

# FREE AND FAIR?—I

## Formidable Obstacles That Remain

By M. R. MASANI

It was only the other day we were being asked challengingly: "Is it better to have elections now or a stable economy?" A little earlier in October a Bill was rushed through Parliament extending the life of the Lok Sabha for another year beyond March 1977 and at that time a most amusing variety of reasons was advanced by the apologists of the measure. One view expressed in Parliament by the Law Minister, Mr. H. R. Gokhale, was: "I do not think that we have come to a situation where it is desirable in the larger interests of the country to go to the polls now." Another plea was that "the conditions which led to the extension of the life of the present House by one year still continue".

### SURPRISE

Now, hey presto, it has been authoritatively announced that the time is "opportune" for the holding of General Election to Parliament. No explanation has been vouchsafed as to how what was against the national interest is now consistent with it. But let us not be ungracious. Let us all, in the spirit of not looking a gift horse, or election, in the mouth, rejoice.

It may be worth while considering the backdrop against which elections have been called and the conditions in which the electorate is asked to make its choice. Assuming it is the desire of those in office that the elections should be free and fair, it would be worth while considering what action needs to be taken to fulfil that wish.

The need for such action arises not so much from the need for fairplay to the Opposition parties but respect for the rights of the electorate and sustaining the faith of the public in the electoral process which is one of the preconditions of democracy.

As it happens, I had an opportunity to examine these matters as a member of the Committee on Electoral Reform appointed by the Citizens for Democracy in the distinguished company of Mr. V. M. Tarasande, Mr. P. G. Mavalankar, M. P., Mr. Eric da Costa, Mr. A. G. Noorani and Professor K. D. Desai. In our report, which was published in February 1973, we had referred to "a widespread feeling, expressed not only by those who gave evidence before us, that public faith in the electoral process and the manner of its implementation has been undermined, particularly since 1971. As far as we can ascertain, this erosion of public faith in the electoral system has become serious in 1974". We mentioned that "all Opposition parties and many individuals who gave evidence before us were deeply disturbed that the continuation of money power and misuse of administrative machinery would make free and fair elections impossible. Some mentioned that the Government had been elected on a promise to carry out free and fair elections, and that the Government had failed to do so".

general view; but we were deeply concerned about the widely prevalent lack of public confidence in the conduct of elections".

The working of a Parliamentary democracy involves for its success the acceptance by nearly all electors of the election result as a genuine reflection of the popular will through the ballot box. If this acceptance is undermined, the peaceful exercise of the right of franchise could be seriously disturbed; also the legitimacy of Governments formed on the basis of the strength of various parties in the legislature can be questioned.

If this was the situation in the conditions of normalcy prevalent in February 1973, how much more doubt about the effectiveness of the electoral process may not exist in the minds of voters in the situation that prevails after what the country has gone through in the last year and a half?

Just as absolute equality in society is a shibboleth out equality of opportunity is a widely accepted objective, so too absolute equality between parties competing for electoral favour is neither practical nor desirable but equality of opportunity is certainly a precondition of free and fair elections. To what extent does such equality of opportunity exist at this moment?

### LETTER

As far back as August 31, 1975, some of us had addressed a letter to the Prime Minister suggesting that she might consider doing what she has belatedly done now. Among the signatories to that letter were a distinguished group of men and women unattached to any political party including S. P. Ayaz, Arvind Mehra, M. C. Chagla, R. R. Dinkar, Nandini Bhaskar, Rajmohan Gandhi, M. Harris, V. V. John, Kamini Ram, Maniben Kar, V. B. Karshik, Khushwant Singh, D. K. Kunte, Lalchand Khanchand, G. S. Mahajan, S. R. Mohan Das, Kamalshankar Pandya, Jehangir P. Patel, Achyut Patwardhan, P. S. Reporter, T. Sadanayam, C. S. Shah, S. J. Sorabjee, Amma Swaminathan, Majorie Sykes and Sophia Wadia.

In the course of our letter, the contents of which can now be disclosed, we had observed: "Happily, all parties, whether in Government or in Opposition, are agreed that the people of India should be free to decide their destiny. It is obvious that such a choice can be made freely by the people through a General Election to Parliament. We have discussed the circumstances in which such an election could take place. It is obvious that under present conditions, with the kind of pre-eminence of the Press that exists, the distortion in favour of a large number of men and women of influence in the country, and the threat of detention without trial and without trial under AFSA, no election that would

have to be freedom of discussion and expression on the platform and in the Press for a reasonable period of time without fear of consequences. On the other hand, in order that an election can take place in a calm and orderly fashion, there should be general agreement that extra-constitutional weapons should be placed aside. In such circumstances the continuance of the Emergency will become unnecessary according to your own statements. You yourself rightly mentioned recently that elections can only take place when there is a proper climate for them".

