

Opinion

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A Penalty Against Illegal Detention

S. P. Sathe

The Supreme Court awarded compensation to Sah for his illegal imprisonment.

THE recent decision of the Supreme Court in respect of one Rudal Sah would doubtless be considered an important landmark in the history of the decisional law regarding governmental liability. Sah was accused of murder and arrested in 1953. He was, however, acquitted in 1968. Normally he should have been released forthwith. But he continued to be in prison until he was released by the Supreme Court as late as in December 1982. Why was he kept in prison for over 14 years?

It was said that since Sah had been mentally insane he could not be released. First of all, did the jail authorities get him medically examined from time to time? There are reports that medical experts had reported twice, once in 1972 and again in 1977 that Sah was no longer insane. Why was he not released then? Secondly, even if Sah was insane, why did the jail authorities

not send him to a mental asylum? Why was he kept in prison? The affidavit filed by the Bihar Government made no effort to answer such questions. These facts are enough to show how an individual's liberty is scantily treated by authorities. Is it not shocking that in democratic India, of which Bihar is a part, such callous disregard of human rights should take place?

Sah's release was a mere accident. Had not a law student of Patna filed a petition for *habeas corpus* in the Bihar High Court or a public spirited lawyer of Delhi filed a similar petition in the Supreme Court, Sah might have continued to languish in jail for all his life. This happened to Sah. It could happen to anyone. Why? It must be happening to so many unfortunate people, whose only sin is their poverty.

The Supreme Court Bench consisting of Chief Justice Chandrachud

and Justices Sen and Misra, described the entire episode as "sordid" and "disturbing". The Court set the detenu free. But what distinguishes this decision from the previous decisions is that the Court awarded compensation to Sah for his illegal imprisonment. The Bihar Government had earlier been asked to pay Rs. 5,000. In addition, the Court awarded him compensation worth Rs. 30,000. In another case, the Court has asked the government to pay Rs. 300 per month throughout life to a person who had been kept in undertrial detention for 30 years.

In recent years, the Supreme Court has been articulating the criteria of procedural fairness which is a condition precedent for deprivation of life or personal liberty. The Constitution in article 21 says that no one shall be deprived of his personal liberty except by procedure established by law. Since *Maneka Gandhi*'s case, the Court has insisted that the words "personal liberty" as well as "procedure established by law" were open textured and held that the procedure must be just and fair. The right to legal assistance or the right to a speedy trial or the right to be released on bail were held to be essential aspects of procedural fairness. In *Hussainara Khatoon* as well as *Kadra Pahadiya* Cases, Justice Bhagwati spoke eloquently on the plight of undertrial prisoners. In *Kadra Pahadiya*, four young boys who had been accused of murder had been kept in jail for over 10 years. When the Supreme

Court asked the Sessions Judge to expedite, their trials were held, and ended in acquittals. These boys had spent 10 precious years of life in jail and after coming out faced the problem of rehabilitation.

The Supreme Court in the Sah case has provided teeth to its earlier rulings by awarding compensation. We hope that this would now pave the way for a similar award of compensation against the Bihar Government for the blinding of prisoners in Bhagalpur, a matter which is pending before the Court. We also hope that compensation would be awarded against police torture and such other excesses or abuses of power.

What is most significant about the Sah decision is that the Court has accepted the liability of the State for the illegal acts of its servants. The law on the subject has been in need of change since the Court held in *Kasturilal v. U.P.* that the State was not liable for the torts of its servants committed in exercise of its sovereign functions. In Sah's case, the Court seems to have implied an overruling of its decision in *Kasturilal*. The liability to pay compensation for illegal imprisonment might have some deterrent effect against government's callousness. True, individual liberty is too precious to be compensated in terms of money. But now at least such callous disregard of individual liberty will not be unpunished.

The author is Principal of the ILS
Law College in Pune.

The Calibre of Leadership

A. G. Noorani

The intellectual who lends himself to men in power ought to be cautious. Is he truly sought out as an advisor—or as an accomplice?

We are so enured to the coarse and the vulgar, the ignorant and the philistine, the deceitful and debased in our midst that we have all but ceased to expect anything very much better. Take a look at the Congress(I) leaders strutting about, to begin with. Take a look also at the other parties. You could count men of real quality on the fingers of both hands with a couple or so unused.

