If there are any more ordinances, just ask them to wait.
**Farewell***

In our first editorial we made the point that our function was to make our readers laugh—at the world, at pompous leaders, at humbug, at foibles, at ourselves. But, what are the people who have a developed sense of humour? It is a people with a certain civilised norms of behaviour, where there is tolerance and a dash of compassion. Dictatorships cannot afford laughter because people may laugh at the dictator and that wouldn’t do. In all the years of Hitler, there never was a good comedy, not a good cartoon, not a parody, or a spoof.

From this point, the world and sadly enough India have become grimmer. Homour, whenever it is there, is encapsuled. Language itself has become functional, each profession developing its own jargon. Outside of the society of brother-economists, an economist is a stranger, floundering in uncharted territory, uncertain of himself, fearful of non-economic language. It is the same for lawyers, doctors, teachers, journalists and such-like.

What is worse, human imagination seems to be turning to the macabre and the perverse. Books and films are either on violence or sexual deviations. Nothing seems to awaken people except unpleasant shocks. Whether it is the interaction of the written word and the cinema on society or not, society reflects these attitudes. Hijackings, mugging in the dark, kidnappings and plain murder are becoming everyday occurrences and sometimes lend respectability by giving it some kind of political colouration.

But "Shankar’s Weekly" is an incurable optimist. We are certain that despite the present situation, the world will become a happier and more relaxed place. The spirit of man will in the end overcome all death-dealing forces and life will blossom to a degree where humanity will find its highest purpose discharged. Some call this God. We prefer to call it human destiny. And on that thought we bid you good-bye and the best of luck.

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FOUR MPs DETAINED AT BANGALORE

A. B. Vajpayee

Madhu Dandavate

Shyam Nandan Mishra

L. K. Advani
OUR COUNSELS

M. C. Chagla

Rama Jois

Shanti Bhushan

Venu Gopal

N. M. Ghatate

Santosh Hegde
UNDERGROUND LEADERS

Nana Deshmukh

George Fernandes

Dattopant Thengadi
UNDERGROUND LEADERS

Madhavrao Muley

Ravindra Verma

Sunder Singh Bhandari
Foreword

The emergency bore out the truth once again of the prison being the only place for a free man in a tyranny. The naked repression of 1975–77 showed how we had not only lost our seven fundamental freedoms which we had won after a long and arduous struggle but had also lost all avenues of legal redress against arbitrary detentions, forfeitures and other excesses. The Emergency, which was itself the result of a thirst for unbridled personal power, had sought to punish even the mildest of attempts at the exercise of the right to dissent.

Gandhiji had taught us to resist invasion on our liberty and dignity and to use the term in prison as an opportunity to strengthen the will to resist. The Emergency and the days immediately preceding its declaration, enabled a large number of our colleagues in politics to realize the perennial truth of Gandhiji’s teaching. We had a new generation of satyagrahis.

Prison is meant to be a punishment. But the satyagrahi converts it into a challenge for deepening his political faith and his personal capabilities. Fellowship in prison enabled the detenus to ponder over what the nation needed and inevitably prepared them to work for the formation of a single, viable opposition party. The efforts to form such an alternative party had long been frustrated. But the cussedness of the then Government made it a reality. Thus in life we find that out of evil doth come good.

Shri Advani spent nineteen months in prison. He was arrested in Bangalore where he had gone to attend a meeting of a Parliamentary Committee. In fact he had the strange experience of being told that he had been arrested even before the Emergency had actually been proclaimed. Except for a few days he spent the entire period in the Bangalore prison. He had the good fortune of having congenial companions in prison, as well as a militant band of younger persons with whom to exchange political ideas. This could by no means be a compensation for the loss of liberty.

The diary reveals a person of singular honesty and dedication, culture and equanimity. It depicts the burning faith with which he withstood the consequences of
governmental trickery, and his passions as an editor, for the freedom of the Press and the mass media. The pamphlets that he wrote for use of the underground which are included in this book show the quality of his learning and are a fine example of political journalism. It is typical of Shri Advani’s modesty that he calls it a ‘scrapbook’.

The book, I am sure, will prove to be an important addition to the Library of our second liberation.

New Delhi,
April 7, 1978

(Morarji Desai)
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NOT PROPERTY, BUT DEMOCRACY IS HER BUGBEAR

by

A Detenu

(February, 1976)
We must respect the Judiciary, the Supreme Court and other High Courts in the land. As wise people, their duty is to see that in a moment of excitement, even the representatives of the people do not go wrong. In the detached atmosphere of the Courts, they should see to it that nothing is done that may be against the Constitution. It is important that judges should be people of the highest integrity, if necessary people who can stand up against the Executive Government and whoever may come in their way.

JAWAHARLAL NEHRU
At its Chandigarh conference, the ruling Congress has called for a second look at the Constitution.

None of the opposition parties has any quarrel with this proposal. In fact, if one were to go through the election manifestoes of various political parties in the 1971 poll, one would find that it is some of the opposition parties which have committed themselves to constitutional reform, and not the ruling party. The Socialist party, for instance, favoured the convening of a new constituent assembly, while the Jana Sangh advocated setting up a commission on the Constitution.

