit flow and consequent

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Professor R. M. Mohan Rao, Ph.D. retired in July 2001 after over 35 years with the Andhra University in Visakhapatnam in the Department of Cooperation and Applied Economics. He has participated in several international conferences held in India and abroad. At the time of retirement he was Director of the NABARD Chair Unit. He is the author of a book on "Suicides Among Farmers" and "Growth and Rural Transformation: A comparative study of the Republic of Korea and India." Prof. Mohan Rao is a member of the Indian Liberal Group.

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increase in rural indebtedness. The enfeebled and impoverished Indian farmers cannot be expected to face their powerful adversaries in the world market unless collective measures are taken for reform and removal of inadequacies plaguing Indian agriculture.

### Indian Agriculture : A Brief Overview

With more than 60 percent of marginal holdings Indian agriculture is small farm agriculture. Yet, during the past half century it contributed a great measure to help the Nation to switch over from food-deficit to food-surplus economy as well as a net exporter of food grains for the last seven years despite trebling of population since Independence.

Notwithstanding the macro level success of Indian agriculture, the worsening nutritional securities and growing distress of farmers manifest in the widespread and continued Diaspora of suicidal deaths is a matter of grave concern. Equally worrying is the fading away of the resilience of Indian agriculture with the deceleration in growth.

### Persistence of old problems

The problems plaguing Indian agriculture are largely due to the persistence of old problems viz. that agriculture continues to be a gamble in monsoons and the farmer continues to live in debt, die in debt bequeathing it to his children. Rural infrastructure facilities like road connectivity, storage and marketing continue to lag behind in terms of coverage accessibility and quality. Input supply by public agencies is limited with telling effects on the distress of farming community.

### Emergence of New Problems

The old problems affecting our agriculture have not withered away but it is also facing new problems viz. growing fragmentation, decline in soil fertility, ground water levels, erosion of capital stock, absence of significant investments from public sector. The growing commercialization of agriculture and consequent increase in risk and uncertainty, exposure to the vicissitudes of the market economy coupled with a decline in institutional support further weakened the farmers.

On the social front too, the disintegration of the joint family system and the kin and community networks that used to be the shock absorbers together with the growing privatization of health and educational facilities added to the woes of the farmers and rural people at large.

Thus, Indian agriculture, despite its past credentials is in a state of flux with the persistence of old problems and the emergence of new ones, the weakening of the social fabric coupled with commercialization of health and education resulted in the decay of the rural economy and society. This calls for collective action to make Indian agriculture vibrant and to improve the livelihood of millions of farmers in ways, which should be more equitable than in the past.

## Agricultural Policy Framework: The Critical Issues

Agriculture has been the most neglected sector of the economy both during the socialist era and after liberalization. This is evident from its low share of investment as a percentage of G D P. Agriculture contributes approximately 25 percent of G D P, provides direct employment to 56.7 percent of the workforce and 69 percent of population are dependant on it for their livelihood. In agricultural policy framework the liberal groups calls for a reversal of the retrograde, lopsided, unjust and inequitable treatment to Indian agriculture and its farming communiy in particular and the rural masses at lcrge.

The problems confronting today's Indian agriculture are many and each needs an in-depth independent analysis to arrive at appropriate policy initiatives. The liberal group has picked up a few, which it considered are critical at this juncture. They are:

- (i) The role of the State vis-a-vis Indian agriculture.
- (ii) The rising burden of rural indebtedness.
- (iii) Shrinking credit flow to farm sector.
- (iv) Increase in risk and uncertainty in farming.
- (v) Viability and profitability of farming.
- (vi) Technology and extension related issues.
- (vii) Neglect of agricultural marketing.
- (viii) Weakening of social infrasiructure, and
- (ix) Rhetoric of participatory development.

### The Role of the State

With growing distress cmong farmers and deceleration in growth, Indian agricultural scenario is unenviable. Though free trade regime is on the anvil, agriculture continues to be outside the reform process, thus there is need for clarity on the role of the State in relation to agriculture.

### Growing Burden of Rural Indebtedness and Shrinking Credit Flow

Increasing share of paid out costs in farming, privatization of health and children's education, successive droughts and crop failures coupled with dependence on non-institutional sources resulted in growing burden of rural indebtedness and farmers' distress in many states.

The positive trend in rural credit flow through institutional sources till 1991 got affected after financial sector reforms forcing farmers to rely on input dealers and others to meet farm credit needs.

### Increase in risk and uncertainty

High susceptibility of new varieties of seeds to pests and diseases, growing commercialization and increased use of modern inputs, adulteration and deterioration in the quality of farm inputs have increased risk and uncertainty in farming. In the absence of effective crop insurance, farmers alone are bearing all the risks.

### Viability and Profitability of Farming

Proliferation of marginal holdings under demographic pressure, lack of value addition to farm products at local level and absence of supplementary incomes from on-farm and off-farm activities in rural areas, sluggish expansion in irrigation and non-availability of dry land technologies are threatening the viability of marginal and small holdings.

Greater use of purchased inputs and their rising costs and doubtful quality in a scenario of decline in output in the recent period had adversely affected profitability in farming.

### Technology and extension related issues

Stagnation in Green Revolution, neglect of technologies for dry land areas and 'orphan crops', post-harvesting value addition, limited involvement and concern for farmers' requirements are technology problems affecting agriculture.

In the post-Green Revolution era, extension encountered challenges in terms of relevance, sustainability and accountability. In dry land farming with widely varying local conditions it faced many limitations and failures. It was found to be unsuccessful in diversified agriculture, viz' high-tech farming, horticulture, livestock fisheries etc.

### Neglect of Agricultural Marketing

Agriculture has become a gamble in marketing largely due to government interventions of forceful procurement in periods of rising prices and leaving farmers to their fate in periods of falling prices. Market imperfections, infrastructure deficiencies and absence of marketing extension further worsened the situation.

### Weakening of Social Infrastructure

The decline of joint family, kin and community networks that used to absorb shocks in periods of distress, decline in the quality of government social services like health and education and rising costs of expenditure on these services contributed to farmers' distress.

## Rhetoric of Participatory Development

Developmental programmes implemented with peoples' participation proved ineffective in practice is evident from experiences of participatory irrigation management and water users' associations due to reluctance of technical and bureaucratic channels. Similarly agricultural research has become laboratory oriented with an utter disregard for farmers' knowledge, practices and concerns.

## POLICY INITIATIVES

### The role of the State vis-a-vis Indian Agriculture – Broad Framework

The challenges confronting Indian agriculture are so formidable that farmers alone cannot face them successfully. It demands a comprehensive national effort to be an effective player in the liberalization regime. In this, the State which steered its destinies for more than a half century has greater responsibility. In view of this the State must spell out its role with a focus on basic and fundamental issues confronting Indian agriculture. This is necessary to send the right signals to farming community to reflect on future course of action, promote private investment in agriculture and allied activities.

Liberal conception of a State is that of a promoter and facilitator and not a detractor. On this premise, Liberals expect the State to play a pro-active role on the following lines:

- Land and the water are the most crucial but limiting factors for agricultural development. The State must initiate effective measures for the upkeep and strengthening of these basic foundations through participatory institutional structures at the ground level.
- Growth promoting services viz research, extension, supply of inputs; credit and marketing are essential for farmers in developing countries to withstand the powerful forces of modernization and globalization. The State has to pay greater attention to these aspects.
- Removal of all restrictions on movement of farm products by farmers within the Country and Exim restrictions to strengthen national marketing and to build up sustained international markets for farm products.
- Evolving effective foolproof safety nets to protect farmers from volatile markets and vagaries of nature.
- Focus on increasing the earnings of individual farmers particularly the small and marginal in unfavourable areas.

Against this broad framework of conceived role for the State, policy interventions on various issues are spelt out.

## Institutional initiatives to mitigate rural indebtedness and enhance credit flow

### Rural Indebtedness

- Invoke debt relief measures on the lines of the Debt Relief Scheme of 1990.
- Evolve a well thought out policy to scale down or wipe out the debt on the lines initiated by the provincial governments in the pre-independence era to keep the farmer alive with his productive potential.
- There is need for a comprehensive Debt and Investment Survey on the lines of the All India Rural Credit Survey of 1950's for a proper assessment of the burden of indebtedness among framers and to initiate corrective steps of a long-term nature.

### Credit Flow

The following policy interventions are considered necessary to enhance institutional credit flow.

### De-politicisation of Co-operatives.

- Issue of Kisan Credit Cards to all eligible farmers with increased credit limits to meet part of the consumption expenses and other family needs like children's education and health without restrictions on the end use as in the case of non-priority sectors.
- Interest rates charged on agricultural loans should be lower compared all other advances by the Banks.
- One-time settlements of NPA should be made applicable to agricultural loans as well.
- Banks' lendings to agricultural sector should form 18 per cent of their annual advances rather than outstanding advances of loans.
- Scales of finance must be revised realistically by taking the changing market prices into account rather than treating it as a routine ritual.

