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FIRST
MEMORIAL
LECTURE
IN MEMORY OF
SHRI MAGUNTA SUBBARAMA REDDY

DEMOCRACY AND HUMAN RIGHTS

Justice P.N. Bhagwati

INDIAN INSTITUTE OF FOREIGN TRADE
NEW DELHI

Justice P.N. Bhagwati, former Chief Justice of India, is Vice-Chairman, UN Human Rights Committee, Geneva. He has been an ardent advocate of human rights. Under his leadership, the Indian Supreme Court developed a comprehensive human rights jurisprudence for India. He is closely connected with a large number of NGOs, both in India and abroad. Justice Bhagwati is the Chairman, South Asian Task Force on Judiciary and Vice-Chairman of EL Taller, an International Human Rights Development Organization based in Tunis. He has been a member of the Committee of Experts of the ILO for over 15 years. He has carried out several missions for the UN Centre for Human Rights, the Commonwealth Secretariat and the International Commission of Jurists. His services have been immensely utilized by several countries, including Mongolia, Cambodia, Nepal and South Africa in framing their Constitutions and particularly the Chapters on Human Rights. He has also participated in numerous workshops organized by lawyers and judges on the subject of human rights and has evinced keen interest in the area of women human rights.

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FOREWORD

A large number of countries worldwide are passing through a phase of transition from authoritarian rule to democratic government and command economies to market led economies. Suitable support systems predicated on true spirit and values of democracy encompassing protection of human rights is a *sine qua non* to transform these processes into a healthy political environment congenial for a dynamic, free and truly democratic society on a sustainable basis. This presupposes a synergic effort to build a pluralistic institutional structure, determination to respect the "Rule of Law" and assiduous protection of human rights and, more importantly, a profound commitment towards implementation of the right to freedom of expression and opinion.

Democracy and human rights are core values in the Indian Constitution. They have emerged as the basic common values essential to underpin any world order. But the task of achieving and sustaining democratization, both within nations and at the international level and preserving and protecting of human rights of people in complex and pluralist societies facing terrorism, secessionism and social exclusion is indeed daunting. The need to debate these issues to diffuse ideas which should be of value and relevance in deepening democratic processes and values in the country, is paramount. The universality of human rights—economic, social, political and civil is recognized. But the importance of cultural, socio-economic and political milieu in securing these rights cannot be ignored. The principle of "Any Thing Goes" should stop short on sanctity and value of human life and the unfettered development of individual potential and self-actualization.

To establish a dynamic, pluralistic and open society, the interdependence of democracy and human rights requires to be recognized and reinforced. Realizing the overwhelming importance attached to the theme "Democracy and Human Rights"

in the context of globalization and liberalization, the Indian Institute of Foreign Trade decided to organize a series of thematic lectures in memory of the Late Shri Magunta Subbarama Reddy, an able parliamentarian and a mass leader, who always espoused the causes of democracy, social justice and protection of human rights. The first lecture in the series was delivered by the doyen of Indian Judiciary System Justice P.N. Bhagwati—an internationally acclaimed advocate of human rights. The Institute thought it fit to publish the lecture in the form of an Occasional Paper considering the relevance of the theme and the profundity of the speech.

The paper captures the true essence of democracy and highlights the criticality of sustaining democracy to protect and preserve human rights. The paper has further dealt with a set of human rights recognized and enforced by the Supreme Court for strengthening the democratic structure of our polity and ensuring "Rule of Law". The paper also points out how important it is to foster a strong legal system in defence of and in favour of the promotion of human rights. It further highlights the challenges ahead which require to be addressed and efforts required on the part of the community including the government, civil society and various other organizations constituting the system. As Pandit Jawaharlal Nehru said "Freedom is in peril, and we should defend it with all our might". Indeed eternal vigilance is the price we have to pay for protection of human rights.

I believe that the paper will be of great relevance and interest to all the friends of democracy. We, in the IIFT, ardently hope that it would not only promote informed discussion but also stimulate new ideas on this issue of crucial contemporary relevance.