It is our charge that the ruling Congress has never been earnestly interested in constitutional reform. When its spokesmen speak of constitutional change, they do so for two ulterior purposes—one negative and the other positive.

The negative purpose is to project the Constitution as a scapegoat for the Government’s own failure on the economic front. Their positive interest in raising this issue is to create a propaganda smokescreen behind which democracy can be destroyed, and an authoritarian polity set up in its place.

For years, the Supreme Court’s judgment in the Golak Nath case was being flaunted as a major roadblock on the path of progress. By this judgment the Supreme Court had declared that Parliament had no right to abrogate or abridge any of the Fundamental Rights.

One of the Fundamental Rights under our Constitution is the Right to Property. As the judicial constraint on Parliament’s amending power protected the Right to Property also, the Government went hammer and tongs at the judgment, and maintained that all its progressive schemes had been hamstrung because of this judgment.

Then came the Twenty-fourth Amendment, seeking to undo the Golak Nath judgment. The Amendment conferred on Parliament the right to amend any provision of the Constitution including those related to Fundamental Rights.

During the debate on this proposal some opposition members who held that inclusion of the property right in the chapter of Fundamental Rights was in itself an initial error, objected to the sweeping powers sought to be acquired by Parliament by
this Amendment. They suggested that while Parliament may be empowered to abrogate or abridge Art. 31 pertaining to property, the other Fundamental Rights, such as, freedom of expression, freedom of religion, etc. should remain inviolable.

The validity of this Amendment was challenged. The case that ensued, the Keshavananda Bharati case, has now become a landmark in Indian Constitutional History.

The Court, however, did draw up a Lakshman Rekha—a thus-far-and-no-further limit. It held that, Parliament was not empowered to abrogate or emasculate any of the essential features of the Constitution.

The Keshavananda Bharati verdict was delivered in April, 1973. If the Government had honestly believed that the Right to Property was obstructing any of its welfare measures, it could have gone ahead and abrogated it without much ado. The highest judicial tribunal in the country had given it the necessary clearance.

The Government has done nothing of the kind. All that it has done during the three years since, is to unleash a fresh campaign projecting the Keshavananda Bharati judgment as the newest hobgoblin, holding back the economic bounties Indira Gandhi’s Government is yearning to shower on the people.

By a clever propaganda alchemy, Government has preserved in the public mind a link between Golak Nath, Keshavananda Bharati and property rights. It has thereby tried to create the illusion that by crusading against the Keshavananda Bharati judgment, it is only continuing its battle against property rights.

The fact, however, is that the issue of property is altogether irrelevant to the new context. According to the Golak Nath judgment, the Right to Property guaranteed under Art. 31 could not be repealed. It could not even be abridged. But after the Keshavananda decision, it can be scrapped altogether if Parliament so desires.

During the Keshavananda Bharati hearing, Government counsel were put searching questions from the Bench as to what exactly they meant when they claimed an unfettered amending power for Parliament. Government counsel were very frank and forthright in their replies. Summing up these replies, Justices Hegde and Mukherjee recorded in their joint judgment:

According to the Union and the States, that power, inter alia, includes the power to:

(1) destroy the sovereignty of this country and make this country the satellite of any other country.

(2) substitute the democratic form of government by a monarchical or authoritarian form of government;
(3) break up the unity of this country and form various independent States;
(4) destroy the secular character of this country, and substitute the same with a theocratic form of government;
(5) abrogate completely the various rights conferred on the citizens as well as on the minorities;
(6) revoke the mandate given to the state to build a welfare state;
(7) extend the life of the two Houses of Parliament, indefinitely; and
(8) amend the amending power in such a way as to make the Constitution legally, or at any rate practically, unamendable.

The Supreme Court very rightly refused to accept this contention. It felt that this was like empowering Government even to scrap the Constitution, if it could somehow manage the requisite majority in Parliament.

Justices Hegde and Mukherjee noted:

At one stage, counsel for the Union and the States had grudgingly conceded that the power conferred under Art. 368 cannot be used to abrogate the Constitution, but later under pressure of questioning by some of us they changed their position and said that by 'abrogation' they meant repeal of the Constitution as a whole. When they were asked as to what they meant by saying that the power conferred under Art. 368 cannot be used to repeal the Constitution, all they said was that while amending the Constitution, at least one clause in the Constitution must be retained; though every other clause or part of the Constitution including the Preamble can be deleted and some other provisions substituted. Their submission, in short, was that so long as the expression Constitution of India is retained, every other Article or part of it can be replaced.

On this aspect of the question, Justice Khanna, whose judgment became the decisive ratio for this case, made this very crisp observation:

...nor can Art. 368 (Article relating to the amending procedure) be so construed as to embody the death-wish of the Constitution or provide sanction for what might perhaps be called its lawful harakiri.

The Government of India has never been happy with this judgment. But, of late, it seems to have become totally exasperated with it.

Government's annoyance with the verdict was officially proclaimed when in
October last, Chief Justice A.N. Ray of the Supreme Court announced that in deference to a request made by the Attorney-General of India, he had decided to constitute a full Bench of the Court to review the Keshavananda Bharati judgment.