### Safety nets to overcome risk and uncertainty

At present, farmer alone is bearing all the risks while many are enjoying fruits of agriculture. In this context the following interventions are considered helpful to mitigate the risks faced by the farmers:

- Crop insurance must be recast by considering the village as unit with relatively low premium to start with to induce a majority of farmers to get into the scheme to make it viable and operative in the long run.
- Transparency in settlement process of claims.
- Involvement of Bankers' and farmers' representatives as part of damage committees to build confidence and facilitate greater participation among farmers.
- The minimum support prices must be extended to all crops and they must be notified well in advance of sowing season to send right signals to the farmers to choose what to grow.

- There must be nodal agencies to purchase all major agricultural produce, as there are no such agencies for many crops.
- Introduction of an effective marketing extension system goes a long way in increasing awareness as well as enlightening farmers about the nature of market risks associated with the crops grown by them.

### **Measures to promote viability and profitability of farming**

The problem of viability of farming is of an urgent nature and cannot be bypassed till long-term solutions materialize. The following deserve attention in the near future:

- Evolving a unified policy framework for livestock sector targeting women as development partners in animal husbandry projects for their successful implementation helps in a large measure to make small farms as viable entities.
- Investment in small agro-processing units in rural areas based on crop and dairying deserve attention as they help value addition and are livelihood intensive with potential for employment generation in the rural areas. ,

Imparting certain skills and developing professions exclusively for rural women helps marginal and small farm households to become viable and face crisis situations without resorting to extreme steps.

### **Cost of Production and Profitability**

The rising cost of production and decline in yields and profitability have to be addressed urgently as they are causing growing indebtedness and severe crisis among the farming community. Some of the steps that call for attention are:

- Lack of supply of quality seed and its high cost which is playing havoc with farmers' lives has to be sorted out immediately through ensuring part of supply to Government/ Cooperatives.
- Announcement of Minimum Support Prices before the commencement of the sowing season help farmers to take appropriate decisions.
- Notification of nodal agencies for purchase of various crops well in advance.
- Private agencies can be encouraged to procure farm produce on lines of FCI.
- Developing cost-effective technologies particularly for crops grown in rain-fed lands and largely grown by marginal and small farmers.

Government's meddling with the market for farm products should be ended or at least limited to abnormal situations.

### **TECHNOLOGY**

Given the current situation of agricultural technology in the Country and the likely neglect of the problems of 'orphan crops', rain-fed areas and poor farmers, where returns to investment are likely to be comparatively less with recognition of Intellectual

Property Rights, the following interventions are essential to make technology farmers friendly in unfavourable areas and particularly the small and marginal:

- Technological advances in crop production should reorient to issues which greatly reduce dependence on water, chemical fertilizers, pesticides and fungicides  
The focus of attention of technology has to shift from increasing production to increasing earnings of individual small and marginal farmers and particularly those in unfavourable areas.
- Given the predominance of small and marginal holdings, the technology has to address itself to the cost-effectiveness and affordability of a vast majority of the poor farmers.

Technology bears fruits only when it is widely adopted at the field level. This emphasizes the need for relevance, with a focus on farmers' concerns and requirements. In this context, farmers' involvement in research process, which is very limited at present, assumes significance.

### **Reform of extension system**

Farming in India in general and small farm agriculture in particular is a diversified activity with on-farm and off-farm pursuits. This calls for a holistic approach towards farm as well as farm households' activities covering aspects such as nutrition, food security, sustainability, risk minimization, income and employment generation, marketing strategies of farm and off-farm products. Viewed from this perspective, farming system approach to extension is suited in Indian conditions.

- Multi-Agency Approach to public extension is desirable for expansion of coverage. But effective measures must be taken for better coordination to avoid wastages and for reasons of accountability. Similarly, private sector extension through farmers' organizations, SHGs and farmers' interest groups is desirable for a better acceptance of the guidance offered.
- Utilisation of para-extension workers though help ease the stress on the public extension system, extension through input suppliers and dealers who are not trained for the purpose are more inclined only to push their product brands is evident from the experiences in suicidal deaths of cotton farmers in Andhra Pradesh during 1997-98. This has to be curbed.
- Private sector extension with a focus on profits particularly involving input suppliers and dealers and corporate sector gravitate towards better-endowed regions and farmers. In view of this Public sector has to continue to play a central role in technology dissemination with a focus on economically backward regions, landless, marginal and small farmers likely to be untouched for reasons of profitability by the corporate houses.
- Media has emerged as a major source of information to the ruralites and this must be used much more extensively than at present to disseminate extension through

support from Government for a separate channel for agricultural extension in regional languages.

Extension system has to be recast with a focus on gender and marketing issues, in the context of the agro- climatic and socio-economic diversity of the Country.

## **Marketing**

Agricultural marketing is an area awaiting greater revamping. The urgency for such an action is all the more in the changed context of liberalization. The following steps are suggested for the purpose.

- Freedom and liberalization for all, except for farmers, sounds odd, irrational and unjust. The farmers must be given freedom to transport, process and sell the product according to their will, if Govt, really wants them to be equal partners in the development of this Nation.
- Steps must be taken to provide marketing extension services, together with measures for more effective dissemination of market arrivals, and prices at different trading centers similar to stock exchange news. A toll-free market intelligence service is the need of the hour.
- Greater use of electronic media for creating awareness and motivating farmers in marketing practices, like proper grading, handling and packaging of products at their level for obtaining better prices.
- Creation of price stabilization fund for select important commodities which are volatile to market fluctuations and put an end to ad hoc market interventions in export of agricultural commodities.
- Post harvesting credit is crucial to avert distress sale. particularly among the marginal and small farmers. Credit against warehouse receipts is totally absent now. Traders are given pledge credit against goods stored in their premises while farmers are denied this facility. This needs a reversal.

Market access calls for proper connectivity. With more than one half of the villages not connected with pucca / all-weather roads, and 41 per cent of villages are without telephone facility is an example of how not to prepare farmers for global trade and this calls for an urgent action.

## **Reforms on Social Sector and Farmers' Participation**

### **Social sector**

Given the poor state of social infrastructure like education and health in the countryside the following interventions deserve attention.

- The quality of primary education offered in government schools must be improved

with due attention paid to physical access, for participation of all children.

- At the secondary stage, introduction of vocational subjects like agriculture dairying and communication helps rural youth to acquire the needed knowledge and skills.
- Educational loans must be extended to farmers' children on par with their urban counter parts.
- Ensuring protected water supply, which goes a long way in preventing water-borne diseases need priority in rural development programmes.
- Over emphasis on curative aspect of health care without due attention to preventive and promotional aspects had its adverse affect on public health, particularly those in the countryside. Greater attention must be paid in this regard.
- A separate scheme of rural health with group insurance concept is essential for coverage of farmers' at reduced premium.
- Institutional credit should also take into account the consumption needs, education of children, health and social expenditure.
- Insurance limit under KCC be revised upwards to Rs. 1 lakh and it must be extended even after the loan period.

Special health insurance scheme for small and marginal farmers with provision for waiver in case of death should be explored to mitigate the crisis.

### Farmers' Participation

In view of the significance of farmers' participation for accelerated development of farm sector, the following measures are suggested.

- Administrators look at participation as people's involvement in the implementation of development projects or programmes which generally comprises of some components like contributing labour or finances and participation in group activity to carry out the pre-determined decisions of the Government. This concept of participation is lopsided and people must be involved at all stages of the project or programme right from the stage of decision making, planning with due weight age to their concerns etc.
- Participation calls for organizations at the community level to identify the groupings of people in the community, which have significance for the participants, and the identification of the leaders of these groups. Thus, there is every need to promote farmers' organizations at village and higher levels.
- Participation needs knowledge and this needs capacity building of the farmers and their leaders depending upon the programmes identified for farmers' involvement.
- Participation involves cost in terms of the time spent for common purpose. The ideal time for involving people in participation is during agricultural slack season when they have relatively free time for community work.

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- Participation involves cost in terms of the time spent for common purpose. The ideal time for involving people in participation is during agricultural slack season when they have relatively free time for community work.

- Agricultural research must be decentralized, if farmers' participation in research process is to be realized.

As a matter of principle, farmers' organizations and representatives must be given representation on bodies concerned with farmers' issues.

### Conclusion

To conclude, in the final analysis, in the post-reform era, the agricultural sector has to compete in an integrated world economy. This calls for reversal of many past policies and new initiatives to strengthen the basic foundations and to bring about a parity between agricultural and industrial sectors and a recognition the private investment is no substitute for public investment given the majority of the vulnerable farmers who cannot be left to market forces. Towards this end, the state must clearly define its role vis-a-vis agricultural sector.