But history teaches us that men matter. Institutions are extremely important, of course, and the failing of ambitious men and women to tinker with institutions or to demise them to suit their own convenience must be resisted. Yet even with the sturdiest of institutions a polity will fail if it is not fortunate enough to have men of real quality, men of integrity, character, intellect and vision to man them. The people need leadership and leadership shapes policies and organisations in every walk of life—even in a sports organisation for that matter. The Janata fell apart not because its rank and file were lacking in devotion but because the men at the very top were small men, particularly the Janata Party appointed leader Morarji Desai. Yet Morarji has his qualities. True, he does not take retirement gracefully and contrary to his pledge not only participates

in politics but is also not above petty politics in what has remained of the Janata Party. But his great quality is that he can suffer wilderness without disintegrating. You might say that the same is true of Mrs. Indira Gandhi. Hence the ease with which she bounced back in October 1977. The difference is that if she had met with reverses as consistently as did Desai it is unlikely she would have retained her morale as he did his.

On the other hand, for all her qualities of daring Mrs. Gandhi lacks vision, lacks the intellect for initiating policies, and, of course, lacks scruples. She has only a fine tactical sense and is essentially an operator. As such she fits in with the age, for ours is the age of operators.

It is refreshing to come across a leader who is not. Francois Mitterrand is positively not an operator. He is truly a big man. In 1946 at the age of 30 he became the youngest minister of the Fourth Republic and was all set for promotion. But he had the courage to oppose de Gaulle and he was in wilderness for over 20 years nursing the moribund Socialist Party. He became President of France in 1981. He heads a coalition in which the Communists are partners but is much more opposed to Soviet aggression than was

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his predecessor, Giscard d'Estaing, on say, Afghanistan and in other areas too.

The Wheat and the Chaff (Vikas, Rs. 195) are not his memoirs but selections from his jottings from 1971-1978. It is a truly remarkable mirror of the man's intelligence and culture. The sheer range of his reading amazes one. And he has guts. The encounters with Brezhnev and Kissinger show him at his best.

In an emotional scene Brezhnev asks him after profuse expressions of peaceful intentions: "Do you believe me?" Mitterand coolly replies, "Let me think it over. I would really like to believe you." Brezhnev rises from his seat, comes towards him and with a gesture cries, "You don't believe me, do you? It's exactly as though you had cut my suspenders."

In a jotting on July 4, 1978 he writes, "Russia has no business in the heart of other continents. Its own is enough to keep it busy... Russian soldiers in Ethiopia, war in Eritrea, a simultaneous coup d'état in both North and South Yemen, a change of regime in Kabul, would warn me that the hour is near. The pincers are closing on the Persian Gulf. And when I see Brezhnev's troops camping at the borders of Germany and China, I think first of all of Iran. Should I accuse Russia of making trouble? It treads warily. When you are big you have to. What should I say of America?"

His remarks on February 8, 1972 on Czechoslovakia remind one of the indifference of the world to the brave Afghan patriots whom the world miscalls "rebels": "Are we going to leave these men—who are gagged if not bound—defenceless,

men whose only guilt is having dreamt of a socialism in their own country that the current situation would not allow? International etiquette calls for silence. Oblivion is a pleasant accomplice. The misfortune of others is always so far away."

He knows well the ways of the Communists but takes them as partners. "An accurate evaluation of the forces confronting each other, and the nature of the conflict, leads the Communist Party to temporize with the existing society until it is strong enough to change it, while its public pronouncements accuse the Socialists of betraying a theoretical plan whose details are only parsimoniously revealed, though one can surmise that it looks like the twin of the Soviet system. These contradictions do not alarm me. Socialists are not Communists; they are Socialists."

He cites the Portuguese Communist Party's leaders' remarks against "bourgeois" democracy and asserts that "freedom of speech, pluralism of parties, universal suffrage" are all important. His retort is "Socialism yes, dictatorship, no". One suspects that in the specific situation of France, Mitterrand accepts united front tactics because in his view there is no other way of removing the Right from power.

What grips one is more than the political comments he makes. It is his comments on things in general which reveal a very perceptive man; on pornography, for instance. "It is not the accuracy of its pictures that I hold against pornography; it is the true falsity of its myths." It is the product of a mercantile society whose only morality is to serve its own interests in all things. Porn

pays. So do drugs. So does violence. The discussion is so intelligent that one wonders why the case he argues goes by default.