The announcement surprised everyone. To members of the Bar it appeared odd, to say the least, that a review Bench was being created only because the Government wanted it.

But if the constitution of the Bench was a surprise, its abrupt winding up just two days after the hearing commenced was an even greater surprise. It was a personal triumph for Nani Palkhiwala who was the main counsel for the petitioners in the Keshavananda Bharati case, and who at this hearing raised a preliminary objection that the review decision was uncalled for. He argued that it was against established precedent. The objection, brilliantly spelt out, hit the bull's eye.

A few days after this, Umashankar Dikshit a senior member of the Union Government (since kicked up to gubernatorial status) declared that if the present limitations on Parliament's power of amendments are not removed, a constituent assembly would have to be convened to frame a new Constitution. It sounded more like a threat than a statement.

Let it be clearly understood that the Government of India is angry with the Keshavananda Bharati decision not because it protects property (which it does not) but because it defends democracy (which it does).

The tirade against the Keshavananda verdict is not aimed at economic inequities; it is directed against democratic liberties. The present hullabaloo about constitutional change has nothing to do with the interest of the underdog; it betrays a concern for the security of the overlords.

The famous American critic James Russell Lowell has said very aptly about democracy:

Democracy has a habit of making itself generally disagreeable by asking the powers-that-be at the most inconvenient moment whether they are the powers-that-ought-to-be.

For Indira Gandhi, this most inconvenient moment arrived on June 12.

Before this, J.P. and the parties participating in his movement had been expressing the view that Indira Gandhi's Government was fast losing its legitimacy.

On June 12, the Judiciary in Allahabad and the ballot box in Gujarat simultaneously posed a very disagreeable question to the P.M. "Indira Gandhi, should you not quit?"

During the fortnight that followed, the same vexatious question reverberated in literally hundreds of editorial columns all over the country. Even papers traditionally
pro-Congress, who lamented that the Allahabad judgment was harsh, opined that so long as the judgment stands, Indira Gandhi should quit.

Indira Gandhi refused to quit. Instead, on June 25, she launched an operation aimed at making democracy quit.

Hitler had used the emergency provisions in the Weimar Constitution to foist a dictatorship on Germany. Indira Gandhi strode on the same path and adopted identical tactics.

With regard to the emergency provisions, the Weimar and Indian Constitutions are similar. In the Constituent Assembly, the veteran socialist leader H.V. Kamath, had drawn pointed attention to this disturbing similarity. But one important difference between the two is that while judicial review is an essential feature of the Indian Constitution, in the Weimar Constitution, this feature was altogether absent.

It might be noted here that Hugo Preuse, the father of the Weimar Constitution, had strongly pleaded for the inclusion of judicial review in the Constitution. But his view in this regard was not accepted. So, later, by a ruthless exercise of emergency powers, Hitler was able to bend the German Judiciary to his will as easily as he could subordinate the German Parliament, the political parties and the Press.

In India, on the other hand, by using its emergency powers Government has succeeded in stultifying Parliament, political parties and the Press; but the fourth institutional check on its authoritarianism namely, judicial review, continues to operate, be it though to a limited extent.

During the Emergency, the Executive becomes empowered to suspend the enforcement of any of the Fundamental Rights.

Availing of this power, the President has suspended four provisions: Art. 14 (Right to equality), Art. 19 (the seven-fold freedoms of expression, assembly, association, trade, movement etc.), Art. 21 (Protection of life and personal liberty) and Art. 22 (detenu’s right to be furnished grounds of detention etc.).

These provisions embody a citizen’s democratic liberties. Incidentally, it is significant that Art. 31, the provision guaranteeing Right to Property has not been suspended. And this, despite the fact that the present Emergency is sought to be continued on the pretext of carrying out the 20-point economic programme. This is glaring proof, if proof be needed, that Government is not a bit worried about property rights.

Ever since the proclamation of Emergency in June 1975, the watchword for all has been ‘Indira is India’. All limbs of the state have been required to honour this maxim scrupulously. Parliament itself did so when it dutifully passed the 39th
Amendment.

The 39th Amendment was an outrageous enactment. By this, Parliament arrogated to itself what was patently a judicial function and peremptorily declared the Allahabad High Court verdict on Indira Gandhi's elections as null and void.

The validity of this Amendment was tested in the Supreme Court. The A.I.R. and other Government media have trumpeted a lot that the Supreme Court had upheld Indira Gandhi's election. But the really important facet of the Supreme Court's judgment in Indira Gandhi's case was its striking down of the Constitutional amendment validating her election. The election was upheld on the basis of the changes made in electoral law.

The observations made by the Supreme Court about the 39th Amendment add up to a pointed rejection of the 'Indira is India' thesis. Justice Chandrachud observed:

I find it contrary to the basic tenets of our Constitution to hold that the amending body is an amalgam of all powers—legislative, Executive and judicial.

Whatever pleases the emperor has the force of law is not an article of democratic faith. The basis of our Constitution is a well-planned legal order....

Sharply reprimanding Parliament for this encroachment into the judicial domain, Justice Chandrachud wrote:

...The function of the Parliament is to make laws, not to decide cases. The British Parliament in its unquestioned supremacy could enact a legislation for the settlement of a dispute, or it could with impunity, legislate for the boiling of the Bishop of Rochester's cook. The Indian Parliament will not direct that an accused in a pending case shall stand acquitted or that a suit shall stand decreed; Princely India, in some parts, often did it....