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### Session Report

Prof. R. M. Mohan Rao presented a summarised version of a paper on Agriculture and Rural Indebtedness. The following participated in the discussions: Mr. D. *Raman* (*Ooty*), Dr. Shiva Shankar (Bangalore), Prof. *Suresh* Shirodkar (Kolhapur), Mr. *Ajit* Narde (Kolhapur), Mr. Subboya Shetty (Mangalore) and Mr. *Rajesh* Singh (*Patna*)

Prof. Mohan Rao while replying to the discussions said *that* he had noted the various issues raised which would be kept in mind when preparing a discussion paper for further discussion *and* adoption.

In his remarks at the conclusion of this session the president assured members that there would a workshop to which would be invited experts in the field and the Liberal Position on the question of Rural Indebtedness would be evolved.

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*Felicitations*  
Mr. A. D. Moddie and Mr. M. R. N. Poi



*Felicitations*  
Mr. T. Subbaya Shetty and Mr. S. V. Raju

## Administration of Justice

G. Giridhar Prabhu

An independent judiciary is the very heart and soul of Democracy which is the sine qua non for the survival of Democracy.

Lincoln defined Democracy to be "Of the People, For the People and By the People". The very cornerstones of Democracy are the three pillars, Legislature, Judiciary and Executive. The Constitution is the Fulcrum of the three Institutions.

Palkivala said "To my countrymen, who gave a Constitution but not the ability to keep it, inherited a resplendent heritage, but not the ability to cherish it. The failure on account of too many Governments with too little Administration, too many Public Servants with too little welfare, too many Lawyers and too little Justice". To these, we can perhaps add and say, too few Judges with too many cases and inordinate delays.

But, the three pillars are at loggerheads and the Constitution itself is at the crossroads today. An assertive judiciary in the garb of activism has encroached and eroded an independent legislature and inept executive. But the question that needs to be addressed foremost is - Is the Judiciary independent? If so, has it overstepped its powers and has it transgressed into areas hitherto unknown and untouched?

Both the Legislature and the Judiciary have put the Constitution, which is the most sacred document of this country, to severe trials and tribulations and it is remarkable that in spite of serious attempts to undermine its value, it continues to be the guiding light of our Democracy.



Mr. G. Giridhar Prabhu, Secretary of the Indian Liberal Group and President of the Mangalore Chapter is a businessman and owner of Achal Industries.

He was Vice Chairman of the Cashew Export Promotion Council of India. An active member in various trade bodies he is past president of the Mangalore Cashew Manufacturers' Association and Kanara Chamber of Commerce and Industry and is currently editor of its house journal. Mr. Giridhar Prabhu is deeply interested in public affairs particularly Development Economics.

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Five decades of independence have ensured that the Constitution has been severely abused in the form of repeated amendments. A country like the United States of America, which has a glorious history of over 200 years since the birth of its Constitution has seen not more than 20 amendments in the last two centuries, whereas the Indian Constitution has been amended more than 100 times in the last five decades alone. The Legislature and the Judiciary have repeatedly crossed swords with each other in an attempt to assert the supremacy of one over the other. But the victim of these battles has been the common man and the hapless litigant who has had no appropriate forum to redress his grievance.

The Judiciary itself has been plagued by several maladies *inter alia* genuine doubts being raised over the credibility and impartiality of the very process of the appointment of Judges, heavy backlog of cases pending before various Courts. In the garb of activism committing "excessism", a serious attempt is being made to undermine the role of the Legislature, i.e. Judiciary is attempting to play the role of the Lawmaker.

Obsolete and antiquated laws, which should be consigned to the dustbins of the history, continue to be in vogue. To put it succinctly, there are three Cs, which are plaguing the system – Corruption, Confusion and Chaos. The Rule of Law is the primary function of the State and the Constitution mandates it in the three pillars to uphold this basic function that lies at the heart of democracy. .

As regards the process of the appointment of Judges, the Constitution stipulates that a Judge of the Supreme Court shall be appointed by the President after consultation with the Chief Justice and such other Judges as he may deem fit (Article 124 Clause 2). A Judge of the High Court shall be appointed by the President after consultation with the Chief Justice of India and the Governor of the State and in cases of a Judge other than the Chief Justice, then the Chief Justice of the High Court (Article 217 (1)). The Judges of the Supreme Court and the High Court are paid salaries determined by the Parliament and provision for the same is made by Parliament. They are paid salaries specified in the Second Schedule of the Constitution – (Articles 125(1) and 221(1)). Other privileges, allowances, right to leave of absence, pension etc. are also determined by Law made by Parliament and, until so determined, as specified in the Second Schedule. Till 1982, the Government's discretion in appointment of Judges was an unwritten law. In fact, attempts were made by an earlier Government in power to appoint "committed Judges", i.e. committed to whatever the Government espoused. The Law Commission has pointed out in its 14<sup>th</sup> Report that appointment of Judges was taking place on partisan considerations. But the matter came to light only in 1973 when the Government claimed an unfettered right to transfer Judges at its will and pleasure. This was challenged in *S.P. Gupta Vs. Union of India* in AIR 1982 SC 149 and as recently as 1994 in the Supreme Court Advocates on Record Association's case. The present position is that the final decision in so far as the appointment of a judge is concerned will be that of the Chief Justice and a Collegium of Judges according to whose advice, the President

is bound to appoint the Judges. A proposal to have a Judicial Service Commission for appointment and transfer as well as removal of the Judges has long been under consideration.

It is also unfortunate that the decisions taken for the appointment of Judges do not seem to be on any rationale. There are two schools of thought, viz., that a transparency of the whole process of appointment and another school recommending otherwise. A fact also to be noticed is that there has been no eminent jurist who has been directly appointed to the Supreme Court or even attempted to be appointed to the High Court as well. Many successful professionals have declined offers to the judiciary because the compensation is grossly inadequate. The salary to which a member of the judiciary is entitled to is grossly inadequate. It needs to be increased to exponentially in order to attract the best talent. This would help to induce eminent jurists to join the judiciary when at least the financial future is secured.

The method of appointment has also not been a time bound affair and hence persons who offer. It is a fact that there must be a certain degree of transparency to understand the criteria and process of appointment with regard to judges.

Keeping all these in mind, the ILG proposes certain basic parameters for selection of Judges which has to be decided by the judiciary itself. But at the same time a transparent and recognized method being a time bound one needs to be framed.

This is rather a peculiar case where the Judges are judging themselves as far as the mode of appointment, transfer or removal is concerned. There is no transparency as far as the appointment of Judges is concerned. To quote former Law Minister and an eminent lawyer, Mr. Ram Jethmalani: "In India there are two kinds of Judges, a small lot who know law and the rest who know the Law Minister". Political and extraneous considerations come into play in the appointment of Judges.

Article 124(3) stipulates the qualifications as pre-requisite to be appointed as a Judge. But an indifferent approach has caused serious injury to public interest. The panacea is for having a more than transparent and accountable process of both selection and transfer. The removal of judges at present is only by way of impeachment and is a mere political process within a legal process. We have had only one instance of an attempt to impeach a sitting Judge of the Supreme Court and this attempt failed on the floor of the Parliament for reasons which were not totally germane to the issue on hand. There have been various reports by both the Law Commission and by various Committees which end up in libraries and bookshelves of iurists and lawyers. No attempt has been made to educate the public on the recommendations of the various committees. There should be a public debate on the subject and the important recommendations of various committees like the Malimath Committee should be implemented at the earliest.

**ILG demands** that the Government submit every year an action taken report

on the various recommendations of the Law Commission. The report should be tabled before Parliament annually.

The Code of Conduct which is now only a guideline to choose has to be made mandatory, viz., in regard to Judges being Members of Clubs and in the event of any of the first family members practicing in the same High Court, the Judge must not be appointed to the same High Court. Any abnormal increase in the income structure of any of the family members of the Judges above a particular prescribed limit ought to be examined by a Committee of Judges. In any event, no Judge should be permitted to sit in a State for more than 7 years in the event of his tenure being longer than that. The minimum tenure of 7 years should be available for the incumbent to occupy the office. But, in any event, no recruitment should be made above the age of 55 for the High Court and above 57 for the Supreme Court.

The Supreme Court should ensure that a Code of Conduct regarding the various "attitude judgments" is enforced in respect of such Judges.

We have also prided ourselves in saying that we have an independent judiciary. By all accounts, the statement has been used in the wrong context. Judiciary at times has been independent, at times efficient and at most times acted excessively. The term judicial activism is a misnomer. At best, Judges have been active at times and one area where they have acted with passion, concern and care has been while exercising their powers under Articles 226 and 32 of the Constitution of India, i.e. matters pertaining to exercise of their Writ Jurisdiction only. But the ordinary Civil and Criminal Justice Systems are in a chaotic state. Heavy backlog of cases, very few judges, too many cases, lack of infrastructure, too many litigants, very few courts, insufficient allocation of funds from the Government towards judiciary for improvement and upgrading the infrastructure. Although attempts have been made by passing suitable legislation to reduce the burden of courts by creating tribunals and encouraging alternative disputes redressal mechanism, the same is yet to catch on in our country. Allocation of proper funds just like Defence Fund, the Judiciary should be given unfettered right of access to funds – to the quantum they may require for the purpose of administration of Justice. In the event the judiciary require any funds for their perquisites and amenities, the same shall be only with the approval of the Parliament.