Dr. P.L. SANJEEV REDDY
DIRECTOR GENERAL

New Delhi
December 1997

DEMOCRACY AND HUMAN RIGHTS

Justice P.N. Bhagwati

I AM thankful to the members of the family of Shri Magunta Subbarama Reddy for inviting me to deliver the 1st Memorial Lecture to pay tribute to the memory of Shri Magunta Subbarama Reddy. I had occasion to know Shri Magunta Subbarama Reddy quite well in my capacity as a Member of Shri Sathya Sai Central Trust. He was an industrialist and entrepreneur who built up an industry through his effort and dynamism, but his restless spirit did not find contentment only in industry and business. He distinguished himself in various other walks of life. He participated in the public life of the country and entered the political life of the country as a Member of Parliament. He also contributed in a large measure to educational institutions and took part in various philanthropic and charitable activities. He had multifarious interests and whatever activity he undertook, he distinguished himself in it. He applied himself with equal vigour and dedication to whatever he undertook. That is why though coming from humble beginnings, he rose to be a well-known public figure and industrialist. He had to give up his college education to take up business at the young age of eighteen in order to help his family. By the age of thirty-two he had emerged as a leading businessman in his home town by taking up an innovative venture of building three large and modern cinema halls at a single place, a concept in vogue at that time only in foreign countries. Starting with this venture, he proceeded from success to success and set up a large brewery and distillery and also built up Balaji Industries Group which covered many varied industries. But, as I said before, his interest did not lie in merely amassing wealth, he felt that he owed a debt to society and that he must return to society what it had given to him. He was a deeply religious man, but his religion was religion of love and service. He believed that service to man is service to God.

He was tireless in his efforts to serve the people in every possible way and he possessed tremendous drive and enormous energy. He had a brilliant future before him, but, unfortunately, in the prime of life, he was taken away from our midst by the hands of an assassin. It is in order to pay homage to his memory that this series of lectures has been instituted. I feel privileged to have been the first to have been invited to inaugurate the series by delivering the first lecture.

The subject on which I am going to speak to you today is democracy and human rights. What is democracy, what is its true meaning and content and how necessary it is for sustaining democracy to protect and preserve human rights? Democracy is government of the people, by the people, for the people. Every citizen must have the right to vote and subject to any age or other relevant qualification, the right to stand for election. This is a basic right in a democracy which is guaranteed by Article 25 of the International Covenant of Civil & Political Rights and to which I shall refer a little later. But democracy does not mean merely the right to vote and send representatives to the Parliament or the Legislature. It includes much more. It postulates multiplicity of parties and a politically aware electorate which can make an intelligent choice between the parties on the basis of their political ideology and manifesto. If the electorate is not politically aware, and is guided by consideration of race, religion, creed or colour or ethnicity, democracy can go off the rails. The people must be the subject of politics and not the object. The spirit of democracy must inspire and motivate the people. Moreover, democracy, in order to be real and effective, must become participatory, where people take part in the making of decisions which affect their lives. There must be debate and discussion in regard to policies and programmes, not only in Parliament or Legislature, but also amongst the people. The responsibility of the people in a democracy does not end by participating in periodic elections. They have to actively participate through influencing decisions of their representatives. They have to create public opinion and exert pressure on the Government to take the right decisions. That is why it is absolutely essential that there should be complete

transparency in actions of the Government and people should have the right to information without which they cannot participate in the process of the Government. There must also be freedom of speech and expression and it is for the Judiciary to ensure that this freedom is observed and respected by the Executive and the Legislature. This is not only the right but also the solemn obligation of the Judiciary in a democracy. I shall develop this aspect of the judicial function shortly.

Now in a democracy there are broadly three checks on executive power. These checks are necessary because it is not unoften that the politicians and the bureaucrats, flushed with power tend to abuse or misuse power or exceed the power conferred upon them by the Constitution or the law or use power for an improper or illegal purpose as Lord Action said: "Power corrupts and absolute power corrupts absolutely". Of these three checks, the *first* is the electoral check which is political in nature. It requires the wielders of power to seek re-election at the end of a specified period, may be four or five years and gives an opportunity to the electorate to decide, having regard to the past performance, whether to re-elect the same wielders of power or not. But this check is, by its very nature, ineffective because it operates long after the specific executive action complained of is taken that many imponderable factors influence the result of the elective process and moreover it does not give any remedy to the individual affected by such executive action. The *second* is the legislative check. The Executive is answerable to the Legislature and theoretically, therefore, the Legislature can control executive action by calling upon the Executive to account for it. But this check has, in many countries, become illusory, because, firstly, it is not uncommon to find, particularly in developing countries, that for various reasons including charismatic leadership, the legislative control has become considerably diluted and it is the Executive which in practical reality controls the Legislature, and the legislature has become the *de facto* agent and facilitator of executive power, and, secondly, having regard to the large number and manifold diversity of executive actions, it is not possible for the legislature to scrutinize each executive action for

