

CHAPTER 23

AN EPILOGUE

Shakespeare in his *As You Like It* aptly says: “If it be true that ‘good wine needs no bush’, ‘tis true that a good play needs no epilogue”. Hence I would not like to indulge in a self-condemnation. I do not, therefore, intend writing an Epilogue. But I intend to make a skeletal summary of certain suggestions. Samuel Butler said: ‘Life is the art of drawing sufficient conclusions from insufficient premises.’ I feel I have drawn in this book ‘sufficient conclusions’ from ‘insufficient premises.’ But both must await my reader’s verdict. If this book leads to the scrutiny of our institutions at work, and the revaluation of our socio-political efforts, my purpose is served. What I write may sound heuristic, but it is without any hubris. When all is said, I overstress the following points so that the points made out in the book do not escape focus. Hence I submit :

(i) To our Supreme Court:

- (a) It should be charitable to accept that it is an organ of the State within the meaning of this concept under Art. 12 of the Constitution of India.
- (b) It should not be miserly in discharging its debt to the administration of justice by narrowing the reach and ambit of the doctrine of *ex debito justitiae*.
- (c) In its role perception it must recognize the constitutional commitments without being deflected from it under the pleadings and persuasion of the neo-capitalists and their matrix, the markets.
- (d) As we are told that ordinary people follow the models of conduct which the good and the great provide, the court must not compromise the discipline of judicial hierarchy, and must not give slightest scope to think that its process of decision-making involves pre-conceived notions, or ideas which appear to most people extraneous to judicial functions.

(ii) To our Parliament:

- (a) It should constitute Treaties Committee; and take steps to implement the recommendations of the Peoples’ Commission,

and suggestions made by this author by bringing about changes in the treaty-making procedure¹.

- (b) Tax treaties are legislated in all the major countries because taxation went wholly out of the executive domain in course of the constitutional history. There is no good reason why in our country the executive be granted power to enter into tax treaties in open-textured terms without even our Parliament knowing anything about it.
 - (c) When our Supreme Court made a *cri de Coeur* to Parliament to provide remedy against the fraud of treaty shopping, our Parliament should not have shown indifference despite a lot of time having already gone.
 - (d) As we are entering into several treaties affecting all the vital sections of our society, our Parliament must have a high Power Committee to oversee the Government's conduct involving treaty terms having impact at international plane, and also in the domestic sphere.
 - (e) Our Parliament should realize that the sub judice rule does not require it to put off vital issues so that they become stale, people lose verve, and the immediate public good is negated.
 - (f) Our Parliament should take its legislative functions seriously so that the Executive does not take it for granted.
 - (g) Our Parliament should have well organized and effective Committees on Petitions to redress peoples' grievance through Parliamentary channel.
- (iii) To our Executive:
- (a) The Executive should shed off its institutional hubris and get rid of the mentality minted during the heydays of the Stuarts.
 - (b) The Executive should not subvert our constitutional democracy by resorting to an opaque system.
 - (c) The Executive must function under constitutional limitations, whether in New Delhi or Port Louis, as it has no reserve power in its hip-pocket.
 - (d) The Executive must conform to the treaty making procedure, which is in tune with our democracy and its constitution.

¹. Vide Chapter 18 "The Uruguay Round Final Act: A Betrayal Of The Nation" Part IV & V.

- (e) ‘The most fundamental change that is required to make globalization work is the way that it should be a change in governance’ (Stiglitz)². It must be ensured that the voices of the trade ministers at the W.T.O., and of finance ministers at the IMF represent the deliberated will of our people articulated by our representatives in Parliament, otherwise the obligations undertaken may not bind the people of the Republic.
- (iv) To our Civil Servants:
- (a) It is dangerous for the country if our civil servants act as the stooges of the IMF or World Bank to become the present versions of the Rida Khans³.
- (b) The civil servants prefer non-transparent system. Stiglitz is correct in stating: ‘Secrecy allows government officials the kind of discretion that they would not have if their actions were subject to public scrutiny.’⁴ {The CBDT Circular 789 of April 13, 2000, the Instruction No. 12 of 2002 dated Nov. 1, 2002 [F. No. 480/3/2002-FTD Govt. of India, Ministry of Finance, Department of Revenue, (Foreign Tax Division)], and Part IX-C in the Income-tax Rules 1962 notified on Feb. 6, 2003 pertaining to MAP illustrate the Executive’s lust for power under an opaque system.}
- (c) ‘The commitment of a public functionary is....to the duties of his office, their due performance with an accent on their ethical content, and not to the ideologies, political or otherwise, of the politicians who administer the affairs of the State.’⁵
- (d) The civil servants should not be led as asses are by the corporate *imperium* and the waxing breed of the compradors.
- (v) To our CAG:
- (a) Dr. Ambedkar had observed, while the Constitution was being framed, that the Comptroller and Auditor General of India shall be the most important officer under the Constitution but under our operative system the CAG has become a constitutional orphan. It enables the Legislature to discharge Parliamentary functions as it scrutinizes the financial transactions of the Government and brings the results of such scrutiny before the Legislature. It is simply atrocious not to provide him the details concerning the tax treaties, and reasons for issuing this or that circular. The