The need of the hour is major reforms in Civil and Criminal Justice Systems to encourage alternative disputes redressal mechanism. It is imperative for the freedoms enshrined and guaranteed in the Constitution to survive, that Judges do not place themselves in a pedestal above the others and attempt to minimize this very constructive and objective deliberations of the proceedings in the Court and Judgment. The Contempt of Courts Act which is undergoing a long overdue amendment proposes to include justification or truth as a defence similar to the one in defamation cases. This proposed amendment will remove the aberration that exists in our Statute Books. Scurrilous criticism

must by all means be avoided. But a free and frank debate of the way the cases are being conducted and judgment delivered should be encouraged within the realm of public domain for a Judge is like Caesar's wife and should always be above suspicion. The length of court vacations is on par with those of the schools and colleges in the country. This legacy which we inherited from the British should be done away at the earliest. While summer vacation can be maintained, the other vacations can be pruned and the luxury of the winter vacation can be done away totally.

While making the appointment, a harmonious balance will have to be struck keeping in mind the social ethos and merit.

A Judge retiring from any office should not accept any public office in regard to any tribunals. As far as any arbitration assignment is concerned, he shall not associate himself at least for one year in arbitration matters involving the Government.

The retirement age should be increased to 65 both for the High Court Judges and the Supreme Court Judges.

The Law Commission in its 14<sup>th</sup> Report has recommended establishing All India Judicial Service along the lines of Indian Administrative Service to improve the quality of District and High Court Judges. The Conference of the Chief Justices, at its Annual Meeting in 1961 and 1963 favoured this idea. The idea has reappeared many times but has never been implemented.

The primary culprit, according to the Law Commission's 14<sup>th</sup> Report was Court's indiscipline, Judges' leisurely behaviour, excessive length of lawyers' oral arguments, Judges' readily granting of adjournments and stays and the granting of Special Leave Petition by the Supreme Court which could result in stays lasting years. Among other examples, Law Commission cited one in Bihar where a Subordinate Judicial Officer was not required to explain the delay until the case was three years old.

The principal purpose of criminal justice administration is to protect and preserve the Rule of Law. Sadly, we see considerable inefficiency and failure of the State in this regard.

ILG demands that the State must put on priority

- Enforcement of Law
- Maintenance of Order
- Fair Trial
- Punishment of Offenders and
- Social rehabilitation through correctional system of justice

Overall, the process of reforms should ensure within a reasonable time of five years.

- Social rehabilitation through correctional system of justice
- New prisons and jails will be built for convicts and under-trials respectively at strategic locations to reduce the load on existing antiquated jails.
- A new policy on remedies to the current correctional institutions that will enable convicts to remain converted and reformed to normal social life
- The very low rate of convictions in IPC crimes as also the non-reporting of crimes by citizens should improve.
- The conditions of citizens who assist the State in criminal justice is pathetic. These include witnesses, members of the administration and service providers including the legal profession. This needs to be addressed at all levels.

The ILG will strive to have people's representatives and administrators focus on the:

- Present state of criminal justice administration: The components of addressing backlogs, absence of coordination between different wings and departments in administration and introduction of modernization and information technology tools.
- Evaluation of the recommendations of the various committees like the Malimath Committee and the recommendations of the ILG workshop and apply the same for action by the recommended agencies.

ILG as a group will act:

- To resolve the issues related to under-trials and injustice meted out to the innocent people who are suffering from the inefficiency or failure of the State in dealing with criminal cases effectively.
- To increase awareness the litigation involving the State is the prime cause of clogging of judicial administration. The State must act for the citizen and not be a party to several disputes within itself as well as with citizens.
- Introduce draft resolutions with Members of Parliament which shall direct the Government to act.

There is a grave danger to a healthy democracy in this country unless the three pillars which form the edifice of the Constitution are strengthened, Democracy may mean "of the Criminals, for the Criminals and by the Criminals". The need of the hour is to shrug off the inertia that has crept in our system and drastic and appropriate steps be taken to correct the maladies which are afflicting our system. Administration of justice and the rule of law are intertwined and an independent and impartial judiciary should necessarily form the very backbone of the same.

## NOTES FOR DISCUSSION

The sheer number of pendency of cases indicates a gross form of injustice when we call our selves a working democracy. We cannot settle our disputes in time and that needs to be addressed first.

### Cases Pending Age-Wise

Court type	Total BALA	More than five years
Supreme Court	21,995	2732 [12 %]
High Courts	3,269,224	1342784 [41 %]
District and subordinate Courts *	2,27,57,693	6481924 [29 %]
[More than 3 years]		

### Notes:

1. For SC as on 1.11.2001 – Rajya Sabha Starred question No.185 dated 3.12.2001
2. For High Courts the data is mostly as on 30.6.2004 or 31.3.2004 – Lok Sabha Unstarred Question No.552, dated 3.12.2004 and Rajya Sabha, Unstarred Question No.2044, dated 23.8.2004.
3. For District and other subordinate courts the data is mostly as on end December 2003 or June 2002 – Rajya Sabha Starred Question No.190, dated 15.12.2003
4. Refers to both civil and criminal. The proportion of civil varies between 30 to 50 per cent across States.

ILG views with concern that the all-pervasive corruption has now intruded into judicial administration. The effect of absence of integrity, admitted even, by the Chief Justice of India recently, in a section of the subordinate courts is enough to shake the confidence of citizens. It has resulted in loss of faith and trust in Governance as a whole.

The barometer of confidence has sunk so low that up to 80 per cent of the current litigants will not chose to go to the present system. The level of confidence in the current judicial administration has sunk to zero.

The current level of vacancy at 25 per cent is very high and with an overloaded system there is no justification even for a single vacancy for all time to come.

This unpardonable state of affairs needs to be corrected and ILG will strive for full composition of the benches at all levels of judiciary in the shortest possible time, say three years.

Again, ILG will advocate that there is no dearth of high level competency and brains as far as the legal profession is concerned.

The ILG will emphasize that the selection process must ensure this in the appointment process as against the current level of mediocrity.

There is a need to introduce professional ethics in the legal syllabus which must be emulated in the profession.

ILG will target students and faculty at the education level to address the problems of competency and integrity.

The ILG will address core issues:

- ❖ The administration of justice is a "function of state" ( and not Non-Plan as it is described in the Budget papers) The full financial and physical resources are provided to this sector by making Liberal Provision in the Liberal Budget.
- ❖ Physical resources in the form of Court Buildings, Offices and support infrastructure are a must for giving room and ground for excellence in the delivery of justice.
- ❖ Information technology and related equipment to improve productivity must be immediately provided to courthouses and court administration. A JUDINET which is an integrated Enterprise Resource Programme solely for judicial administration must be developed which will considerably enhance quality of administration.
- ❖ The allotment of personnel is required to be done. Judicial administration must be exempted from "austerity measures" like staff cuts or resource cuts. If necessary surplus staff from other redundant departments be allocated to staffing the judicial administration at all levels.
- ❖ ILG will examine the current situation in judging the judges and will endeavour to highlight current problems and provide choices for parliament, legislature and civil society to have a result oriented approach and a watch on judicial conduct.
- ❖ ILG believes that cooperation is essential in a democratic civil society. Every disagreement or dispute need not be dragged to the courts.
- ❖ Alternative dispute settlement (ADS) is a programme that needs to be infused with a new vigour.
- ❖ An ADS arbitration is a viable and acceptable mechanism and needs to be

encouraged, enlarged, nurtured and established. Public acceptance of administration is extremely low. It needs to be enhanced.

- ❖ Private effort needs to be augmented to encourage arbitration. This requires facilities, support staff, services and integration. The legal profession also needs to cooperate and actively encourage arbitration procedures.
- ❖ The other option also is "pre-trial conciliation" where two parties can be brought together systematically to narrow down differences, this mechanism will save trial time and possibly generate "settlement" which can be "decreed" for acceptance.
- ❖ ILG views seriously the process generated by "judge made law". The subtle aspects of this have to be discussed in detail to restore the "institutional" balance between the three institutions of Governance.
- ❖ By a strange coincidence the national awakening and attention on judicial administration issue is in sharp focus after our National Workshop.
- ❖ This is a good augury. The document produced after discussion will hopefully generate material for continual improvement till we have met the goal of not just satisfactory but an excellence Judicial Administration
- ❖ Parliamentary and Legislative oversight on Judicial Administration (and not judges) is essential. The State of Judicial administration must find compulsory mention in tad dress of President to Parliament and Governor's address to legislature.
- ❖ Mention and attention must be made to budget pronouncements on allocations made to improve judicial administration and must contain financial resource allocation for improvement.