determining whether it involves abuse or misuse or excess of power, even if it were brought to its notice. The *third* check which is judicial check, therefore, becomes extremely important. It has the merit of inviting scrutiny by an independent body of persons who are outside the political arena and who are well versed in law and can be expected to bring to bear objective and unbiased scrutiny in the examination of the executive actions challenged before them and to afford effective relief to the individuals affected by such executive action. It is to the Judiciary that is entrusted the task of keeping every organ of the State within the limits of the power conferred upon them by the Constitution and the law. The Judiciary is enjoined by the Constitution to curb and control abuse or misuse or excess of power by the State or what I may call in other words "State lawlessness". It is this judicial check on executive action that constitutes the core or the essence of the rule of law which is essential to preserve the democratic way of life.

There are several human rights which are enumerated in Part III of the Constitution. They are largely drawn from the Universal Declaration of Human Rights and they impose limitations and restrictions on executive as well as legislative power. These human rights embodied in Part III of the Constitution have been elaborated by the Supreme Court of India by a process of judicial creativity so as to accord with interest human rights norms which are to be found in various international human rights instruments adopted by the United Nations subsequent to the Universal Declaration of Human Rights. It is a long story how the Supreme Court expanded the reach and content of human rights embodied in Part III of the Constitution. But this is not the occasion to narrate it. I will deal only with a few important human rights recognized and effectuated by the Supreme Court with a view to strengthening the democratic structure of our polity and enforcing the rule of law.

One human right to which I attach the greatest importance is free speech and expression, without which indeed no democracy can survive and that is guaranteed by Article 19 of the

International Covenant of Civil & Political Rights and Article 19(1)(a) of the Constitution. It is a distinctive characteristic of democracy that nothing in its social or political life is immune from criticism and it establishes and protects institutions whose purpose is to subject the existing order of things to study and examination. This process of self-examination has certain special features. It is conducted in the open. All members of the community are presumed to be free to engage in it and all are held to be entitled to true information about the state of their society. Moreover, in a democratic society, such public criticism has immediate and practical objectives. A commitment to democracy is, therefore, a commitment to an open society. Democracy accepts its own fallibility, but provides a method by which its mistakes can be corrected, and that method is exposed to continuous debate and criticism. The right of free speech and expression is, therefore, most essential to the maintenance of democratic way of life, and the courts have always been very zealous to uphold it.

Two hundred years ago in England, a letter-writer called Junius wrote an article criticizing the Government of the day in the course of which he remarked that the sovereign did not know the language of truth. As a consequence, the newspaper which published Junius' letter was prosecuted for seditious libel before Lord Mansfield and a jury. Lord Mansfield told the jury that the question of libel was for the judge alone. All that the jury had to say was whether the words complained of were in fact printed and published. If they were, the jury had no option but to find the newspaper guilty of the offence. This was in effect a direction to the jury to find the newspaper guilty. But the jury were not so easily to be intimidated, and after more than five hours' consideration, they came back with a verdict of "Not guilty". It is said that the hurrahs and huzzhas reverberated across the metropolis until they reached the ears of the learned Judge himself in his residential house. That verdict established the freedom of the press—the freedom of speech—in England to criticize the Government of the day.

That great Judge, Mr. Justice Holmes, said in his famous dissent in Abrams *vs.* United States (250 US 616 (1919) which has been ranked by some legal writers "besides the Gettysburg Address" of Abraham Lincoln:

> "But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution—I think that we should be eternally vigilant against attempts to check the expression of opinion that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country."

In India too, we have always cherished the right of freedom of speech and expression as one of the valued rights under the Constitution. In a case which arose about five or six years ago, a book called "Extracts from Mao-tse-Tung" was banned by the Government of Gujarat on the ground that it contained seditious matter, a Division Bench of the Gujarat High Court presided over by me held the ban to be illegal and in the course of the judgement, I observed:

> "These passages expound the philosophy of Mao-tse-Tung with a view to its academic study and they cannot possibly by any stretch of language be regarded as seditious. To condemn them as seditious would be to close the doors of knowledge, to ostracize a philosophy because it challenges values cherished and held dear by our present-day society and holds up for acceptance a new way of life vastly different from that to which our people are presently accustomed. It is not for the Government of the day nor for the Judges presiding over our courts to decide what doctrine or philosophy is good for our people. It is for the people to choose what is best for them and in order that they may be able to make a wise and intelligent choice, free propagation of ideas is an essential requisite. The ideas propagated may be unorthodox and unconventional; they

may disturb the complacency of a handful minority or they may challenge deep seated, sacred beliefs and question the most fundamental postulates of our social, political or economic thinking. There should be no ground for anxiety or apprehension, particularly in a country like ours which has always believed in the pursuit of truth and in its unending search for truth, never hesitated to receive new ideas and absorb them, if found acceptable."