Indira Gandhi must have been rudely shocked by this judgment. If she had the slightest inkling that this Amendment may be struck down, she would never have agreed to it. After all, by simply moving this Amendment, the Law Minister had ripped the mask off Indira Gandhi's pretence that the Emergency had nothing to do with the Allahabad judgment.

The Law Minister must have assured Indira Gandhi that the Constitutional Amendment was absolutely foolproof. He may have also pointed out to her that four out of the five judges hearing her appeal—Chief justice Ray, Justice Mathew, Justice Beg and Justice Chandrachud—were among the dissenting judges in the Keshavananda Bharati case. Gokhale's calculations went all awry, except in the case of Justice Beg.
By striking down a measure directly concerning Indira Gandhi, and in regard to which she had even risked world opprobrium, the Supreme Court clearly demonstrated that unlike Parliament, the Judiciary was not prepared to abdicate its responsibility, and to prostrate itself before the Executive.

The same bold awareness of the Judiciary's constitutional obligations has been evident at the High Court level as well.

In all cases arising out of emergency laws, the Government's stand has been that as Fundamental Rights have been suspended by the President under Art. 359, Courts cannot give relief to citizens, whatever be the nature of injustice which the Executive inflicts on them.

The Attorney-General put this point very strikingly in the Supreme Court when he argued that even if a MISA detenu is shot dead by an official to settle a personal score, Courts cannot intervene.

The Bombay High Court took judicial notice of a similar argument, advanced by Government counsel. In that case some detenus had challenged their conditions of detention. The Government counsel had argued that conditions of detention being merely different facets of personal liberty whose enforcement had been suspended, if the conditions of detention include a clause that detenus are not allowed to eat food, even such a clause could not be challenged during the Emergency.

Till now, neither the Supreme Court, nor any High Court, has accepted Government's preposterous contention.

The Allahabad High Court, in a forthright denunciation of the Government's stand, has said:

The learned Advocate-General has stated that (because of the Presidential orders under Art. 359) the right to personal liberty has come under eclipse, and that in the resulting darkness the Executive has become empowered to take any action it pleases.

This would mean a kind of darkness in which the spectre of Hitler would be stalking the land, terrifying people and toying with their lives, their reputation. The President could never have imagined that this would be the outcome of his orders under Art. 359 suspending enforcement by Courts of Articles 14, 21 and 22.

Court after Court has thus continued to intervene on behalf of civil liberties, and declared that suspension of Fundamental Rights enforcement by the President does not mean suspension of the rule of law.
In July, the eminent journalist Kuldip Nayyar was detained under MISA. The Government was angry that he had organised a meeting of pressmen to protest against the censorship. More than that, even after the Emergency, he had continued to write articles strongly criticising authoritarian trends be it in the context of Pakistan or America or other countries. The hint was too obvious to be missed.

Nayyar’s wife filed a *habeas corpus* petition in the Delhi High Court. At the hearing it came out that the official who had signed Nayyar’s detention order and who was supposed to have personally satisfied himself that his detention was imperative for the country’s security, was ignorant even of the fact that Kuldip was a journalist. Nayyar’s detention was declared illegal. The Delhi High Court thus became the first to strike a blow on behalf of citizens’ rights. The Government had been able to sense the Court’s mood during the hearing itself. So it tried to retrieve its position by releasing Nayyar four days before the judgment was due to be delivered and then plead with the Court not to pronounce judgment as the detenu had already been set free. The High Court refused to oblige, and formally quashed the detention order.

In the earlier weeks of the Emergency, MISA detenus were allowed to have meetings with family members once a week. Towards the middle of July, under instructions from the Centre all meetings were stopped. Some relatives of the detenus (more notably the daughter-in-law of Morarjibhai Desai) filed writ petitions in Courts arguing that detentions under MISA were preventive in nature and could not be made punitive. This ban on meetings made it punitive. The High Court admitted the writs and issued notice to Government to explain. The Government sulkily amended the rules, and permitted meetings to be resumed.

In Bombay, a journalist wrote articles dealing with the law of Emergency and Censorship. The consors forbade their publication. The journalist went to Court against the restriction. The Court held the censors’ orders were wrong. It also forbade the censors from blacking out reports of Court hearings about the case.

In Bombay again, lawyers had planned a Civil Liberties Conference in November. The former Chief Justice of the Supreme Court, Justice J.C. Shah and former Union Minister M.C. Chagla had agreed to address it. The State Government refused to permit it. They relied on a blanket ban they had imposed in Bombay on gatherings of five persons or more.

The lawyers went to Court, and the Court struck down the ban order itself as bad. Earlier, a *Kavi Sammelan* organised in Bombay on *Gandhi Jayanti* was also prohibited and could be held only because of Court intervention.
In the Karnataka High Court, writ petitions were filed by four opposition leaders in Parliament, A.B. Vajpayee, Shyam Nandan Mishra, Madhu Dandavate and L.K. Advani alleging that their detention was *mala fide*. The Government of India sought to have these petitions dismissed ‘at the threshold’. Home Minister Brahmananda Reddy filed an affidavit saying he had personally satisfied himself that their detention was necessary. The Attorney-General and his aides waged a fierce battle spread over weeks somehow to spike these petitions.