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### ***Session Report***

The paper on the Administration of Justice was presented by Mr. Giridhar Prabhu. There was a high level of participation in the discussions that followed. The following members spoke during the discussion: Justice (retd.) K. S. Puttaswamy (Bangalore), Prof. T. S. Nair (Trivandrum), Mr. D. Raman (Ooty), Mr. Arunajatesan (Chennai), Mr. G. R. S. Rao (Hyderabad), Mr. M. V. Mathew, (Kannur), Mr. K. C. Shetty (Mysore), Dr. Mary Thomas (Mumbai), Dr. R. Srinivasan (Mumbai), Mr. A. D. Moddie (Mumbai), Mr. Jagdeep Chhokar (Ahmedabad).

The Paper found general acceptance as reflecting the *Liberal* Position. The Convention also recorded the fact conveyed by the Paper's author Mr. Giridhar Prabhu that the entire proceedings of a seminar on the subject held in Mangalore in August 2004 would be published and that he had been appointed by the president of the ILG to edit them with the help of the faculty in the local Law College. After its publication the ILG would launch a campaign to educate the public on its recommendations to reform the judiciary.

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# ANNEXURES

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## **Annexure 7**

### **Strategy of the Indian Liberal Group (ILG) 2005-2010**

#### **MAIN AIM (In 5 years time we can proudly say that ..)**

The Indian Liberal Group (ILG) is a pressure group and a catalyst for change known in most parts of India. It is fighting for a better understanding of liberal values and principles among the general public and a clear-cut liberal policy at all levels. Its recognized successes are based on the following achievements:

- 1) ILG has educated a large number of people on liberal values.
- 2) ILG has influenced the political decision-making process.
- 3) ILG has taken up a number of crucial issues to achieve concrete results.
- 4) ILG empowered and activated local people.
- 5) ILG has strengthened political parties and/or politicians upholding liberal values.
- 6) ILG has strengthened other organisations and individuals who spread liberal ideas or practice liberal principles.

#### **Milestones to reach Main-Aim Aspect 1:**

##### **"Educated a large number of people on liberal values"**

- Main target groups have been identified (accomplished)
- Target groups have been profiled to finetune trainings
- Liberal principles have been formulated in such a way that they serve as guiding principles in trainings
- Liberal principles have been broken down and applied to major political fields
- Trainers have been trained on how to teach liberal values (content; communication & presentation skills)
- Training related needs of target groups have been assessed
- "Marketing-techniques" have been developed to "sell" our trainings to the various target groups



**Dr. Peter Traub** is a leading German Liberal who was with the Friedrich Naumann Foundation for over ten years. He has successfully built up a network in Germany to spread the Liberal philosophy in general and the Free Democratic Party in particular. He heads his own consultancy firm "Level Up" engaged in training, coaching and networking.

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**ACTIVITIES to reach Milestones for Main-Aim Aspect 1 :  
Educated a large number of people on liberal values"****TASKS RELATED TO THE CORRESPONDING MILESTONES:**

- Identify main target groups (accomplished)
- Profile target groups to finetune trainings and identify needs
  - students, youth, teachers  
(Jaishree, Anjali, Gopal; March 15)
  - media people  
(Sharad, Allwyn, Rajiv Ketkar; March 15)
  - elected representatives  
(Mary, Mathew, Chhokar; March 15)
  - women  
(M.V. Mathew, Vandana, Usha. D.; March 15)
  - farmers  
(Narayan, Sharad Patil, Mohan R.; March 15)
  - business people  
(Giridhar, Claret, C.S.Deshpande; March 15)
  - civil servants (Shanbhogue, Bagchi; 15 March)

**ACTIVITIES to reach Milestones for Main-Aim Aspect 1 : Educated a  
large number of people on liberal values"****TASKS RELATED TO THE CORRESPONDING MILESTONES:**

- Formulate liberal principles in such a way that they can serve as guiding principles in trainings (and external communication)  
(Giridhar, Raiu, Shirodkar; March 15)
- Break down and apply liberal principles to major political fields  
(Giridhar, Raiu, Shirodkar; March 15)
- Develop training kits  
(persons responsible – members and/or non-members - will be identified until the end of February; Raiu)

## **ACTIVITIES to reach Milestones for Main-Aim Aspect 1 : Educated a large number of people on liberal values"**

### **TASKS RELATED TO THE CORRESPONDING MILESTONE:**

Train trainers on how to teach liberal values  
(content; communication & presentation skills)

- identify and brief potentially qualified and interested trainers of trainers (people with a liberal view and training experience)  
Raju, Mary; end of May)
- identify potentially qualified and interested trainers on state/language basis (people with a liberal view and training experience)  
Raju, Mary; end of May)

## **ACTIVITIES to reach Milestones for Main-Aim Aspect 1 : Educated a large number of people on liberal values"**

### **TASKS RELATED TO THE CORRESPONDING MILESTONE:**

Develop marketing-techniques to "sell" our trainings – and in fact our whole liberal message! - to the various target groups

- ❖ Develop packages of mutual benefit (Start with topics of very practical use for the target group)
- ❖ Identify an emotional, image-building message

### **An overall emotional and image-building message ...**



**ILG – we care!**

## **Milestones to reach Main-Aim Aspect 2: "Influenced the political decision making process"**

We have been successful in ...

- influencing the Prime Minister's and the Establishment's thinking
- influencing high ranking civil servants at national, state and local level
- influencing the legislation (elected representatives and the relevant bureaucratic structure)
- Building up a relationship with opinion makers /societal leaders
- motivating local citizens to come into action
- influencing national and regional media

## **Activities to reach Main-Aim Aspect 2: "Influenced the political decision making process"**

### **TASKS RELATED TO THE CORRESPONDING MILESTONE:**

- Influence the Prime Minister's and the Establishment's thinking by
- sending important liberal publications
- systematically building a relationship with people close to decision makers
- at least one follow-up for each letter and/or sendout of publications
- inviting members of the Establishment and/or their close aides to ILG-activities (national topics and people dealt with by the national office local topics and people dealt with by the local office)

## **Activities to reach Main-Aim Aspect 2: "Influenced the political decision making process"**

### **TASKS RELATED TO THE CORRESPONDING MILESTONE:**

- Influence high ranking civil servants at national, state and local level by
- sending important liberal publications
- systematically building a relationship with people close to high ranking civil servants
- at least one follow-up for each letter and/or send out of publications
- inviting them and/or their close aides to ILG-activities
- organize public hearings with them
- working with professors at civil service training institutes (national topics and people dealt with by the national office, local topics and people dealt with by the local office)

## **Activities to reach Main-Aim Aspect 2: "Influenced the political decision making process"**

### **TASKS RELATED TO THE CORRESPONDING MILESTONE:**

- Influence the legislation (elected representatives and the relevant bureaucratic structure)
- sending important liberal publications
- at least one follow-up for each letter and/or send out of publications
- systematically building a relationship with elected representatives and civil servants dealing with legislation
- foster regular interaction between voters and legislators
- ILG-members appearing before parliamentary and legislative committees
- monitoring official websites ("ILG Policy Watch")  
(Raju, Shirodkar, Bagchi, Giridhar)

## **Milestones to reach Main-Aim Aspect 2: "Influenced the political decision making process"**

### **TASKS RELATED TO THE CORRESPONDING MILESTONE:**

- Pro-actively building up a relationship with opinion makers/societal leaders

## **Milestones to reach Main-Aim Aspect 2: "Influenced the political decision making process"**

### **TASKS RELATED TO THE CORRESPONDING MILESTONE:**

- Motivating local citizens to come into action by
- Identifying and involving celebrities (film stars, sport stars, famous authors etc.); drafting a list / brainstorming about ideas how to approach them (Gopal)
- providing correct information on pressing issues directly affecting peoples' life
- providing tailored training about workable solutions to their problems (whom to approach etc. etc.)
- produce videos/DVDs about success stories of the empowerment trainings
- organizing exhibitions about completed or ongoing ILG activities; also participating in the same way in other organisations fairs and/or public events

## **Milestones to reach Main-Aim Aspect 2: "Influenced the political decision making process"**

### **TASKS RELATED TO THE CORRESPONDING MILESTONE:**

- Influencing national and regional media by
- inviting media people to ILG activities
- systematically building a relation with selected journalists
- organizing interesting one-day events
- making active use of press-club meetings
- identifying the "news value" in all ILG-activities
- sending important liberal publications
- at least one follow-up for each letter and/or send out of publications
- offering concrete projects/assignments to students of media schools/colleges
- providing special trainings for media people (see main aim aspect 1)

## **Milestones to reach Main-Aim Aspect 3: "Taken up important issues to achieve concrete results"**

We take up especially issues that qualify under the following criteria:

- they serve as good example to demonstrate our liberal conviction /the relevance of our five liberal pillars

We take up issues especially under the following perspective:

- In which regard do they qualify as good examples to demonstrate our liberal conviction /the relevance of our five liberal pillars?  
(It is not only important what you do, but how you do it / approach it)

## **Milestones to reach Main-Aim Aspect 4: "Empowering and activating local people"**

We have been successful in ...