"There can indeed be no real freedom unless thought is free and unchecked, not free thought for those who agree with us but freedom for the thought that we hate. It is only from clash of ideas that truth can emerge, for the best test of truth is the power of the thought to get itself accepted in the competition of the market. If, therefore, the publisher of this forfeited book wants to propagate the philosophy of Communism as expounded by Mao-tse-Tung amongst the people, there is no reason why he should not be free to do so. Let the people decide what doctrine or philosophy they wish to adopt. We have great faith in the commonsense of our people and we have no doubt that with the sound unerring instinct which has guided them over the years, our people will choose a doctrine or philosophy true to their genius and reject the rest. If the people want to adopt the philosophy of Communism as expounded by Mao-tse-Tung, confiscation of a book like this is not going to stop them from doing so. The reasons for their choice would be much deeper and if the Government wants to repeal the onslaught of Communist ideology, it is to an elimination of these reasons that the Government may well address itself rather than proscribe a book like this which propagates the principles and practice of Communism as expounded by one of its chief exponents, with a view to their academic study by the people."

The Supreme Court has also upheld the right of free speech and expression in numerous decisions—Sakal Papers (P) Ltd.*vs.* The Union of India (1962) 3 SCR 842), Bennett Coleman & Co.*vs.* Union of India (1973) 2 SCR 757) and Maneka Gandhi*vs.* Union of India (W.P. 231 of 1977 decided on 25th January 1977).

The right of free speech and expression includes within its broad sweep freedom of the press and indeed the latter is an integral and inalienable part of the former. The importance of

the right to freedom of the press has been emphasized over and over again both by writers, judges in India as well as in other countries. The Supreme Court of India pointed out in Romesh Thapar's case (1950) SCR 594 at page 602 that freedom of the press lies at the foundation of all democratic organizations, for free political discussion, no public education, so essential for the proper functioning of the process of popular government, is possible. A freedom of such amplitude might involve risks of abuse .... But it is better to leave a few of its noxious branches to their luxuriant growth, than by pruning them away, to injure the vigour of those yielding the proper fruits.

So also in Bennett Coleman & Co.'s case (1973) SCR 757 A.J. Ray C.J. on behalf of the Court said at page 996:

> "The faith of a citizen is that political wisdom and virtue will sustain themselves in the free market of ideas so long as the channels of communication are left open. The faith in the popular government rests on the old dictum `let the people have the truth and the freedom to discuss it and all will go well'. The liberty of the press remains an 'Ark of the Covenant' in every democracy ..... The newspapers give ideas. The newspapers give the people the freedom to find out what ideas are correct."

In the very same case, Mathew J. quoted with approval of the following statement from the judgement of the US Supreme Court in Time Inc. *vs.* Hill 385 US 374:

> "The constitutional guarantee of freedom of speech and press are not for the benefit of the press so much as for the benefit of all the people and pointed out that in Riswold *vs.* Connecticut 381 US 479, the US Supreme Court was of the opinion that the right to freedom of speech and press includes not only the right to utter or to print but the right to read."

Mathew J. then proceeded to observe at page 819 in his judgement:

> "Under Article 41 of the Constitution the State has a duty to take effective steps to educate the people within limits of its available economic resources. That includes political education also.

> Public discussion of public issues together with the spreading of information and any opinion on these issues is supposed to be the main function of newspaper. The highest and lowest in the scale of intelligence resort to its columns for information. Newspaper is the most potent means for educating the people as it is read by those who read nothing else and, in politics the common man gets his education mostly from newspaper."

It will thus be seen that freedom of the media is an essential part of freedom of speech and expression and it includes its scope and is in fact sustained by freedom to impart, receive and seek information and ideas. These freedoms which may broadly be described as communication freedoms are vital for the realization of human rights. Extension of these communication freedoms to broader individuals and collective right to communicate is an evolving principle in the democratization process. It is obvious that the right to impart information is a necessary concomitant of the freedom of the press. However, much has been said on this subject. I need not reiterate what has been ably said by others. Suffice it to state that the right to impart information is an essential part of the right to freedom of speech and expression and is guaranteed under all International Human Rights Instruments. It includes the right to impart information not only through print media, but also through electronic media such as broadcast on radio and television. There have been several decisions of the European Court of Human Rights, as also of the High Courts in India upholding this right to impart information.