His comments on the fall of Andre Malraux from the pedestal on which he was placed are not devoid of compassion. He was a better conversationalist than a writer. Sample this—"The person eclipsed the work; all we could see after a certain point was the man, and we mistook one for the other. A regrettable mistake." How well put and how true, indeed, it is of many an "artist" we meet—using the word artist in the broadest sense. We are charmed and beguiled. The work may be third rate, we accept it as first class because we like the man.

But this is the failing of middle age, amiability increases, ability recedes. Few are the men who need to turn out first class work to support pride. Many having established themselves are content to relax and seek refuge in a vanity which assures them that their work must be first class because they themselves are so. But work must sit in judgement on itself, the late Dr. Zakir Husain used to say.

There are also the tests of character which confront a man in success more insidiously and, therefore, dangerously than they confront him in adversity. The challenge then is not so subtle. It is crude, cruel and open. Small wonder that Mitterand admires Julien Benda and his classic *The Treason of the Intellectuals*. As Benda remarked, the State has no need of Truth. The intellectual who lends himself to men in power ought to be cautious. Who is using

whom? Is he truly sought out as an adviser—or as an accomplice?

The same holds good for politicians also: "When de Gaulle made up his mind that he wanted to charm one of his opponents he felt could be useful to him politically, he could really turn it on. Which, when you think about it, is the worst form of contempt . . . I saw how he treated those he wanted to suffer this ultimate humiliation. They ended up as ministers in his administration." Those who resist the autocrat's blandishments are persecuted. Does it remind you of the situation at home?

Where is the cry of socialism? Everything has been abandoned—secularism, socialism and democratic values. Mrs. Gandhi's is a naked grab for power.

But socialism still has a relevance. Venice is perishing, Mitterand notes, not because the Italian government lacks the money to save it but because of the power of Big Business. "There is no more terrible example of the contradiction of Capitalism, which is incapable of resisting the temptation of immediate gain, even if it means destroying a priceless treasure."

Yet, "to limit our criticisms of the present system to economics would be to reduce our capacity to convince. Socialism demands a morality. Any plan for a society which would turn its back on a plan for civilization would lead nowhere. Love and beauty, freedom and knowledge have to be constantly reinvented."

How many politicians are capable of perceiving these truths let alone articulating them so well. Yet it is in the last analysis on the quality of

leadership that the success of any polity depends. This is not less true but far more true of a democratic polity. It demands a yet higher quality of leadership. The leaders

must be inclined with character as well as possess intellect. An awareness of values must be combined with an awareness of the imperatives of power.

Glories Past, and Present too ?

Gauri Deshpande

The Taj or Fatehpur Sikri or the Lal Kila are beggarly by comparison to what Ming China must have been like.

IT seems to me after seeing all these countries that our past was much more glorious than our present. Wherever you go, you are taken to see ancient ruins, great old temples, sumptuous ex-residences, majestic defunct palaces; all residing beside drab or functional or practical buildings that inspire nothing but boredom. This struck me even more powerfully in China than in most other countries, because the modern China is especially without visual splendours; simply full of look-alike housing warrens and atrocious official monstrosities. By the side of these, the Imperial Palace is like an extravagant dream. Its endless marble courtyards, intricately carved marble walks, richly decorated halls, vista after vista of opulence that spreads before your eyes as you exit one and enter the other, the unimaginable treasures housed therein, all leave you absolutely numb at the end. Your only thought is : this can't possibly have been real, can it ? Indeed, there are things there like a whole tree made of gold, with jade leaves and pearl, ruby, emerald, aquamarine fruit and flowers; or a whole globe made of gold

leaf and studded with diamonds, pearls, rubies etc. for stars and constellations; there are solid gold dinner plates and drinking cups by the dozens; the crowns and other ornaments simply cannot be described because you would not believe me . . . they are all almost exactly like the descriptions in Arabian Nights. I could hardly believe my own eyes when I saw all that.