- Local elected bodies are able to fully function, utilizing their resources and exercise all their powers.
- Local citizens are able to demand what is promised to them (both in quantity and quality).
- An x number of opinion leaders among the people have been trained on
  - to understand the local political system
  - to know about funds and loans available
  - to know about their duties and rights as citizens
  - how to become a (responsible, liberal) leader
- Successful pilot cases/projects where the feasibility can be demonstrated
- Making people aware of crucial aspects of social and economic empowerment and make them self-confident to speak out

## **Activities to reach Main-Aim Aspect 4: "Empowering and activating local people"**

### **TASKS RELATED TO THE CORRESPONDING MILESTONE:**

- Enable local elected bodies to fully function, utilizing their resources and exercise all their powers by ...
  - ❖ providing orientation programmes for locally elected bodies
  - ❖ empowering the local people to act as a pressure group (see main aim aspect...)
  - ❖ encourage people to interact with local bodies ("overcome political shyness")

## **Milestones on Main-Aim Aspect 5: "Strengthening political parties and/or politicians upholding liberal values"**

We have been successful in ...

- Identifying and developing potential political candidates among ILG members
- Counselling ILG-members or potential ILG-members already a member of a political party
- Supporting good politicians during election campaigns by providing them a forum to express his/her views (15:9),
- Contributing liberal articles in party bulletins

## **Activities to reach Main-Aim Aspect 5: "Strengthening political parties and/or politicians upholding liberal values"**

### **TASKS RELATED TO THE CORRESPONDING MILESTONE:**

- Identifying and developing potential political candidates among ILG-members
- Sending a letter cum questionnaire to all ILG-members (ILG-NHQ; March 31)
- provide leadership training; incl. developing curricula, recruiting resource persons etc. (team of three at NHQ in consultation with local chapters; starting: August 2005)
- ILG-members supporting "our" candidates on an individual basis

## **Milestones on Main-Aim Aspect 6: "Strengthening other organisations and individuals who spread liberal ideas or practice liberal principles"**

We have been successful in ...

- Actively establishing a relationship with potential allies
- Holding joint programmes and campaigns
- Training/developing the leaders of potential allies
- Sharing information and resources (material, contacts etc.)
- Becoming the nodal agency of a network of liberal organizations

(We will work only with liberal, non-partisan, non-communal organizations)

(Note: No tasks developed yet)

### **INTERVENTION BY MODERATOR:**

#### **"WHAT IS YOUR REAL TARGET GROUP?"**

"It's the middle class! The very section of society most of you yourselves are coming from. If you really want to succeed in attracting more people for your liberal cause and recruiting more members for ILG, you have to start addressing also the needs and problems of the middle class. If you really want to become a successful political pressure group you have to start working and fighting your very own cause!

Farmers and other underprivileged /marginalized people in India need all your help and assistance. But they are not your „target group". You can help them to organize themselves and fight for THEIR cause. But in the long run they will benefit most, if you succeed in pushing YOUR i.e. the liberal cause.

### **TASKS TO OVERCOME INTERNAL WEAK POINTS**

- Weak point: No explicit concrete offer for our main target group, the middleclass
- Define what YOU consider "middle class"
- A respective paper is produced (and later included in ILG brochures)  
(Gopal, Sharad Bailur, Babu Joseph, S. L. Shanbhogue; March 31)
- Weak point: No explicit concrete offer for young people to join ILG
- A respective paper is produced and included in ILG brochures  
(Claret, Anjali, Jaishree; March 31)

## TASKS TO OVERCOME INTERNAL WEAK POINTS

- Weak point: Not enough members
- Weak point: Not enough chapters  
Start addressing you real target group in an attractive way (in verbal communication, via brochures, website etc.)
- Develop and communicate a real "product" (it must be transparent what you are really up to)
- Weak point: Several established chapters are not really effective
- Weak point: Not enough financial means

Note: Before dealing any further with internal weak points a general decision by the ILG should be taken, whether to follow the new, in a way more political course or to stick to ILG's current approach. Because the outcome of this decision will also decide the concrete necessities of ILG's internal structure.

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Participants of a Play (Kannada version of The Beggar Who Would Be King) enacted by the students of St. Agnes Special School, a school for handicapped children, at the Inaugural Session.

# ANNEXURES

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## Annexure 2

### Annexure to President's Report

#### Local Chapters' Activities

December 8 2002 to February 15, 2005

This is a report on programmes organised by ILG's Local Chapters in various parts of India. They have been arranged state-wise and in chronological order. It is not claimed that *all* activities have been covered - only those which Local Chapters have informed us.

#### ANDHRA PRADESH

##### Guntur Chapter

In March 2003 the Chapter collaborated with Amnesty International and Forum for Human Rights in organising a two-day seminar on Violence against Women.

The Chapter organised an awareness programme in September 2003 for school teachers and students on the principles that ILG stands for.

At its monthly meeting on September 5, 2003 the Chapter decided to participate actively in the Loksatta One Crore signature campaign to bring pressure on the AP Government to transfer powers to the local bodies as required under the Indian Constitution.

On October 4, 2003 the Chapter held a meeting to condemn the Naxalites' attack on the the A.P. Chief Minister. The meeting felicitated Dr.A.Rajasekhar Vice-president of the Guntur Chapter on being awarded the 'Best Teacher award for 2003 from the state government and wished the Secretary of the ILG's A.P. State Executive Dr. L. S. N. Prasad bon voyage on taking up a teaching assignment in Ethiopia.

Guntur was the venue of a meeting on February 21, 2004 of ILG members in AP. 38 members were present. The meeting was convened to discuss the potential for new chapters and strengthening existing ones. Dr. Y. Sivaji, (national vice-president of the ILG) and president of the Andhra Pradesh State Executive presided. Mr. S. V. Raju (national) president participated in the deliberations.

The day after the terrorist bombings in Mumbai, the Chapter convened an emergency meeting to condemn the outrage. Dr. Sivaji who was present at the meeting called for the unity of all communities to fight terrorism.

### **Tirupati Chapter**

In March 2003 the Chapter collaborated with Amnesty International, Forum for Human Rights in organising a two-day seminar on Violence against Women.

A workshop organised by the Tirupati Chapter of the ILG at a village near Tirupati on February 20, 2004, on farmers' problems brought together farmers in that area who were typical of those in deep debt. A questionnaire that was distributed revealed that government's agricultural policies were of little help to the farmer.

### **Hyderabad Chapter**

The ILG Chapter in Hyderabad, in association with the leading Telugu daily Vaartha, organised a Public Awareness Meeting on July 23, 2003 to draw attention to the Mysterious Disease leading to a large number of Infant Deaths in several districts in the State.

## **BIHAR**

### **Patna Chapter**

The Patna Chapter's major preoccupation was the rapidly deteriorating Law and order situation. Criminal gangs flourish, protected by political parties. The kidnapping of well-to-do professionals, merchants, traders was routine and personal security was at a premium. In these circumstances the ILG Chapter decided at a meeting in Patna in May 2003 that its single focus would be to organise citizens' protest through the many trade, professional and commercial organisations in the State. The Patna Chapter would organise an umbrella organisation for this purpose.

In February 2004 the Chapter held a meeting when it reiterated its determination to organise like-minded organisations and citizens.

## **KARNATAKA**

### **Bangalore Chapter**

An exhibition and painting competition on environmental issues for school students from five schools was organised by the Bangalore Chapter in January 2004

The Chapter organised an elocution competition for college students in September 2004. The competition was held in a prestigious educational institution called "Jyoti

Nivas College". The principal of this women's college is Sister P. Cardoza a life member of the ILG. The subject of this competition: "Can Empowering Women Help" prize winning students along with a copy each of Minoo Masani's "We Indians."

Another programme to catch the attention of students and youth was by organising an exhibition with models and live-exhibits on such themes as 'Nutritive value of various kinds of edibles, diet recommendations, paintings relating to agriculture and cropping systems, animal husbandry and poultry keeping. A number of high school students participated. The programme was held in October 2004

### **Mangalore Chapter**

The ILG's Mangalore Chapter held a public discussion on July 19, 2003 on "Current Issues in Professional & High Education. President of the Chapter Dr. S. L. Shonbhogue was in the Chair. Various suggestions were made among which was one that ILG should take the initiative in organising Career Guidance programmes and aptitude tests to help children make the right choice.

The Chapter participated in a three day cultural festival organised by the Tibetan Students' Association, Mangalore and Friends of Tibet India in October 2003. Mr. Giridhar Prabhu, Secretary of the ILG was present at a press conference where he expressed the strong support of Liberals to the Tibetan struggle for freedom.

In January 2004, Mr. S. V. Raju addressed the Rotary Club of Mangalore on "Liberalism in India". He also addressed the Management Students of the Institute of Managerial Excellence, on Liberalisation in the present context. Both these meetings were arranged on the initiative of the Mangalore Chapter.

As hosts to the 2nd National Convention the Mangalore Chapter held regular meetings to deal with issues relating to the organisation of the Convention in the month preceding the Convention.

