

MILESTONES after MIDNIGHT

Mitta, Manoj
The Times of India (1861-); Aug 14, 2010; ProQuest Historical Newspapers: The Times of India
pg. 23

ROAD TO REPUBLIC

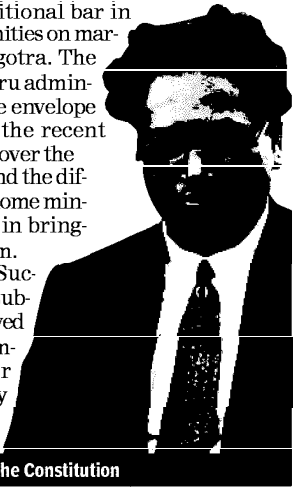
1 The promulgation of the Constitution, 29 months after Independence, was indeed the first major freedom milestone. For, it had more than turned India into a Republic on January 26, 1950. Through a chapter on fundamental rights, the Constitution introduced a range of liberal values, not all of which could have possibly been traced to our own ethos by even the most jingoistic patriots. Nothing could have been, for instance, more alien to our caste-ridden society than the very notion of equality. For the millions steeped in religiously sanctified caste inequities, the upfront references in the Preamble to liberty, equality and fraternity must have seemed deeply subversive. And the provision abolishing untouchability drove home the implications of importing those western notions. Other far-reaching changes brought about by the Constitution included expressly guaranteed freedoms such as the right to free speech and expression and conferring special rights on minorities.

LAND EQUITY

2 The big political policy battle in the first three decades of independent India was to deal with the concentration of ownership or control of land in a few landlords and their intermediaries. The Jawaharlal Nehru government introduced the Ninth Schedule in the Constitution in 1951 in order to insulate land reforms from legal challenge. The driving philosophy of giving land to the tiller was not only socially equitable but also more conducive to boost agricultural productivity.

HINDU CODE

3 Besides serving as the chief architect of the Constitution, dalit leader BR Ambedkar made the blueprint for reforming Hindu personal laws. There was such resistance to it from the saffron brigade that the Hindu Code could be enacted only piecemeal, that too staggered across 1955-56 well after Ambedkar had resigned in despair. Hindus were suddenly liberated from the retrograde tenet that marriage was an indissoluble sacrament. The Hindu Marriage Act 1955 for the first time provided for divorce. In another significant reform, it disregarded the traditional bar in some regions or communities on marriage within the same gotra. The extent to which the Nehru administration had pushed the envelope could be gauged from the recent spurt in honour killings over the intra-gotra marriages and the difficulties being faced by home minister P Chidambaram in bringing a law to combat them. Besides, the Hindu Succession Act 1956 and its subsequent amendments paved the way for parity in family property rights for women in a notoriously patriarchal society.



B R Ambedkar: Architect of the Constitution

LIMITS ON LEGISLATURE

4 The judgment delivered by a 13-member bench — the biggest ever — in the Kesavananda Bharati case in 1973 led to the first ever supercession of judges in the appointment of the Chief Justice of India. The provocation was the basic structure doctrine enunciated by the Supreme Court setting limits on the extent to which Parliament can amend the Constitution. Though the Kesavananda Bharati verdict came in the context of Indira Gandhi's socialist overdrive, the basic structure doctrine — which is by far the most important and original contribution made by the Supreme Court — could serve as a safeguard to maintain the essential character of the Constitution. Since secularism, for instance, has been held to be part of the inviolable basic structure, there is little scope to tamper with it even if BJP were to come to power on its own strength.

MILESTONES after MIDNIGHT

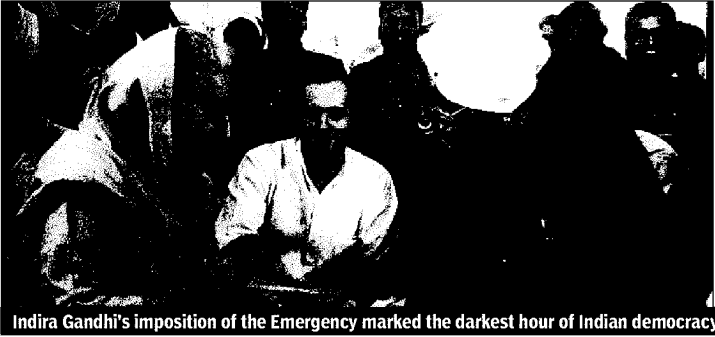
India gained political independence on August 15, 1947. But there were many more freedoms that were won, bit by bit, over many years. Some were the result of executive decisions, others were gained through legislative or judicial intervention. But all of them played a major role in helping to shape India as a liberal democracy. Manoj Mitta picks 10 major landmarks on the road to liberty