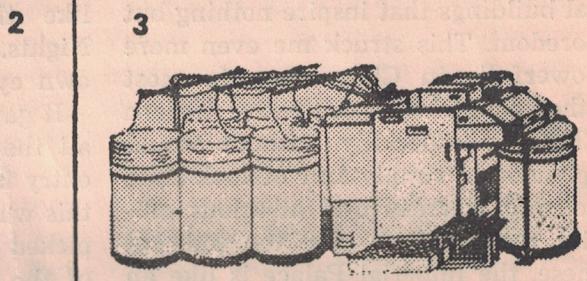
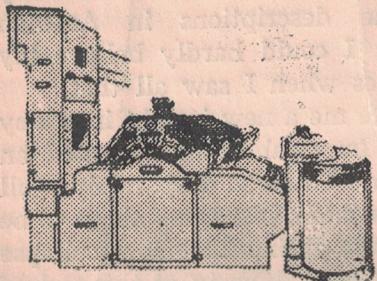
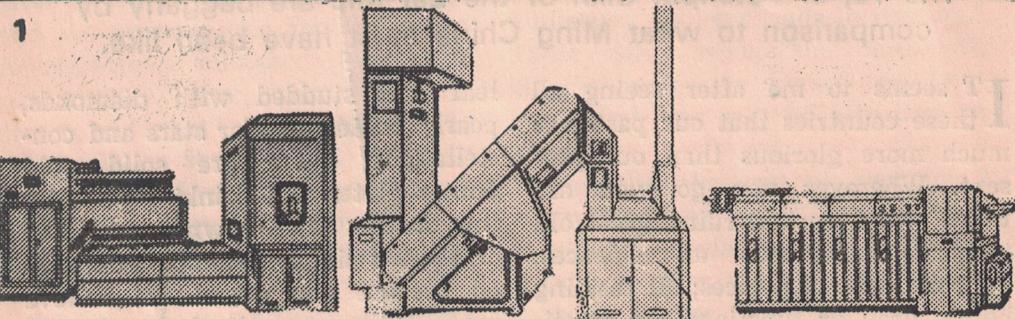
It gave me a new insight into why all the Imperial Powers wanted an entry into China so desperately — all this was there, just lying about to be picked up during the slow collapse of the Ching dynasty at the end of the last century. I mean, can you imagine a vast expanse of marble, interspersed with beautifully carved marble bridges and marble walkways with (again) intricately carved handrails stretching in front of your eyes for about half a mile ? And you are standing at a most richly decorated gate at the top of a couple

shallow flights of marble steps, and, across all this expanse of marble, are looking at another even more fantastic gate opening onto another perfectly unbelievable hall... I began to think that this "For-

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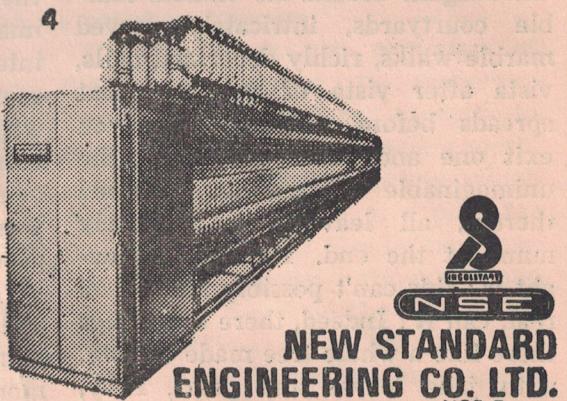
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"bidden City" was forbidden to us only to protect our poor eyes from being dazzled and our brains from being addled!

Begun at the beginning of the fifteenth century and completed in just under fifteen years, these palaces are a testimony to the power and the glory of the Ming Emperors. Those of us brought up to think of the Mughal Empire as the last word in opulence and extravagance would be quite incapable of imagining what Ming China must have been like, because the Taj or Fatehpur Sikri or the Lal Kila are beggarly by comparison. There was never an end to the stunning splendour which the Forbidden City kept unfolding before our dazzled eyes and it was much later, only as we were wearily making our way back to Tienanmin Square from around the Palace that it occurred to me that the work of its restoration is almost as mind-boggling as its construction and any country less endowed than China in manpower would have hesitated to attempt it. There are still huge sections of the Palace left in the dilapidated state in which the end of the war found them and one can see the work progressing slowly and

painfully as armies of workers scurry about cordoned off corridors while listening to rousing revolutionary music. It gives you an idea of the scale on which Emperor Yung Lo's employment office must have worked, to get enough labour to finish building the Palace from scratch in all its fantastic glory in just about 15 years. And I am sure he used something much more rousing than revolutionary music.