Can it be argued that the preconditions for a free election that we had suggested are in existence today?

To start with, the legal position today is that the Proclamations made by the President of India on June 27, 1975 and January 8, 1976 by which the rights of any citizen to move any court to enforce the Fundamental Rights conferred by Articles 14, 19, 21 and 22 of the Constitution were suspended for the duration of the Proclamation of Emergency have not been withdrawn. It is still possible therefore for a citizen to be arrested and detained indefinitely without any reason being shown and without recourse to the courts of law. The writ of habeas corpus, which is a historic guarantee of personal liberty, is still not available. So too, the Conservator Order under Rule 43 of the Defence of India Rules is still intact and has not been withdrawn.

All that has been done is to announce that the Order will not be enforced for the time being, which is another thing altogether. The Commissioner of Police of Bombay has announced in the Press that "political organisations may now hold meetings in Greater Bombay in connexion with the elections". What does this mean? Is this freedom not to continue beyond March 15 when there are no elections?

### WEAPONS

So long as these weapons of repression still remain in the hands of those who have used them during the past eighteen months and the rule of law is not re-established, can elections held in such conditions be pronounced to be fair and free?

In our letter of August 1975 we had pleaded for a "reasonable period of time" for the election campaign to be conducted. Can it be claimed that the period of two months between the dissolution of Parliament and polling day is a reasonable period? This question is made more relevant by the complaint of various political parties that several of their prospective candidates in the coming elections and a large number of their party cadres have still not been released from detention.

(To be Continued)

# WAY FOR BEAUTY AND AGE

By A Staff Reporter

WITH the 12th Statesman Vintage Car Rally only two days away, several old cracks could be seen on Delhi roads on Thursday, looking none the worse for wear and getting the respect due to them from the younger and brasher generation. There were many to give way to beauty and age.

Meanwhile there was some excitement among the men making the lists at Statesman House over an entry from Nehlaur, Bijoor. It told all about a Fiat 508S made in 1927 making its debut at the rally.

Mr Syed Iqbal Mehdi, its owner, records that the car was bought on January 4, 1928, from Messrs A. Hyland of Bombay and in 40 years it has covered hundreds of thousands of kilometres. Generally stated as an Alpine model, it has found the roads in Kashmir easy to negotiate, and the first gear had to be employed only while going through the Banihal Pass.

Mr Mehdi writes that the first engine overhaul was done in 1937, the second in 1947 and the third in 1956. It has had no trouble since. Most of the parts are original, the watch still keeps perfect time and the odometer has never failed.

If Mr Mehdi has maintained his car in the same meticulous fashion as he has recorded its history, this car should be worth coming a long way to see.

## Old-Timers

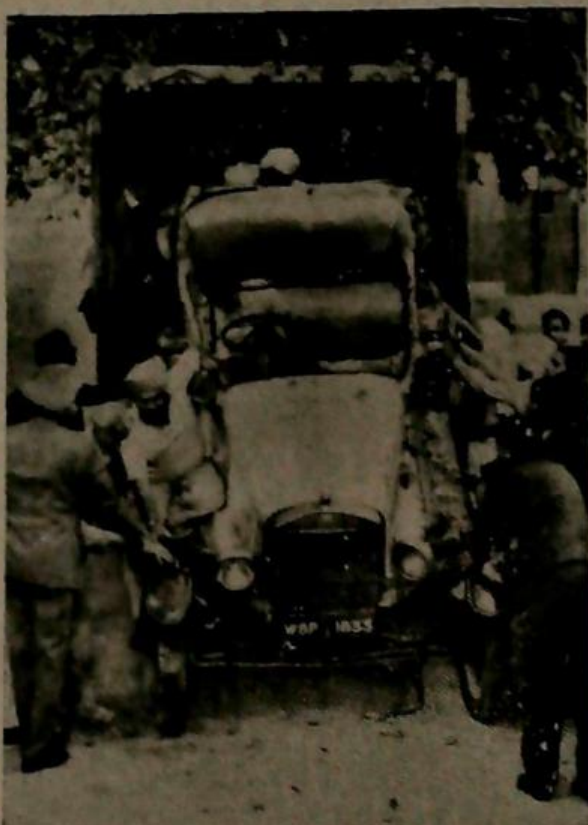
Members of the Seth-Nagpal team have at last sent in their entry forms and three of their beauties will be seen at the rally. A magnificent emerald green Lagonda 1934 is one of them. It will have at the wheel Mr R. N. Seth, who has handled the car with such tender care that it has won 36 trophies.