The Karnataka High Court overruled the Government’s objections, and in their 95-page judgment held that notwithstanding the Presidential orders under Art. 359, the petitions were maintainable. Even while the High Court was considering this matter, the Government of India twice went to the Supreme Court to secure a stay of proceedings. The Supreme Court declined to grant stay.

On the question of maintainability of *habeas corpus* petitions by MISA detenus, similar judgments have been delivered by the Allahabad High Court (excerpt cited above), the Jabalpur Bench of the Madhya Pradesh High Court and the Nagpur Bench of the Bombay High Court.

The Nagpur Bench has also held that notwithstanding the ordinance declaring grounds of detentions as confidential, Courts are empowered to call for files relating to detentions under MISA.

Against this background one can well imagine how furious the Government must be feeling about the Judiciary these days. Parliament has been tamed, the Press has been muzzled, but the Courts continue to bark—this may well be the mood in the PM’s Secretariat.

On November 22, *Mainstream*, a pro-CPI weekly of Delhi carried the text of a paper on changes proposed in the Constitution. The paper was described as having the blessings of senior Congressmen.

The changes envisaged made the President, instead of the Prime Minister, the keystone of the political set-up. However, it was not to be a Presidential system. The Prime Minister was to continue though half the Cabinet was to be from outside Parliament. The worst feature of the plan was the obliteration of an independent Judiciary. The apex body for the law Courts would be not the Supreme Court, but a body described as the Superior Council of the Judiciary. This was to be headed by the President himself. The writ jurisdiction of the Court was to be abolished. Its present authority to pronounce on the validity of Parliamentary enactment would also go.

Despite all constraints and curbs on criticism, the publication of this draft evoked a sharp reaction in all concerned quarters. A number of leading newspapers in the country wrote editorials disapproving of the scheme.
The Bar Council of India convened an emergency meeting and opposed any drastic changes being made in the Constitution. It pointed out that social justice did not require abridgment of any citizen’s rights other than that of property.

The Bar Council specifically attacked the draft paper and said if adopted it would lead to the destruction of democracy, and usher in authoritarianism.

So powerful and spontaneous was the reaction that Government beat a hasty retreat. The Bar Council held a meeting on December 27, 1975. On December 28, Prime Minister Indira Gandhi declared that changes in the Constitution would be made only after a public debate. On December 29, Law Minister Gokhale disowned any official connection with the draft paper. This disclaimer, it is important to note, came more than a month after the paper’s publication.

This paper, I believe, was a trial balloon. Seeing that it failed to take off, Government has decided to abandon it, at least in its present form. But the main considerations which had given birth to this scheme continue to condition their thinking.

During the past few months a series of Government-sponsored lawyers’ conferences have been held in various parts of the country. Most of them have been poorly attended despite the high-powered publicity they have received. These conferences have occasioned a lot of woolly-headed and diffuse talk about constitutional changes to make the Constitution ‘an instrument of social change’. But in terms of specifics, the conferences have yielded little other than pinpricks against judges and suggestions to clip the powers of the Judiciary.

The Law Minister himself has gone on record saying that Courts have been abusing their power to issue writs. He, perhaps, forgot that less than three years back, in an essay, ‘The constitution in operation’, he himself had paid rich tributes to Courts for the manner in which they had been exercising their writ jurisdiction. The exercise of this jurisdiction, Gokhale wrote, had “produced socially desirable consequences and had generated ‘tremendous’ public confidence in the Constitution.”

The country’s super Law Minister, Siddhartha Shankar Ray (it was he who accompanied Indira Gandhi to Rashtrapati Bhawan on June 25 evening to advise the President about the Emergency) told a meeting of Congress lawyers in Madras recently that the power of judicial review was “preventing the emergence of a new economic order.”

It would be in place here to recall what B.R. Ambedkar, the chief architect of the Indian Constitution, had said about Articles 32 and 226, the provisions comprising writ jurisdiction of Courts.

Speaking in the Constituent Assembly on December 9, 1948, Ambedkar commended Art. 32 (this refers to the Supreme Court, and Art. 26 to the High Courts)
If I was asked to name any particular article in this Constitution as the most important, an article without which this Constitution would be a nullity—I would not refer to any other article except this one. It is the very soul of the Constitution and the very heart of it.

It is this heart and soul of the Indian Constitution which the Government of India is now itching to destroy, or at least to cripple.

Taking note of this desire, Justice Krishna Iyer of the Supreme Court (who, even Gokhale would have to agree, is no 'reactionary' judge) remarked in the course of recent judgment (December 18, 1975):

Speaking in critical retrospect and portentous prospect the writ power has, by and large, been the people's sentinel; and to cut back on or liquidate that power may cast a peril.

Summing up, the Government's intentions, when it speaks of constitutional change, are as follows:

(a) All official talk about egalitarianism and common man interest, and a new economic order is irrelevant to this debate about constitutional amendment; the Right to Property can be abolished; all land reform legislation becomes protected when included in the Ninth Schedule. No wonder, the President has not suspended the Right to Property even during the Emergency. In fact, the egalitarian argument is only a cover and veneer for ulterior ends.