### **KERALA**

The president of the ILG's Kerala State Executive Professor Babu Joseph organised two programmes in association with the Project for Economic Education in Trivandrum and Kottayam on December 16 and 17, 2003

The first was a seminar in Trivandrum on the "Development Crisis and Economic Reforms in Kerala. The objective of the seminar was to support the present government in Kerala in its efforts to promote economic reforms. The seminar was inaugurated by Mr. A. K. Antony, the then Chief Minister of Kerala.

The second was a Women's Leaders' Conference organised in association with the Mount Carmel Training College, Kottayam to make women realise their potential and role in the development of a free society in a liberal democracy..

A training programme was held at Nocergram in Kerala relating to the accountability and strengthening of Panchayat Raj institutions. The plan is to develop a close relationship between panchayats and our chapters with a view, in the not too distant future, to get ILG members or those with a liberal orientation to themselves become members of panchayats. This is possible because under the law, political parties are not permitted to contest panchayat elections.

Another was a series of three training programmes entitled "Women Empowerment in Panchayati Raj" organised in collaboration with NOCER at Nocergram (NOCER Village) in Kerala between October 26 and November 19, 2004.

The objective of these seminars was to make women in Kerala aware of their rights conferred on them under the Panchayat Act. Women under the Act have been given certain political authority. They are both responsible and accountable in the exercise of their powers. Mr. M. V. Mathew president of NOCER and a life member of the ILG designed and executed this very useful programme. ILG vice president Dr. Mary Thomas, was actively associated in these programmes at Nocergram.

As many as 12 seminars on Police Reforms in Kerala were held between November 27 and December 18, 2003 in the following districts of Kerala: 27/11 Kannur; 28/11 Kasargod; 6/12 Wyanad; 7/12 Calicut; 8/12 Malappuram; 9/12 Palakkad; 11/12 Kottayam; 12/12 Idukki; 13/12 Ernakulam; 15/12 Pathanamthitta; 17/12 Trivandrum; 18/12 Kollam.

The objective of these seminars which was also organised by the ILG in association with Mr. M. V. Mathew president of NOCER-India, and a member of the ILG, was to make the people in Kerala aware of the reforms introduced in the Police Department so that it can effectively carry out its duty; to gauge the public's response and their reaction to the Police Reforms; and to provide a feedback to the State government and to the police department. The rule of law is a cardinal liberal principle and economic growth requires the impartial enforcement of law and order. Dr. Mary Thomas, ILG's Vice President was an active participant in six of these seminars.

As a follow-up, a Report arising from these seminars was printed and distributed to the Chief Minister and his cabinet ministers, the heads of the Police Department (DGP and IGP), the Human Rights Commission, and voluntary organisations in Kerala and other states and to all political parties.

## MAHARASHTRA

### Mumbai Chapter

The Chapter held a meeting on September 12, 2003 to discuss the spate of terrorist bombings in the city; offered support to the city police and the government in their effort to maintain law and order and campaign to demand expeditious disposal of cases involving terrorism; the bomb blasts had given rise to hostile reactions directed at the Muslim community, showing little understanding of the problem. The guest speaker was Mr. Satish Sahney, Retired Director General of Police, Maharashtra. Mr. Ashok Karnik, member, ILG and former Deputy Director, Intelligence Bureau, Government of India emphasised that terrorism in India cannot be isolated from terrorism in other parts of the world.

On February 13, 2004, the ILG Mumbai Chapter met to discuss the role ILG should play in the then forthcoming elections to the Lok Sabha, particularly with reference to what we, as Liberals, can do to arrest the degeneration of representative government. The Mumbai Chapter networked with The Catalyst Trust, a Chennai based organisation devoted to good governance and its trustee Mr. A. K. Venkat Subramanian, delivered the keynote address at this meeting. A key decision that emerged from was popularising the facility of the "Protest Vote", i.e. Rule No.49(O) in the Conduct of Elections Rules 1961, by which a voter can legally refuse to cast his vote to any of the candidates listed on the ballot paper and return it blank to the presiding officer at the polling booth saying that he does not wish to vote for any of the candidates because none of them meet his expectations. Under current law such a vote while being valid will be treated as a negative vote. The ILG drew the attention of the press to this provision and which resulted in a lively debate in the press with a small minority even exercising this right!

The Chapter took advantage of the presence in town of Professor Minoo Adenwala, Professor Emeritus, Centre for Liberal Studies, Lawrence University, Wisconsin, USA to address a meeting organised by the Chapter in July 2004. He spoke on 'Affirmative Action'. The talk was relevant in the context of the fact that the United Progressive Alliance (the present coalition government in Delhi) has been advocating reservation of jobs even in the private sector.

### Nagpur

A workshop on "Liberalism – A Way of Life" was held in Nagpur on September 28 2004. This one-day workshop was in cooperation with a local women's college for undergraduate students to introduce them to the basic principles of liberalism. The language of the workshop was Marathi. This was followed by two more workshops in October .on: "Liberal Solutions For A Stronger Economy" and "Globalisation and the Future

of Indian Youth". The workshops were intended to interest students (both undergraduate and post-graduate students and youth in Liberal values, Liberal Economics and the Liberal Way of Life. Over 150 students and youth participated in these three programmes the first of its kind held in this city. The programmes were organised and conducted by Chapter Convenor Anjali Patil.

### **Nashik Chapter**

The Nashik Chapter held its first meeting on December 7, 2003. The meeting was well attended. Mr. Kumar Ketkar, the popular editor of the well-known Marathi newspaper *Loksatta* delivered the keynote speech on the Relevance of Liberalism in the present context in India. Mr. Sanjay Panse, ILG member from Mumbai gave a presentation on the Dilemmas of Liberalisation. Mr. S. V. Raju, presided and spoke on the Indian Liberal Group and its objectives.

## **TAMIL NADU**

### **Chennai Chapter**

Mr. S. V. Raju met student members of the ILG on November 19, 2003. He discussed with them ways and means to involve youth in the activities of the ILG. The participants were enthusiastic and offered full support to the programme for 2004.

The Chennai Chapter in association with MGR Janaki College for Women, MOP Vaishnav College for Women, the Catalyst Trust and the Project for Economic Education organised two seminars on Vocational Education entitled "Energising Youth Power – Education and Training for Enterprise skills" on December 12 and 13, 2003. The purpose of these seminars was to provide information to the youth regarding education and training for enterprise skills and choice of career courses, particularly for those who are unable to pursue higher studies; and to impress on youth the ILG's concerns, particularly the fact that Liberals give equal importance to education for employment as much as education for citizenship.

The programmes which were attended by over 700 participants –students, teachers, professors, principals and directors of polytechnics, engineering colleges and technical institutes, was directed by Mr. Krishan Khanna, ILG member from Mumbai who is actively involved in imparting knowledge on vocational training and career courses.

Two Liberal Youth Clubs were formed in Sri Sankara Vidyaashraman Matriculation Higher Secondary School and Sri Sankara Senior Secondary School, both in Chennai with 23 and 30 students respectively.

The Chapter organised a survey with data collected by the students from local

citizens on the government's decision to install CAS (Conditional Access System). It was found that in general consumers in their neighbourhood. Reports of both these surveys were carried by the press and also printed as booklets for the benefit of the general public. The Chennai Chapter also circulated copies to all the ILG Chapters for their information.

In June 2004, the Chennai chapter organised a rather unusual seminar. This was on Spirituality and Prosperity! A member of the Sri Aurobindo Ashram in Pondicherry was the main speaker,

Liberal Values for Liberal Youth Club members was organised at Utthandi new Chennai in June 2004. This was followed by a two-day 'Orientation Course on Liberal Values' at the Gandhigram Rural Institute, Gandhigram, Tamil Nadu on the 17<sup>th</sup> and 18<sup>th</sup> of July, 2004. This was meant for those who had recently joined the ILG (largely students and those under 40) and needed to better understand the concepts of liberalism and liberal values. Apart from the normal subjects that deal with Liberalism, the Vice Chancellor of the Institute made a presentation on the relevance of Gandhian Values and how Gandhian values are identical to liberal values. A discussion session on "Youth Problems" brought out the problems of the young in India who find it hard to find employment in today's competitive world

A workshop for Liberal Youth Club Members and an induction programme for new members was held at Nemmeli near Chennai on January 23, 2005.



Another scene from the Play, The Beggar Who Would Be King enacted by the students of St. Agnes Special School, a school for handicapped children, at the Inaugural Session.