But what I consider to be of supreme importance in a democracy is the right to receive information and ideas which is guaranteed by the International Covenant on Civil & Political Rights as well as by the Constitutional mandate of free speech and expression. In contemporary society, freedom to express opinions is no longer enough. Because of the social role of information, because of the needs of democratic government, the right of everyone to receive information and ideas also has to be protected. This is more than just a corollary of the right of another individual to impart information. It is not simply a converse of the right to impart information, but it is a freedom in its own

right. That is why freedom of expression as developed and understood in Article 19 of the International Covenant on Civil & Political Rights covers both the right to impart information and ideas as also the right to receive such information and ideas. So also freedom of expression. Article 10 of the European Convention on Human Rights includes not only the right to impart information but also the right to receive information and ideas. It has been held by the European Court of Human Rights in Ledandir *vs.* Sweden that this right is dependent upon there being a willing speaker. The court held in that case that "..... the right to freedom to receive information basically prohibits the government from restricting a person from receiving information that others wish or may be willing to impart him". But it does not confer on an individual "the right of access to a register containing information regarding his personal position". In other words, Article 10 does not confer the right to receive official information from a government department or agency. This would seem to suggest that the right to receive information does not include the right to seek information. But it may be noted that this decision of the European Court was based on the specific language of Article 10 which, unlike Article 19 of the International Covenant of Civil & Political Rights, does not expressly include the right to seek information as an integral component of the rights of free speech and expression. Even so, I think that the European Court gave a rather narrow and restricted interpretation to freedom of expression.

It may be noted that the right to seek information and ideas, as part of freedom of expression, is expressly recognized by Article 19 of the International Covenant of Civil & Political Rights. But the right to seek information is not expressly mentioned in Article 19(1)(a) of the Indian Constitution just as it is not mentioned expressly in Article 10 of the European Convention on Human Rights. The question which, therefore, arises is whether under Article 19(1)(a), the person concerned has the right to seek information. One view is that the right to receive information also includes the right to seek information from all generally accessible sources but such a right does not imply that the

authorities are under an obligation to provide information, on the ground that "freedoms" do not give rise to a right to positive State Action. The other view which is advocated by legal scholars is and I am inclined to agree with this view that having regard to the aim and effectiveness of Article 19(1)(a) of the Indian Constitution, and the same may also be said in regard to Article 10 of the European Convention on Human Rights, the right to seek information is clearly implied in this provision. Article 19 of the International Covenant of Civil & Political Rights, as pointed out above, specifically includes the right to seek information as part of the right to freedom of expression. It would, therefore, seem that domestic Courts, while interpreting the scope and ambit of the right to free speech and expression guaranteed under Article 19(1)(a) can invoke the international human rights norm embodied in Article 19 of the International Covenant of Civil & Political Rights and interpret the right to seek information or, in other words, the right to know. This mode of interpretation of national constitutions by reference to the international human rights norms with a view to internalizing international human rights norms into domestic jurisdiction, was strongly advocated at the recent judicial colloquium of Chief Justices of South Asian and South East Asian countries which was held in Bangalore in February 1988, under my Chairmanship, at the instance of the Commonwealth Secretariat. In fact, I observed in my judgement in S.P. Gupta *vs.* Union of India, a case which has now come to be known as Judge's Appointment and Transfer case, that the right to information is a direct emanation from the right of speech and expression. It is a component right embedded in the right of free speech and expression and is indicated in that right. The right to seek information or access to information is one of the most essential elements of freedom of speech and expression. Indeed freedom of speech and expression and, in particular, freedom of the press would be bereft of all effectiveness, if the press has no access to information, particularly governments held information. I may point out that democracy, to my mind, does not consist merely in electing representatives at the end of every five years, but it involves participation by the people in the democratic

process at all levels. If democracy is to become truly participatory, it must involve the people in all major decision-making processes that affect their lives. But the people cannot be involved in the participatory process unless they have the right to know the right to information. I am of the view that the right to information—or access to information, is basic to the democratic way of life. In fact, real democracy cannot function effectively without a free and unfettered exercise of that right.