². Joseph Stiglitz, *Globalization and its Discontent* p. 226.

³. See Chapter I.

⁴. Stiglitz pp. 228-229.

⁵. *The Shah Commission Report* para 24.18.

CAG should assert its role, so that his role may not become irrelevant.

- (b) The CAG, in an appropriate case, may seek declaration from the Supreme Court on the ambit of his express and implied powers ensuing from the constitutional provisions, and his oath to uphold the Constitution.
 - (c) It is to be recognized that to think of the CAG and his team a mere body of ordinary accountants⁶ is a constitutional solecism; and to call them pedestrian accountants is a culpable economy with truth betraying misunderstanding both of the Constitution, and Administration.
 - (d) If the rightful requisition from the CAG is not complied with, as it had happened in the grossest form in Bihar when the scam in the Animal Husbandry Department was going on, the CAG is competent even to report to the President of India to consider the declaration of Emergency under Art. 355 of the Constitution of India.
 - (e) If government officers obstruct the functioning of the CAG, they are clearly guilty of misbehaviour unbecoming of the government servants; and are liable to be taken to task for violation of the Conduct Rules.
- (vi) To our diplomatic mission:

The story of the misuse of the Ind-Mauritius DTAC shows that our diplomatic mission in Mauritius failed in discharge of its duties under Art. 3 of the Vienna Convention⁷ on Diplomatic Relations of 1961 adopted by the UN Conference on Diplomatic Intercourse and Immunities as it failed in impressing on the home government that with the transformation of Mauritius as a tax haven it was appropriate to initiate the process of modification, recension or denunciation of the DTAC.

- (vii) To our politicians:

⁶. A. Appleby was wrong in stating in his *Re-examination of India's Administrative System* p.28: "Auditors do not know and cannot be expected to know very much about good administration; their prestige is highest with others who do not know much about administration... Auditing is necessary but highly pedestrian function with a narrow perspective and very limited usefulness."

⁷. Art. 3: '1. The functions of diplomatic mission consist *inter alia* in : (a) representing the sending State in the receiving State; (b) protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law; (c) negotiating with the Government of the receiving State; (d) ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State; (e) promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations....'

The six Inquiry Commission Reports were one in highlighting “on the unhealthy factors governing the relationship between the Ministers and civil servants” which the Shah Commission rightly considered the ‘root of all evil’. The story of the misuse of tax treaties largely shows the same syndrome at work in our country. Can something be done to root out the root of All Evils?

(viii) To our economists:

What is most annoying in the leaders of the economic realm is their collective hubris, medieval mind-set despite jet and laptops, and complete bartering of souls to a section of society with high economic worth but low spiritual quotient. We run the grave risk of finding ourselves in the “age of sophisters, economists, and calculators”⁸ in which democracy of people may get, to borrow Burke, “extinguished for ever.” If the economists could know the uncertainty principle, and the fact that man is an indeterminate equation, they could have surely acquired information ripening into wisdom. Let us not make everything a trading ware. Most economists do not realize that every judgment stands on the edge of error, and what is done cannot be undone even by Zeus. There is no way out but to reap the consequences of our deeds. Wisdom is always the better part of valour.