But the point I am making is this : have all the revolutions indeed reduced the sum of human misery in the present era ? Are the people of the world any happier today for all the lip service we pay to equality, fraternity, democracy and peace ? Have we gained anything by losing the Ming Palaces ? Have we indeed anything comparable to show ? Of course these reactionary thoughts are best kept to myself, but I am sure that I would have been perfectly happy had my poor and perhaps hungry or cold or miserable eyes been allowed to look upon something as wondrous as the Forbidden City, say, once in six years. I am sure I would have forgotten for a whole day how hungry and cold and miserable I was. Today, I am sure I am just as hungry and cold

"For what avail, the plough or sail,
or land or life, if freedom fail?"

A reminder from

THE STATESMAN

and miserable but without any such glory in store for me as I ride a bicycle to my factory no. 2 in the suburbs that makes some unintelligible parts for some incomprehensible machine in some remote region which I have never seen and contemplate an equally weary ride back to my 2 sq. mtrs. of room to a bowl of rice and pickled vegetables. I would rather be trudging on my way to carving a lion or a dragon on the steps of the Forbidden City, or even carrying bricks in a hod for the moat wall; because after all, the two square metres of room and the cold bowl of rice and vegetables hasn't improved any, has it?

The Great Wall is another mind-boggling feat. Of course, to call it a "wall" is slightly misleading, because we immediately think in terms of something that surrounds a house or a garden and keeps out strays and thieves. The Great Wall is a long line of battlements and gun turrets; fortifications about 7 metres tall and 6 metres broad at the top, from behind which the forces inside could bombard the attacking foe with bullets, cannon balls, or, more likely (since its building started in the 7th century B.C.) with stones and hot oil. The part that we went to see near Beijing (Badaling) was built in the Ming Dynasty (1368-1644).

The Wall follows the contour of the land and rises and falls with the mountain ridges. It presents an impressive sight when you clamber up a steep ridge, reach the wall and after getting atop, climb along a battlement wide enough for ten men to walk abreast, to stand at one of the small ammunition-storage forts where it makes a right angle turn,

and look to the left and right and front and back and see the long trail of it snaking, twisting, angling away into the distance. It stretches right across the north of China east to west for nearly 6,500 km, separating it from (the now Autonomous Region of) Inner Mongolia. That such a thing could not only be conceived, but actually executed, should give the rest of the world a pause when it is dealing with the Chinese. I was utterly convinced that the Chinese can do *anything* they put their minds to—a sobering thought! It is said that this Wall is the only man-made object on earth visible to the naked eye from the moon. Men shall come and men shall go but the Chinese will go on forever.

After these two wonders of the world, I hardly took in the Ming Tombs. But I saw enough! And to think that all the treasures in the Forbidden City and in the Tombs and in the various museums in China and the world are only about a percent of all that the long lines of Chinese emperors of the long lines of illustrious dynasties must actually have possessed! Even that one percent is enough to numb all thought: it is not possible even to imagine what fabulous splendours must have existed, and must have been plundered and broken and lost at the end of each era. These treasures have only recently been put up for display, and since it is still reasonably difficult to enter and to get about in China, not many eyes have looked upon them in spite of China's new policy of promoting tourism; also the Chinese are not all that sophisticated in the art of display and exhibition. Which is why these