This view was reiterated by the Working Group on right of information and promotion of open and transparent government set up by the Government of India where the Working Group observed:

> "It is now widely recognized that openness and accessibility of people to information about the government's functioning is a vital component of democracy. In all free societies, the veil of secrecy that has traditionally shrouded activities of governments is being progressively lifted and this has had a salutary effect on the functioning of governments. In most democratic countries, the right of people to know is now a well established right created under law. It is a right that has evolved with the maturing of the democratic form of governance. Democracy is no longer perceived as a form of government where the participation of people is restricted merely to periodical exercise of the right of franchise, with the citizens retiring into passivity between elections. It has now a more positive and dynamic content with people having a say in how and by what rules they would be governed. Meaningful participation of people in major issues affecting their lives is now a vital component of the democratic governance and such participation can hardly be effective unless people have information about the way government business is transacted. Democracy means choice and a sound and informed choice is possible only on the basis of knowledge."

It is indisputable that a modern democracy embraces a wider and more direct concept of accountability—a concept that goes beyond the traditionally well established principle of accountability of the Executive to the Legislature in a parliamentary democracy. Increasingly, the trend is towards

accountability, in terms of standards of performance and service delivery, of public agencies to the citizen groups they are required to serve. Such accountability is possible only when public have access to information relating to the functioning of these agencies.

It is axiomatic that if we want democracy and the rule of law to become effective in protecting human rights abuse or misuse of State power we must have an open government. In the judges appointment case, I highlighted the need for open government to uphold the rule of law. I emphasized that where a society has chosen to accept democracy as cradle faith, it is elementary that the citizens ought to know what their government is doing. I reiterated "the citizens right to know the true facts about the administration of the country is thus one of the pillars of a democratic State and that is why the demand of openness in the government is increasingly growing in different parts of the world" including India. If there is an open government where means of information are available to the people, there would be greater exposure of the functioning of the government and exposure to public gaze and scrutiny is the surest means of achieving a clean and healthy administration. The Working Group observed: "Transparency and oppenness in functioning have a cleansing effect on the oppenness of public agencies. As has been aptly said sun light is the best disinfectant."

It is, to my mind, absolutely imperative that we must have Freedom of Information Act which would guarantee to a citizen the right to demand information from the government or its officers and agencies. There is such a law in the United States called The Freedom of Information Act. The US law itself is only one of similar laws that have existed in countries such as Sweden, Denmark, Norway, Austria, France, the Netherlands, Australia, Canada and New Zealand. It is a matter of great satisfaction that the Government of India is proposing to enact a law on freedom of information on the basis of the draft submitted by the Working Group. I would strongly appeal to the Government not to delay the adoption of this law any longer.

It is, therefore, essential to have an Ombudsman or to use the Indian nomenclature, a Lok Pal, who would have power to investigate into misuse or abuse or excess of power by the government or its officers or agencies. The institution of Lok Pal can contribute in no small measure towards effectively checking and substantially eliminating corruption and improper exercise of power by the political masters of the public service. It is interesting to note that the institution of Ombudsman first originated in Sweden as far back as early 19th century when the post of Ombudsman was created for the purpose of overseeing the entire functioning of civil officers including public administrators, Central and local, Police and Prisons. This institution which originated in Sweden has gained wide acceptance in common law and non-common law of developed and developing countries. It is a positive step forward in establishing an open government securing responsibility for the rule of law and protecting human rights and developing a more coherent body of public law. It can build new equity jurisprudence and help in bringing renaissance in the working of a modern government.

I would, therefore, strongly urge that the institution of Lok Pal must be set up in the country. Every government which has come to power has talked eloquently about setting up the institution of Lok Pal, but no government has been bold enough to enact legislation for setting it up, presumably because the political bosses do not appear to be anxious to control the abuse or misuse of discretion on their part. I have my own doubt whether any government in India would be really anxious to have a strong and independent Lok Pal to look into the mal administration and misuse or abuse or excess of power by the government or its agencies. Unfortunately, functioning of every government in this country, whatever be its colour or complexion, is usually shrouded in secrecy and the citizen who aggrieved by any act of the executive hardly knows the reasons why any particular action prejudiced to public interest or adversely effecting his interest is taken up by the government. The setting

up of the institution of Lok Pal would be a healthy check on State lawlessness.

I think that my exposition of the subject of democracy and human rights will remain incomplete unless I refer to the innovative strategy of public interest litigation initiated by me in the Supreme Court. It was through intense judicial activism and judicial creativity that access to justice was broadened and the doors of the Court were thrown open to the poor and disadvantaged through the strategy of public interest litigation.

We are celebrating this year fifty years of our Independence and let me, therefore, end with the hope that in the years to come we will be able to turn our attention to improving the life conditions of the poor and the oppressed, the have-nots and the handicapped and wipe tears from the eyes of our fellow-beings.

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