## ANNEXURES

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### Annexure 3

#### DELEGATES

##### **Andhra Pradesh (6)**

Mr. T. Lalith Kumar  
Prof. R. M. Mohan Rao  
Mr. V.V.S. Rama Rao  
Prof. G.R.S. Rao  
Mr. K. Narayana Reddy  
Dr. Y. Sivaji

##### **Bihar (1)**

Mr. Rajesh Singh

##### **Gujarat (1)**

Prof. Jagdeep S. Chhokar

##### **Karnataka (17)**

Mr. M. Srinivasa Achar  
Ms. Claret D'souza  
Prof. Jaishree R. Iyengar  
Dr. G. R. Krishnamurthy  
Mr. M. R. Narasimhas Das Pai  
Mr. G. Giridhar Prabhu  
Justice K. S. Puttaswamy (Retd)  
Mr. Vivek Raju  
Mr. Kalbavi Prakash Rao  
Mr. Sorake Vishnu V. Rao  
Dr. Satheesh Rao  
Mr. K.C.P. Setty  
Dr. S. L. Shanbhogue  
Dr. K. Shiva Shankar  
Mrs. Vijayalaxmi Shankar  
Mr. T. Subbaya Shetty  
Mr. V. N. Torgal

##### **Kerala (10)**

Mr. V. Dinesan  
Prof. Babu Joseph  
Mr. R. K. Aneesh Kumar  
Mr. M. V. Mathew  
Prof. T. P. S. Nair  
Mr. P. K. Padmanabhan  
Ms. K. V. Rathi  
Mr. C. V. Satheesan  
Mr. P. V. Shaju  
Ms. P. Sindhu

##### **Maharashtra (13)**

Mr. Sharad M. Bailur  
Mr. Sunil Bhandare  
Mr. Allwyn Fernandes  
Dr. Ajit Karnik  
Mr. Rajeev Ketkar  
Mr. A. D. Moddie  
Mr. Ajit Narde  
Mr. S. V. Raju  
Mrs. Kashmiri Rao  
Mr. S. S. Shirodkar  
Prof. Vijay K. Sinha  
Dr. R. Srinivasan  
Dr. Mary Thomas

##### **Tamil Nadu (4)**

Mr. S. Arunajatesan  
Prof. S. Radhakrishnan  
Mr. D. Raman  
Dr. A. M. Swaminathan

## OATH OF AFFIRMATION

Those who wish to join the **INDIAN LIBERAL GROUP (ILG)** are required to sign an Oath of Affirmation that they are in agreement with the Objectives laid down under Article 2 of the Constitution of the ILG:

Article 2 of the Constitution states:

### Objectives

The purpose of the **ILG** is to foster the values of freedom, responsibility, tolerance, social justice and equality of opportunity based on the liberal beliefs that

- liberty with individual responsibility are the foundations of civilised society;
- the State is an instrument of the citizens it serves.
- any action of the State must respect the principles of democratic accountability and the rule of law.

The primary objective of the **ILG** is to defend the fundamental liberal belief of

- the right of individuals to personal liberty, liberty of thought, expression, belief, faith and worship;
- the right of association;
- the right to private property;
- free choice of occupation;
- the right to information to enable the exercise of one's right meaningfully.

While tolerance is integral to liberalism, the **ILG** will not tolerate intolerance.

The **ILG** believes that the business of government is governance, not business.

The **ILG** is opposed to any kind of monopoly.

The **ILG** believes that technology is needed to promote human development and draws attention to the fact that the growth of Liberalism has been contemporaneous with the development of science and technology.

The **ILG** affirms that active and participatory citizenship at all levels is essential for sustaining a liberal and democratic society.

Above all, the **ILG** believes in the need to uphold values and excellence; character and integrity.

To develop men and women with such faith and principles is the real task and goal before liberals.

## Minoo Masani's Open Letter to Young Friends

I believe that the business of government is to govern and not be in business. How true that Gujarati proverb: 'Where the king becomes a trader, his subjects become beggars'. The policy of involving itself in industry, trade and commerce has led to the state neglecting its primary responsibilities: The maintenance of law and order, the provision of drinking water facilities, primary health care, primary education, and a network of good roads and rail lines.

These ought to be the objectives of the new economic policy. And this is the essence of liberalisation. It will enable the government to live within its means as it will make it unnecessary for governments to maintain huge administrative overheads. It will eliminate the need for deficit financing which in turn will help keep prices at reasonable levels. A government committed to liberalisation will not, even while proclaiming its policy of freeing the economy, engage in the dubious and anti-market act of administering prices as it did recently in the case of petrol. Such acts make a mockery of economic reforms and can only hamper the process of liberalisation.

I am personally unhappy with the fact that the Indian voter today has to make his choice between unwilling liberalisers on the one hand and those who seek the people's support through appeals to religion or caste be it Ayodhya or Mandal. Had I been even ten years younger I would have taken an active role in educating people on the real meaning of liberalisation, why it is so important that the economic reforms succeed. I might even have taken the initiative to once again organise a movement to put pressure on the government to ensure that it honestly implemented the reforms.

Since my advanced years and consequent physical frailty prevent me from doing so I appeal to my younger friends and all those who have faith in the dignity of the individual, their right to live their lives with the minimum of state intervention, and who wish to see an India where people have a fair opportunity for self-fulfilment, to get together and organise a movement. If such a movement does not emerge soon I am afraid the reforms process will, in the not so distant future stutter to a stop and when that happens we will once again find ourselves at the bottom of the heap.

Surely, we do not want that to happen because the people of India deserve better.

Minoo Masani  
(Extracted from Freedom First, January 1994)

Publications of the Indian Liberal Group and Allied Organisations\*

1. State Monopolies or Mixed Economy – *What is our Choice*: J. K. Mukhopadhyay
2. Rural India – *No Swaraj Yet* – Bhanu Pratap Singh
3. Indian Economic Scene: From Twilight to Dawn – Viren Shah
4. Socialism Reconsidered – Minoo Masani
5. The Market Economy and the Contemporary Crisis – Amlan Datta
6. The Retreat from Socialism – B. K. Nehru
7. The Public Sector– Gangadhar Gadgil
8. Towards a New Polity – Abid Hussain
9. A Question of Survival-Why Economic Reforms were Necessary? – An Illustrated booklet
10. Answering before God – Sharad Joshi
11. The Swatantra Economy – Obstacles & Challenges – Gangadhar Gadgil
12. Freedom & Dissent – Essays in Honour of Minoo Masani on his 85th Birthday
13. Minoo Masani 90 – Excerpts from Minoo Masani's writings between 1944 and 1989
14. V. B. Karnik: Views and Vision – A Commemorative volume of his selected writings
15. Liberalism – An Essay by Minoo Masani
16. Priority for Agriculture (Proceedings of a Seminar)
17. Liberalisation of the Indian Economy – Obstacles and Measures to Overcome them (Proceedings of a Seminar)
18. Swadeshi (Proceedings of a Seminar)
19. Liberalisation: A Balance Sheet by Seetha P.
20. Liberal Priorities for India in the 21st Century (Proceedings of a National Colloquium)
21. Accelerating Disinvestment of State Enterprises (Proceedings of a Seminar) on the subject
22. We Indians by Minoo Masani
23. The Swatantra Party –Victory in Defeat by H.R.Pasricha
24. Development and Human Rights (Proceedings of a National Seminar)
25. The Philosophy and Practice of liberalism by Professor Amlan Datta.
26. What India Needs - A New Path (Proceedings of a Seminar)
27. *Samajwadache* Rangroop (in Marathi) by Ajit Narde and Athle
28. Voluntary Organisations in India's liberalised Economy (Proceedings of a Seminar)
29. *Fifty Years After* (Proceedings of a Seminar)
30. Women in Development (Proceedings of a Seminar)
31. More Governance with less Government by Digvijay Singh (First Minoo Masani Memorial Lecture)
31. Corruption Mocking at Liberalisation by N. Vittal (Second Minoo Masani Memorial Lecture)
32. Equity and Sustainable Development by P. V. Indiresan
33. The Liberal Budget- Building an Equitable Society
34. The liberal Budget – 2005-06 – *The Way Forward*

- ◆ Allied Organisations are: Democratic Research Service, Freedom First Foundation, Rajaji Foundation and the Indian Liberal Group.
- ◆ Please note: 1. All are priced publications; 2. Not all titles are available

For information on availability and price please contact

PROJECT FOR ECONOMIC EDUCATION

3<sup>rd</sup> floor, Army & Navy Building,

148, Mahatma Gandhi Road,

Mumbai 400001

Phones: 91 22 22843416; 91 22 56396366 ● Telefax: 91 22 22843416

Email: [freedom@vsnl.com](mailto:freedom@vsnl.com); [ilg@vsnl.net](mailto:ilg@vsnl.net)

For membership and other details, please write or email:



## INDIAN LIBERAL GROUP

National Headquarters  
1st Floor, Sassoon Building,  
143, Mahatma Gandhi Road, Mumbai 400 001.  
Phones : (0091 22) 2284 341 6 • 2284 1340  
Fax : (0091 22) 2284 341 6  
E-mail : [freedom@vsnl.com](mailto:freedom@vsnl.com); [ilg@vsnl.net](mailto:ilg@vsnl.net)  
Website : [www.liberalsindia.com](http://www.liberalsindia.com)

**Let's Restore Character and Values in Our Democracy**