Mrs S. Nagpal, who has established her driving ability on previous occasions, will be at the wheel of a Daimler 1938 which also has developed a habit of picking up trophies. And Mr Gyan Seth, who despite his youth is an ardent vintage lover as anyone else will be in partnership with a 1936 Mercedes.

Meeting Mr Seth a couple of evenings ago was quite an experience, a vintage experience in fact. "When I was young I was crazy about motorcycles. I graduated on to cars and of late it is vintage cars," he said.

For him the challenge lies in getting a car and then restoring it to its original condition—something easier said than done. Parts have to be fabricated, numerous manuals consulted, work supervised minutely.

It comes as no surprise that trophies by the dozen are his. He has earned every one of them, working for months on end on a car. Sundays and holidays take him to the garage. For Mrs Seth it has been a bit trying at times.



The JS car for the Vintage Car Rally being unloaded at Statesman House from the truck in which it came from Calcutta.—Statesman.

with restrictions on social gatherings, motor parts all over the house but she too has been bitten by the bug. "He loves it so much."

Another entry which had been anxiously awaited came from Mr V. Kumar. His Morris is over a picture and undoubtedly one of the best of the smaller cars in the country. It will be 40 years old, but few will believe it. Mr Kumar has collected a lot of street from rallies.

Mrs Pauline Singh, a rally regular, will be driving a new car this year—a Ford 1932 which has not made a rally run so far. The Morris in which Mrs Singh drove in earlier rallies will have Mr Mohinderjit Singh at the wheel this time.

Mr V. Pradhan has just completed restoration work on an MG 1931 and it is to make its debut. Mr S. G. Pradhan will be present with a lovely 1933 Packard. Another favourite will be Mr Indrajit Anand's Austin 1933.

After a lapse of some years the JS Mobile—a Ford Model T—has made it for the rally. Even

after the long truck journey from Calcutta the canary yellow "Tin Lizzie" looks as cheery as ever.

## Period Costume

More attention is being given to the period costume event this year. It will be judged by a panel headed by Mrs Throthy Irani. The members will be Mrs M. M. L. Chhabra, Mrs K. C. Anand, and Mrs Rami Chhabra.

Filts are coming in; a few more would swell the hampers to the right size. Every participant will get a silver plated beer mug—empty (though there are possibilities of something stimulating in the hamper). There are soft drinks from Parlos, torches from Eveready, and for prize winners special flasks from Hindustan Vacuum with vintage car designs.

All indications on Thursday pointed to Sunday's rally being a lively affair and should anyone find the strain (telling by the time he reaches Sohna, the manufacturers of the Dnyaro exhauster system are there to help relax muscles.

## SOUR DELHI MISSES THE ENTHUSIASM

By A Staff Reporter

The Opposition in Delhi has never had it so good during an election campaign. Thanks to the Emergency and what followed thereafter, its battle appears to have been fought for it by the Congress.

It would be the first time when

been taken to far away places, Bengal and South India, who form a large bulk of the population, are hurt at the rapid erosion of Naxalite dignity.

With the elections round the corner, the Congress has been trying to make amends. The irregular sessions are to be replaced by regular sessions, the Government is to be replaced by a new one, and the

## WORK EXPERIENCE IN SCHOOLS NURUL HASAN WRITES TO STATES

Professor K. Nurul Hasan, Union Education Minister, has suggested the development of strong programmes of consumer education through work experience activities in schools, reports *Dispatch*.

In a letter to all State Education Ministers, he has said that under the new education and craft development programmes, several primary schools and pre-

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# FREE AND FAIR?—II

## Raising One Cheer For Democracy

By M. R. MASANI

THEN there is the question of equality of opportunity. The day after Parliament was dissolved a friend of mine, as slim as myself and possessed of a dry sense of humour, said to me: "Let us, Masani, organise a boxing match between yourself and me for the flyweight championship of India and let us agree on 15th March for the bout." When I readily agreed, he went on to say: "I must tell you, however, that I propose to kidnap you and lock you up in a room ten feet by ten—the kind of cell that you used to enjoy in British days in Nasik and Yeravda prisons—and I shall see to it that your arms and legs are shackled day and night. You will of course be on a starvation diet. I, on the other hand, shall be in intensive training for the bout under a good coach. I shall perk myself up with all the vitamins I can. A couple of days before the great event, you will be free to go home and live a normal life. On 15th March, I shall invite you to enter the ring and, should you hesitate, I shall ask you 'Are you a man or a mouse?'"

Though my friend was exaggerating somewhat and was perhaps being a little unfair, one cannot quite dismiss his analogy. Consider only the imbalance in regard to funds to fight the elections between the party in office which has had every opportunity to collect massive funds for its campaign and those who were till the other day in prison with their treasures empty and their organisation smashed to smithereens.