GAY DAY The matter is pending in the Supreme Court, which is why we didn't include it in our 10 milestones. But there's no denying that the Delhi high court's verdict on July 2, 2009, amending a 149-year-old colonial era law — Section 377 of the Indian Penal Code — and decriminalizing consensual sex between adults of the same gender certainly marked a historic day in the struggle for gay rights in India

EMERGENCY EXIT

5 One of the casualties of the Emergency was the most basic of the fundamental rights, the right to life and personal liberty. In a shame it has never been able to live down, the Supreme Court upheld the government's power to suspend Article 21. This was at a time when Opposition leaders were all in jail and the media was subjected to censorship. And when Indira Gandhi extended the term of Lok Sabha by a year, it raised apocalyptic fears about the future of democracy in India. So when Mrs Gandhi, confounding all expectations, lifted the Emergency and held elections in March 1977, the nation embraced its new-found freedom with vengeance. It provided the impetus for India to get its first non-Congress government, which was headed by Morarji Desai. As a corollary, the Desai government undid many of the undemocratic aspects of the infamous 42nd Amendment enacted during the Emergency.



Indira Gandhi's imposition of the Emergency marked the darkest hour of Indian democracy

JUDICIAL INNOVATION

6 It took about three decades for the judiciary to make one radical departure from the Anglo-Saxon jurisprudence inherited from the colonial rule. The breakthrough lay in recognizing the Indian reality that a vast section of the population did not have the resources to approach the courts for enforcing their fundamental rights. In a bid to reach out to such needy people, the Supreme Court diluted the inherited principle of locus standi so that others can take up their cause in the form of what has come to be recognized as "public interest litigation". This whole innovation of letting somebody who has not been personally affected espouse a cause in public interest began with the landmark Hussainara Khatoon case in which an activist lawyer Kapila Hingorani secured the release of undertrials who had had been languishing in Bihar jails for periods longer the maximum sentences they could have got in the event of conviction. Over the years, PIL grew into a force for the good in diverse fields such as human rights, environment, probity and social welfare. The increased accountability prompted the government recently to come up with a policy of reining in PIL, taking advantage of its occasional misuse.

PRESIDENTIAL INTERVENTION

7 The first time the President ever differed with the government on any legislation was when Rajendra Prasad came out on the side of reactionaries in opposing reforms to Hindu personal laws. But, three decades later, there was a Presidential intervention to protect a cherished freedom: Giani Zail Singh thwarted the Rajiv Gandhi government's move to encroach on the privacy of citizens through a Bill empowering it to intercept postal communications indiscriminately. Since he would have been obliged to sign the Bill had it been passed again by Parliament, Zail Singh, in an activist interpretation of the Constitution, never returned the offending legislation to the government. He sat on it for the remainder of his term. His successor R Venkataraman strengthened the case against the postal Bill by making the government seek the opinion of the Attorney General on its constitutional validity. Fortunately, unlike the recent incumbents of that office, the then Attorney General K Parasaran displayed enough independence to hold that the Bill was unconstitutional. Subsequently, Prime Minister V P Singh went out of his way to give that illiberal Bill a quiet burial.

ACTING AGAINST CASTE ATROCITIES

8 Though the Constitution outlawed untouchability, it was not until 1989 that India got a law specifically dealing with violent manifestations of this socio-religious menace. The Caste Atrocities Act has been tremendously empowering to dalits, for all the indifference betrayed by the police and judiciary in most cases.

ECONOMIC REFORMS

9 In 1989, the Rajiv Gandhi government amended the Representation of the People Act making it mandatory for all political parties to swear by, among other values, socialism. Barely two years later, the next Congress administration, which was headed by P V Narasimha Rao, jettisoned socialism in all but name when it ushered in economic liberalization. While the immediate provocation was to tide over a foreign exchange crisis, economic reforms have come to stay irrespective of the electoral fortunes of successive governments. The demolition of the licence-permit-quota regime unshackled entrepreneurial talents in various fields. This in turn earned India the reputation of transforming into the fastest growing economy after China. So, although all political parties continue to affirm faith in socialism under Rajiv Gandhi's amendment, nobody talks any longer about nationalization or state ownership of industry, the stated reason for the insertion of that shibboleth in the Preamble of the Constitution during Indira Gandhi's Emergency.



Prime Minister P V Narasimha Rao at a press conference in 1991

TRANSPARENT GOVERNANCE

10 No list of freedom milestones of India can of course be complete without the transparency revolution wrought by the 2005 Right to Information Act. A whole tribe of RTI activists have sprung up across the country, holding to account every institution of governance, much to the discomfort of even the Supreme Court.