(b) The Right to Property does not irk government but the other Fundamental Rights do. It is these that enshrine democratic freedoms. During the Emergency, these freedoms have been suspended, and political activity and Press freedom have been curbed. But these curbs (laws like the Objectionable Press Matter Act, for instance) cannot survive the Emergency unless the Constitution is amended.

(c) The right of judicial review conferred on Courts by the Constitution has become a serious irritant for the Government. Their writ jurisdiction has become a headache. The Government would very much like to see the Constitution amended so as to repeal it or attenuate it.

(d) Unfortunately for Government, both in respect of democratic rights as well as the right of judicial review, the Keshavananda Bharati decision solidly bars any curtailment. It is therefore that the Government wants this decision to go.
At Chandigarh the other day, Indira Gandhi approvingly quoted Thomas Jefferson's well-known dictum about the desirability of reviewing a country's Constitution every twenty years or so. She twitted the opposition for opposing constitutional change now though they themselves had been earlier pressing for it.

It was a pleasant surprise to hear her quote Jefferson. For the past several months quoting Western liberals seemed to have become passe, if not altogether retrograde and reactionary. However, now that she has chosen to quote Jefferson at us in the context of constitutional change, we feel tempted to quote Jefferson back at her in the matter of many issues relevant to the present scene.

Jefferson was a dedicated libertarian. A recurring theme in his writings was that political society can naturally be divided into two kinds of parties: one which trusts the people and so would like Government to impose the minimum of curbs on the people's liberties, and the other which distrusts people and so holds that unless they are held in leash by powerful Government, there can be no social progress.

Political India too has become divided today into two camps, one led by Indira Gandhi and the other by J.P. The first distrusts the people, and relies on a shackled Press, parties, Parliament and the Judiciary; the second trusts the people, and believes with Jefferson, that Governments degenerate and that the people themselves are its only safe depositories.

One of Jefferson's major contributions to liberal political thought was his insistence that every citizen had a right to defy an unconstitutional statute. He himself regarded the Alien and Sedition laws (resembling our MISA, DIR) as unconstitutional when he became President of the US in 1800 and his first Executive act was to release all prisoners arrested under these laws. He said on the occasion:

I consider this law to be a nullity, as absolute and palpable as if Congress had ordered us to fall down and worship a golden image.
I regard it as much my duty to arrest its execution as it would be to rescue from the fiery furnace those who should be cast into fire for refusing to worship the image.

Jefferson was the author of the American Declaration of Independence proclaimed in 1776. If Jefferson had been living in India in the year of grace 1976, there is little doubt that his fervent writings would have landed him in gaol under MISA. J.P. has never said anything more seditious than what Jefferson once wrote to a friend: "God forbid, we should ever be twenty years without a revolution."
Note for Consideration

1. It is evident that Indira Gandhi has no intention of allowing the situation to return to the pre-Emergency position.

2. This does not mean that the Emergency will not be lifted. It will be lifted but after all the essential attributes of the Emergency have become part of India’s body-politic. Indira Gandhi’s current moves on the constitutional front seem aimed at achieving this.

3. Normally the restrictions on the Press could not have been continued after the Emergency. Now, those have been made statutory in the shape of the Press Objectionable Matter Act. As it is, the Act violates Art. 19 and so the moment the Emergency ended would have been struck down as invalid. It has therefore, been included in the Ninth Schedule and made immune to judicial scrutiny.

4. The Swaran Singh Committee’s latest proposal about having in the Constitution a chapter on Fundamental Duties seems yet another major step in this direction. A charter of eight commandments has been drawn up. Failure to carry out any of these duties will be punishable by law, and such law shall be protected from Courts, even though it may be violative of Fundamental Rights. Now, the eight duties taken together cover the entire gamut of legislation. Every law framed by Parliament or the state legislatures can be related to one or the other duty. Thus every law can become non-justiciable. Thus Fundamental Rights can become meaningless.

5. At present the RSS has been banned under DIR. A separate law may be enacted in pursuance of the Duty requiring citizens to eschew communalism and the ban reimposed thereunder. If the S.S. Committee’s recommendations are incorporated in the Constitution such a law will be non-justiciable.

6. Of course, the Fundamental Duties scheme itself, as conceived, appears to go against the Keshavananda Bharati judgment. But in view of growing judicial pusillanimity the Supreme Court cannot be relied upon. Even so, legal opinion on this
question must be sought in advance.

7. Vinoba's decision to undertake a fast on the issue of cow-protection may be causing some worry in New Delhi. In the beginning, New Delhi feigned unconcern. In fact by sealing the Maitri press at Paunar, and confiscating copies of the journal, they seemed to serve a notice on V.B., that we do not care for your decision. Later, perhaps, there have been second thoughts and Government may be wanting to avoid a confrontation. The Press has been reopened, and the copies seized restored. It realizes, perhaps that if it takes an adamant stand, and Vinobaji sacrifices his life for this issue, the electoral consequences—if and when elections are held—can be pretty serious. It is possible that shortly before the fast is to commence, Indira Gandhi may send an emissary or go to Paunar herself and somehow try to buy time on some such plea as that consultation with Chief Ministers, minority representatives etc. are needed.