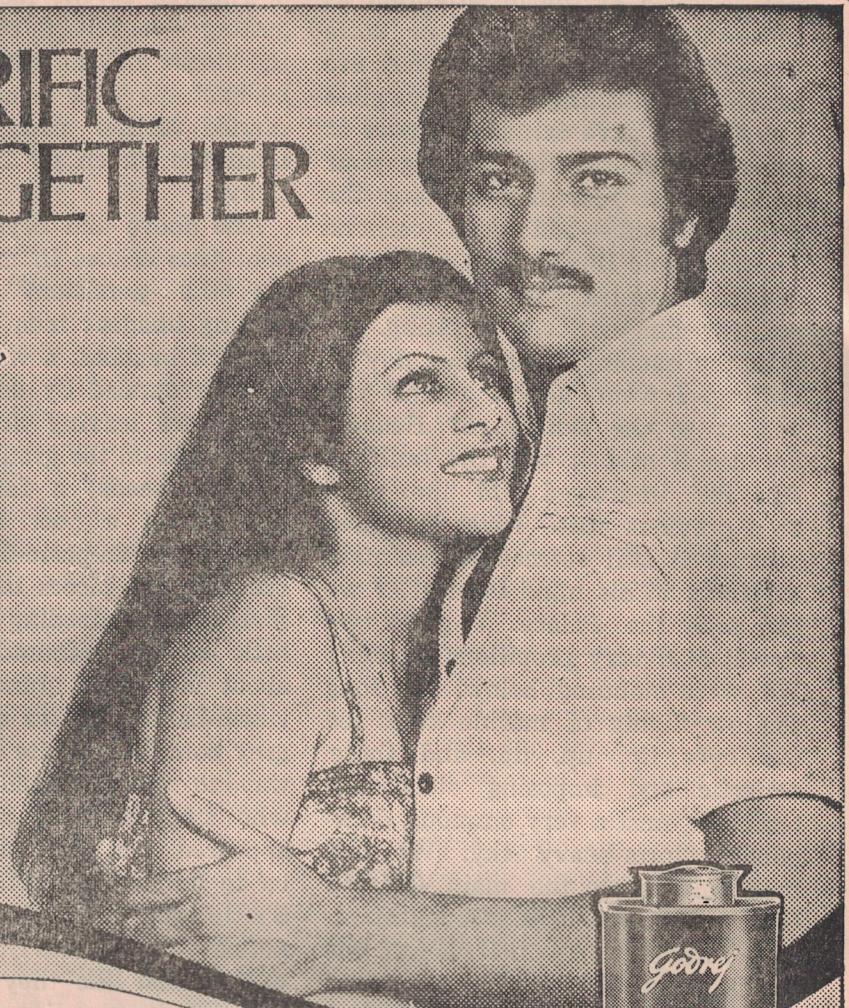
priceless and stunning objects have not received as much attention as those, say, in the Topkapi or those from the Egyptian tombs. They are mostly languishing in dusty glass cases—you have actually to peer at some of them while cupping your hands about your face to keep the reflections out—and dark corners. The available information is meagre and uninteresting, which is disappointing and curiosity-whetting.

In the evening of my last day in Beijing, I went, almost against my wishes, to the Temple of Heaven, because S said it was the building that had impressed him the most on a previous visit. I was intrigued because it still seemed to maintain its status in his mind even after we had seen the Palace. I guess we saw it at a very propitious moment. We were standing below, the long shallow flights of marble steps led our eyes up, up, up, and there, majestic and imposing stood the temple against a very ominous, dark-purple, storm-heavy sky. We had time only to see the main Quinian Hall, a 38-metre high wooden structure without a nail in it, before the storm broke. I think that in that mellow and subdued light it looked especially impressive, for otherwise, perhaps in the glaring noon sunlight, it would have looked garish with its bright red, yellow, gold, peacock blue, green and purple decorations. It was completed just after the Palace, and stands as a wonderful example of Chinese temple-architecture. I too, have a very vivid memory of it against a purple-grey sky flashing with lightning and echoing with thunder, its huge marble courtyard swept clean by the hurricane and a lone sparrow trying to fly to its

eaves for protection and utterly bewildered by the fact that he kept getting swept back by the force of the storm and no matter how hard he beat his poor wings, kept being carried further and further away from the haven of the Temple of Heaven.

And above and beyond the splendour that echoes in my mind, there are the persistent memories of fleeting images: men in blue asleep on park benches; a watermelon vendor surrounded by squatting eaters who were leaving nothing but the green rind on the ground and pocketing the seeds; a father who had just bought a poor breakfast of a small hot-bean-paste-filled dumpling, breaking off pieces and blowing on them before feeding them to his little boy; a grandmother wheeling about her two grandchildren in a wheel-barrow; a sea of bicyclists in grey pants and white shirts, on their way to work; lackadaisical diggers who stopped work as soon as we appeared, and who clustered about us to admire my little daughter or S's turban (there is not much to notice in me, alas!); young boys who looked like they were playing at soldiers, parading up and down with guns and bayonets in front of the President's residence and trying very hard not to stare at us; whole groups of Chinese tourists asleep in the various awe-inspiring gates of the Palace or eating their rice-cakes and chasing their children across the endless white-marble expanse of the Imperial Courtyards and Halls with resounding names like 'Supreme Harmony' and 'Heavenly Purity'; families having a cool dip; of fishing on the river; clustering about an ice-cream vendor; boating

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on the lake; joggers in the early morning mist; an old man shadow-boxing, men and women lined up to buy tomatoes; mountains of cabbages in the vegetable market; two cheerfully waving youths sitting atop a truckload of *baingans*; mismatched ponies drawing a cart one behind the other (rather than in tandem) driven by an old man in a coverall ten sizes

too large with a huge hole at the bottom through which his bright mauve, nylon, long underpants were showing... A picture of a poor people, busy, naive, a bit provincial, always willing to smile back, not in the least polite but always cheerful and curious. Not exactly happy, but not much worried about that illusive goal of happiness either.