### MALADY

In the report of the Committee for Electoral Reform to which I have referred earlier, we had observed: "A major malady in the operation of elections in India has been the reckless use of money. We recognise that many of the obligations imposed on candidates, in most keenly contested elections cannot be fulfilled successfully without substantial expenditure. With the rise in prices since 1967, these expenses also cannot be contained within the limits fixed by law either for Lok Sabha or Assembly elections. But we have received ample proof that the current violation of the law by almost all parties is not related primarily to inflation. The steep rise in election expenses, particularly by the Congress Party which has access by reason of its power of patronage to business finance, is the result of a deliberate preference in favour of money power as a major instrument for winning elections."

Then again, the misuse of Government power and official machinery had already become a malady during the elections of 1971 and in our report we had observed: "Almost all the winning

new projects, (c) grant allowances or loans, salary increases or (d) hold official functions attended by Ministers, Deputy Ministers and Parliamentary Secretaries.

During this period, Ministers, Deputy Ministers and Parliamentary Secretaries should not travel except at their own expense, and should not use Government aircraft, jeeps or vehicles. Also, they should not use Government postage for election purposes nor use the Public Works Department for erecting rostrums for the public meetings. Generally the use of the Government machinery for election purposes should be stopped.

During this period, no member of the Government should be given time either on radio or television except such time as may be allotted to his party for election propaganda. No advertisements of Government achievements should be published at Government cost and no news-reels should be exhibited at Government expense for the propaganda of the Government or the ruling party. No police officers above the level of head constable and no revenue officer of Class I or Class II should be transferred from his post.

It should be provided that no candidate and no political party concerned in an election shall give any donation, directly or indirectly, to any public institution during the period from the dissolution of Parliament to polling day.

The recommendations we had then made may appear to the cynic to be a cruel joke in the conditions that now prevail. The Supreme Court Bar Association in Delhi have drawn attention to yet another danger. "Extra-constitutional centres of power must not be allowed to undermine the power and authority of the Council of Ministers collectively responsible to Parliament and Assemblies at the Centre and in the States. The emergence of individuals as more powerful than persons occupying high office as Chief Ministers and Central Ministers is a definite erosion of the delicately balanced power structure sanctioned by the Constitution. This could endanger the unity and integrity of India."

### MEDIA

In regard to the media of mass communication, so long as the Censorship Order has not been revoked and so long as the Prevention of Publication of Objectionable Matter Act remains on the Statute Book, the claim that the Press is free is one that is difficult to accept.

Also does freedom come naturally to those who have accepted, night after night, illegal "advice" from the Censor over the telephone in flagrant contradiction of judgments of the courts of law? And is there any guarantee that such "advice" will not continue

parties today suffer may be somewhat mitigated. If the idea of holding elections is to get an honest mandate from the people and to give the Government the legitimacy which it lost on March 31, 1976, it will be wise if measures are taken on the lines suggested above to prevent the misuse of Government power and administrative machinery on the one hand and to see that the radio, television and Samachar authorities are given the freedom and encouragement to go in for objective reporting and fair comment. Above all, the Proclamations made by the President of India on January 27, 1975 and January 8, 1976, should be withdrawn immediately and the Rule of Law restored in the country. But, supposing all this were to take place, would that be enough to ensure fair and free elections? I doubt it. In the report of the Committee on Electoral Reform, we had observed: "Even a perfect electoral law, however, will not produce the requisite result unless the spirit of those responsible for the law is attuned to their high obligations. For this purpose the vigilance of the electors is as important as the dedication and independence of the members of the Election Commission and their staff. We consider, therefore, that spontaneous associations of voters in the form of voters' councils interested in the protection of their rights of franchise are as important an element in reform as those for which specific legislation is provided."

### PROPOSAL

Our concrete proposal was that voters' councils should be organised in as many constituencies as possible in both Parliamentary and State elections. These should consist of persons who cherish democratic values but do not owe allegiance to any political party. As part of this educative programme, voters' councils may arrange question and answer meetings to be addressed by candidates, preferably joint meetings.

The other and equally important function of voters' councils would be to act as impartial observers in each constituency so as to ensure, as far as possible, that elections are not contested on the basis of communal or caste appeals and are free from bribery, coercion and other corrupt practices.

This is something that the people can do for themselves and they need no leave or licence from those in authority for taking the initiative suggested. It is to be hoped that at least in cities where public spirited citizens unattached to any political party abound, such a development will take place forthwith.

If the picture given above is correct, I shall be asked whether it is worth while participating in such an election. The answer is