8. It is not clear why Vinobaji chose this issue. He could not have been concerned with its electoral potential. His argument that the Emergency issue is a transient one does not carry conviction. After all, he was responsible for the Acharya Sammelan. It was he who declared that if Government does not accept the anushasan of Acharyas, satyagraha would be justified. In private conversation he had repeatedly affirmed that if Government did not do anything (about the Emergency, prisoners etc.) by October, he would himself offer satyagraha. I think it would be good if he could somehow be persuaded to link the Acharya Sammelan decisions also with the Go-Raksha issue.

9. I have no information whatsoever as to where exactly the one-party issue stands now. The last we heard was after the Congress (O) Working Committee meeting. Shortly after that the issue appeared to have been shoved beneath the carpet. Shri Madhu Dandavate and I wrote a joint letter to Asoka Mehta, expressing our reaction. The letter reflects my views on the subject. One factor which I thought it rather indelicate to write in a letter of that kind is my anxiety that this process of fusion should be complete while J.P. is healthy and active enough to participate in it. Uncertainty about J.P.'s health lends urgency to the question which otherwise may have been allowed to proceed at its own pace. I think efforts in this direction should be revived and Shri Asoka Mehta may be persuaded to spearhead the move.

10. Reports that have been received here off and on indicate that we have been able to re-establish our organisational network. This is immensely gratifying. The struggle is obviously going to be long-drawn, and only an enduring mechanism of this kind can bear the burden.

I am sure conscious efforts must have been made to see that there is increasing involvement of students and younger sections in this regular working of ours. In the bauddhik food that we provide to these get-togethers, a commitment to democratic values ought to be consciously built up. In the pre-Emergency days our emphasis has
been almost exclusively and rightly so, on nationalism. Now it has to be a two-fold emphasis—on nationalism and democracy.

11. I had mentioned in my last note about the need to revitalize and reinforce whatever free media of communication are available, our Gujarati Sadhana, has acquitted itself very well, so also the Marathi Sadhana and the English Janatha both connected with the Socialist Party. Gorwala’s Opinion (now being sent in cyclostyled form) and the Seminar also have been doing very good work. All papers falling in this category—there may be some at district level—should be popularised by us irrespective of their ideological affiliations.

I saw a cyclostyled bulletin Satya Samachar from Bombay area. It could be regularised.

I had suggested last time that an effort should be made to publicise even normal routine activities of opposition activists outside, that is, those who are not underground—such as J.P., Goray, Tyagi, Shanti Bhushan, U.L. Patil, Pandit etc. I hope our own papers have started doing this. The L.S.S. bulletins also should cover this.

12. When Parliament meets on August 10, the Emergency will be more than a year old. Important Constitutional amendments would be on the agenda. Prominent opposition members would not be in a position to participate in the debate. The remaining Janata Front members would do well to consider whether it would still be worthwhile participating in the debate or whether a boycott (such as was done in the first session after the Emergency) would not be more appropriate.

L.K.A.
Likely course of events
during the next six months
(as seemed likely on Oct. 31, 1975)

POSSIBILITY A
1. Supreme Court verdict favours Mrs. Gandhi
2. Release of detenus shortly thereafter
3. Relaxation of curbs on the Press, and on public activity only about a month or so before polls
4. Polls in February or March, 1976

POSSIBILITY B
1. Supreme Court verdict favours Mrs. Gandhi
2. Release of detenus to start thereafter, but release to be phased out till upto a month before polls
3. Relaxation of curbs on the Press, and on public activity only about a month or so before polls
4. Polls in February or March

Both the above possibilities do not take into account the possible impact of the proposed November satyagraha. Taking satyagraha into account, the possibilities to be:

POSSIBILITY C: Greatest likelihood
1. Verdict in favour of Mrs. Gandhi
2. No release until Government is able to assess response to satyagraha call
3. If satyagraha evokes good response,
   —no release
   —no elections

POSSIBILITY D
1. Verdict in favour of Mrs. Gandhi
2. No release until Government assesses response to satyagraha
3. If satyagraha evokes a feeble response, elections in February-March will be announced at next Parliament Session and simultaneously releases may start
4. Curbs on the Press, public activity to continue till about one month before the polls
5. Polls in February or March

All the above possibilities are contingent upon the Supreme Court pronouncing in favour of Mrs. Gandhi, as seems most likely. In case, however, the unlikely thing happens and the verdict is adverse, possibility E would follow thus:

POSSIBILITY E
1. Verdict goes against Mrs. Gandhi
2. No release, no removal of curbs
3. Election Commission to remove disqualifications
4. Mrs Gandhi to be elected to Rajya Sabha, to continue as PM
5. Polls to be put off

NON-VARIABLES FOR THE NEXT SIX MONTHS
1. No lifting of Emergency
2. No lifting of ban on RSS and other organisations
3. Press freedom not to be restored to what it was before Emergency. Statutory shackles to be devised to perpetuate subservience of the Press
4. No withdrawal of warrants against underground workers. Punitive proceedings against them to continue
No. II/15014/4/75-S&P (D-II)
Government of India
Ministry of Home Affairs
(Grih Mantralaya)