The Importance of English

P. N. Driver

English has continued not as a matter of grace but due to sheer necessity.

ONE feels Mr. Edward S. Orzac should be congratulated for his stand made recently in some Indian newspapers on the importance of English for India.

It is wrong to condemn English just because it is not known to the masses and is spoken by the "elite". On the same grounds we may as well condemn Sanskrit. This apart from the fact that English is known to more people than those who know Assamese, Kashmiri, Sindhi, etc. Even if it is taken that English is known to only two percent of the people, the percentage of the people in India speaking Assamese at the time of the Census of 1971 was only 1.63 percent, the comparable figures for Sindhi and Kashmiri being only 0.31 and 0.44 percent. Evidently the importance of a language like English cannot be judged by the number of the percentage of people who speak it.

Apart from the number of people

who claim English to be their mother tongue — these are many and they are all Indians — the number of people who *know* English really runs into millions. A short time ago Mr. Marley, a member of the Karnataka Assembly explained in detail in his speech how no less than 40 million people *knew* English even when they did not all use it as their mother tongue. This could come to 15 percent. Sanskrit which is the mother of many Aryan languages was estimated by the Census of 1955 to be the mother tongue of only 555 people all over India. The Census of India in 1971 put this figure at 2,212 only. The importance of both English as well as Sanskrit as a matter of fact can be seen if we recollect that the total number of mother tongues in India has been shown to be about 1,652 (Census 1961) for a total population of 438,936,918.

Since Independence, English has continued not as a matter of grace

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as some think, but due to the sheer necessity of preventing a complete break-down of administration, commerce, and defence. When countries with highly developed languages of their own like German or Russian have seen the necessity of English, we in India cannot afford to be totally unrealistic. We were however, partly unrealistic in weakening English and thereby sowing the seeds of serious internal dissensions. If we had not tilted the balance rather prematurely in favour of mother tongues and Hindi things could have been different in Assam, the Punjab and the North-East. It would be

totally unrealistic to forget that even today English is the only official language in some parts of India like Nagaland. It will be a sad day for India when men ignorant of the red signals of Indian history come in the seats of power and decide on policies about education, defence, law and order and administration. This rot has begun already but it may not be too late. Can we really have *national minded* leaders without having English as the medium for higher education in all universities of India? We have to learn much before English can be set aside.

Letter to the Editor

Sir: As a close observer of the Indian scene for nearly 40 years and the servant of the Indian people for nearly 60, I would ask men and women of goodwill devoted to the public interest to consider whether : (a) Mr. G. D. Birla's example and influence had no connection with the deservedly low reputation of Indian business today; (b) Mr. G. D. Birla's example and influence had no connection with the deservedly low reputation of India's political and governmental behaviour at the present time.

Yours faithfully,
A. D. Gorwala

In a controlled economy such as ours, how can one gauge the reputation of business? When every essential product, service and commodity required to start and run a business is directly or indirectly controlled by government, how is a businessman to function? And when it is

an unwritten—and sometimes written—policy to manipulate business to fill political parties' and individuals' coffers, can we expect business to refuse compliance?

From cooking gas cylinders to bank loans, from cement to telephones, the government determines who gets what, when and at what price. And government does not decide these issues on merit alone. The businessman who refuses to adapt to the realities of the situation would soon be out of business.

In such environs how does one define business ethics? Can one sit in judgement on business in terms other than financial? On a global scale what is considered ethical in one country would be looked upon as an unfair practice in another country. So finally the reputation of Indian businessmen will be determined not by their methods alone but their profitability, market value, assets and revenue.

A Bedbug Gives Thanks

Ruskin Bond

I'm a child of the Universe
Claimed the bug
As he crawled out of the woodwork.
I've every right
To be a blight.
To Infinite Intelligence I owe
My place—
Chief pest
Upon the human race!
I'm here to stay—
To feast upon their delicate display,
Those luscious thighs,
Those nooks and crannies
Where the blood runs sweet.
No, no, I don't despise
These creatures made for my delight.
A kind Creator had my needs in
mind...
I thank you, Lord, for human-kind.