(ix) To our press and media:

The press has never been ready to report comprehensively the misuse of tax treaties, though they could not be unaware of its sordid reasons, and serious fallouts. If it exists only for a section of our people, it must forfeit its right to be the national press with such expectations as Junius had: “The liberty of the Press is the Palladium of all the civil, political, and religious rights of Englishman.” It is this degradation which made an important national newspaper write that just as the U.S.A is entitled to have the tax havens to service the U.S. interests, India needs a Mauritius to serve its interests. This sort of plea can be made only by sold souls in the years of low morality. If a press exists for the corporate *imperum* and net worth individuals alone, then it is certainly not entitled to the protection of fundamental rights. The American (Hutchins) Commission on the *Freedom of the Press*, was right in saying that “the right of free public expression has... lost its earlier reality”. The Shawcross Commission, had a point when it complained of “the poor performance of the press council particularly in the investigation of economic problem...” Even in the U.S. it is felt that the First Amendment interest of the public in being informed is said to be in peril because the ‘market place

⁸. Edmund Burke, *Reflections on the Revolution in France*.

of ideas' is today a monopoly controlled by the owners of the market." ⁹
The press in our country is much worse, and is a matter of national concern.

(x) To our countrymen:

A society, which keeps on accepting aberrations & Injustice over a long span of time, is surely most unfortunate. The massive strokes of injustice suddenly inflicted leads to powerful reaction with all its instant spiral effect. But when it comes in low doses the victims keep on adjusting with it treating their plight as mere vagaries of misfortune. This sort of process of adjustment is sure to destroy the capacity to rise to higher levels of excellence. We cannot enjoy sojourn on a plateau: if we cannot go up, we must decline. This is what history has taught us, and while making history we can ill-afford to forget it. This brings to my mind a story about two frogs which a naughty boy had caught for his sinister play. He hurled one into a pan of boiling water. The frog jetted into the boiling water but instantly jumped out and fell with a thud in a bush, and so it survived. The second frog was initially lucky because it enjoyed the cool water. But the boy played the cruel prank. He set fire wood ablaze under the pan in which the frog rested with delight. The water which was cool and comfortable was made warmer & warmer. There was a phase in which the frog found warmth to its liking. It was followed by other phases when it found warmth becoming inconvenient and inclement. It went on adjusting with the circumstances under which it was placed. But water became hot, then it became extremely hot. The unlucky frog had fritted away its energy in the process of adjusting itself with the circumstances becoming more & more inconvenient. By now it had reached a point where it could do only one thing; it could die. The story of the two frogs is rich in lesson it underscores the hazards of adjustments. It illustrates the wisdom of what Lord Krishna said "we are our own foes, we are our own friends". This story would tell more than what I can write here, or what I have written in this book. Let each one of us say with Goethe in *Faust* :

*At the whirring loom of Time unawed
I work the living mantle of God.*

(xi) To the neo-colonialists:

It is a nice strategy to reincarnate imperialism in new garb with mightier implementing machinery. It may make the world comfortable for some and a wheel of fire for the most others. But such an unjust world managed with stratagem cannot last for long. But history imparts certain

⁹. Miami Herald Publishing Co. v. Tornillo (1974) 94 St. Ct. 2831 at pp. 2835- 2836 quoted by SIR Zelman Cowen in his *Individual Liberty and the Law*, pp. 40-41.

lessons. The Great Egyptian Civilization was destroyed by the poor desert tribes who swooped on their plenty to pulverize their house of dreams. The Greek Empire was destroyed by ill-clad and ill equipped early Romans and the Great Roman Empire and its Pax Romana kissed dust under the onslaught of the ill-equipped Mongols. Wisdom alone can make you see that all the institutions are the subject-matter of continuous debate between Time and Decay, and also between God and Satan. It would be a misfortune if under the zest for the over-painted rainbow of the present, home truths are forgotten.

This author ends the book with a *sloka* from the *Bhagvadgeeta*:

Atmaiva hy atmano bandhur
*Atmaiva ripur atmanah.*¹⁰

This *sloka* states the fundamental principle of the grammar of our existence.

We reap the consequences of our omissions or commissions; we are ourselves our friends, and we are ourselves our foes. The logic of karma is inexorable. If things have gone wrong we ourselves are to be blamed. Those who contribute to our degradation are surely to be blamed : but those who remain indifferent and remain passive on-lookers are no less blameworthy. It is a strange thing to note that while we swear by the *Bhagavad Gita*, we remain impervious to its message, which Lord Nelson caught from the sky, and expressed in his light signal to his forces in distress in the Battle of Trafalgar: "England expects every one to do his duty". It is appropriate to end this Epilogue saying: India expects everyone to do his duty.

Jai Hind

¹⁰. *The Bhagvad Gita* VI. 5.