New Delhi-110001, the 8th November 1976

MEMORANDUM

In accordance with the provisions of sub-section (4) of section 16A of the Maintenance of Internal Security Act, 1971 (26 of 1971), as amended, the Central Government has re-considered whether the detention of Shri Lal K. Advani S/o Shri Kishan Chand D. Advani, in respect of whom a declaration was made on the 16th July, 1975 under sub-section (3) of section 16A of the aforesaid Act, continues to be necessary for effectively dealing with the emergency. On the basis of the facts, information and materials in its possession, the Central Government is satisfied that the detention of the said Shri Lal K. Advani continues to be necessary for effectively dealing with the emergency.

(By order and in the name of the President)

To
Shri Lal K. Advani
S/o Shri Kishan Chand D. Advani

(R.L. Misra)
Joint Secretary to the Govt. of India

Received a copy of this memorandum. November 8, the date of this memo, happens to be my birthday. So, I take it to be a birthday gift. Thanks.

L.K. Advani
17.11.76
Publisher’s Note

It is a matter of great pleasure and privilege for us to re-publish *A Prisoner’s Scrap-Book* by Shri L.K. Advani. It was first published in 1978 by Late Shri Gulab Vazirani of Arnold-Heinemann Publishers. We are proud that our publishing house has been given the honour of presenting this book again to readers.

But why is a book, that too a diary, on events that happened more than a quarter century ago being republished now? The question becomes redundant once you know that the events pertain to what is unquestionably the most decisive period in the history of independent India, and that the diarist is, equally unquestionably, one of the most influential political leaders of our time. Just as it is incongruous for anybody to become a refugee in his own country, it is both strange and saddening when widely respected national leaders become political prisoners in their own country. But, alas! it happened in Free and Democratic India during the draconian Emergency rule in 1975-77, imposed by the government of the then Prime Minister Shrimati Indira Gandhi. It could happen only because the government of the day decided to suppress democracy and muzzle the fundamental freedoms and rights of our citizens. A key requirement for sustaining this outrageous and unpopular agenda of authoritarianism was imprisonment of all those leaders, activists and dissenters who were opposed to it. Tens of thousands of them were so arrested. Many of them were victims of the proverbial ‘midnight knock’, since the Emergency was declared at the midnight hour of June 25-26, 1975. Most of them languished in jails across the country till the eclipse on the Sun of Democracy ended in March 1977.

One of the most distinguished among them was Shri Advani, then the President of the Bharatiya Jana Sangh. His fellow prisoner in the Bangalore jail was Shri Atal Bihari Vajpayee. Not even the tallest Indian of that time, the ailing but venerable Jaiprakash Narayan, was spared. What happened to the hated Emergency rule is well known. And what journey Shri Vajpayee and Shri Advani have traversed since then is
also well known. It is a journey of great intrepidity, of inspiring idealism, of unflinching dedication to the guiding goals of the Indian nation. It has also been a steady and unstoppable march of the forces of democracy and nationalism, a march that has seen Shri Atal Bihari Vajpayee become the Prime Minister of India and Shri Lal Krishna Advani become the Home Minister of India.

A leader’s mettle is tested in a time of adversity. So how did Shri Advani spend those ‘nineteen dark months’ behind bars? Deprived of communication facilities, deprived even of personal contacts – except for rare visits by members of his family – how did he contemplate and comment on India’s forced contact with fascism? What did he think of his own and his colleagues’ trials and tribulations? What do the letters he wrote to his associates and friends reveal about his personality and about his political thinking? This book presents useful answers to these questions.

Of special interest to students and practitioners of politics is the section on ‘Underground Literature’. It presents the five pamphlets that Shri Advani wrote, anonymously for obvious reasons, during the Emergency, which dissect, with a scientist’s precision and a committed political activist’s passion, the false claims and disingenuous arguments of its proponents. Here is an excerpt, from his ‘Open Letter to AICC Delegates at Chandigarh’, titled “When Disobedience to Law is a Duty”:

“This is an appeal to the conscience of Congressmen. It is a plea to them to pause and ponder. Let them not think in terms of government versus the opposition. That is not the issue at hand. The issue is democracy; the issue is civil liberties; the issue is a free Press.

If at Chandigarh even a single voice is raised boldly for these issues, if there is one delegate who speaks up fearlessly against the cruel and callous treatment meted out to JP, that single voice would be heard loud and clear over and above the din that may be created by stooges and sycophants, by flunkies and flatterers.”

If the Emergency was the darkest episode in India’s post-1947 history, the struggle against it, which ended with the victorious restoration of democracy, is by far the brightest episode. Shri Advani was one of the heroes of that struggle. Emergency may be a distant memory now, never to be revisited. But every new generation needs to revisit, in books and in works of art and culture, both the dark and bright chapters of its nation’s history—for illumination and for inspiration.

We are confident that this book will help the new generation, as well as the generation that experienced the Emergency rule, to know both the ‘prisoner’ and the undemocratic mindset and establishment that had turned India, for nineteen fateful months, into a ‘prison’.