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MORALS BY LEGISLATION ?

By M.R. Masani

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'Councillor Busy and Mr. Nose, the Member for
Misery Wood,
And the Secretaree for the Societee for Making
the Public Good,
Were walking up and down the town with a frown,
for everywhere they saw
The bold, bad Britisher doing things which
weren't against the law;
And "This won't do!" said Councillor Busy;
"It certainly won't!" said the Secretaree of
the S.M.B.P.G.

"Let's stop somebody from doing something!
Everybody does too much.
People seem to think they've a right to eat and drink,
Talk and walk and respirate and rink,
Bicycle and bathe and such.
So let's have lots of little regulations,
Let's make laws and jobs for our relations,
There's too much kissing at the Railway stations--
Let's find out what everyone is doing,
And then stop everyone from doing it." '

These lines from a jingle by A.P. Herbert, while brought to mind by many things that happen in India today, also serve to stress the universality of the problem as to whether people can be made moral by legislation.

In Britain, if we are to believe Honor Croome writing in Lloyd's Bank Review of July 1949, "a man may not build himself a house, nor change his occupation, nor open, equip and operate a business, nor, if a farmer, rotate his crops and feed his stocks, nor, if a shopkeeper, supply what his customers want, nor, if a professional man, import books essential to his work, nor travel abroad, without more or less detailed official sanction; he cannot correspond with friends overseas without the risk of having his letters tampered with; he cannot regulate

the laying out of his own income, since that is either directly determined by rationing and the provision through taxes on that income, of communal services, or more subtly directed by the apparatus of special tax and subsidy.... Even Tudor officialdom is not recorded to have ordered the ploughing-in of a crop ready for harvest, because its sowing had not been sanctioned, nor made it an offence for a man to give a neighbour a pitcher of milk, nor forbidden him to repair his own house with his own hands. No guild tyranny was tighter than that of the officially encouraged closed shop, no sumptuary law more explicit than many prohibitions of the non-utility and no official debasement of coinage more effective, as barrier against the winning of independence through personal savings, than the fiscal policies of today."

In our own country, the prohibition of drinking, the laws against gambling, the regulations providing for the early closing of shops and restaurants, the censorship of films and plays, the Sarda Act against child marriage are only a few of the many legislative fruits of a state of mind which believes that desirable social ends can be furthered by the enactment of laws which "stop somebody from doing something".

While the limited utility — some would call it futility — of such efforts is well understood by large sections of the Indian intelligentsia, the expression of such dissatisfaction is apt to take too restricted and superficial a form.

Morals and morality are very wide concepts, and their most important aspects are not necessarily confined to personal behavior relating to sex or drink. The dictionary defines

morality as "ethics" or "good conduct", while a moral person is defined as one who is "concerned with right and wrong conduct or duty towards one's neighbour." Properly understood, then, morals embrace all the activities of a man or citizen which impinge on his neighbours or fellow-citizens. Behavior that is anti-social is immoral, while social and economic injustice or the exploitation of man by man cannot but be held to be contrary to morality. Fair dealing by citizens, the integrity of State officials, honesty in profession and business, and indeed the achievement of social justice therefore fall within the scope of our problem.

Can individual goodness and social justice be achieved by law? Is the building up of the "free and equal society", of which Lenin used to talk, to be envisaged as a path on which milestones are provided by successive Acts of Parliament?

There are broadly two schools of thought on the issue at hand. The first is what might be called the étatist school of thought which thinks in terms of political, social and economic advance being achieved by successive acts of legislation and State administration. There is little need to elaborate in this thesis since it is to be found explicitly or implicitly stated in far the larger part of what is somewhat ironically called the 'capitalist' press of India. It is curious that with all their furious differences, the fascist, the communist, the Marxist, the New Dealer and the New Delhi-ite are all agreed that the State is the instrument and agent for the attainment of socially desirable objectives. James Burnham made a brilliant analysis of the common thread that runs through the

thinking of these various schools of thought in his book The Managerial Revolution published a decade back.

The most recent manifestation of this way of thinking is to be found in the proposals adumbrated by a Sub-Committee of the Congress Working Committee for amending ~~the~~ — the second time within five years — ~~in~~ the Constitution of the Indian Union. It has been proposed that the right of the Supreme Court and the High Courts to pronounce on the validity of laws in the light of the Fundamental Rights guaranteed by the Constitution should be truncated in certain important fields such as the right to compensation for compulsory acquisition of property and the right of public servants to security of tenure. Encroachments on the right of the superior Courts to issue writs and to superintend the work of other tribunals have also been proposed.

The plea advanced to justify this attempt to give Parliament the sovereignty which was, after the fullest consideration in the Constituent Assembly, denied to it is that such constitutional safeguards come in the way of rapid social advance. The manner in which ~~The~~ fact that these proposals would, if adopted, strike a blow at the independence of the Judiciary, endanger the rights of the citizen and undermine the existence of the Rule of Law is ^{likely} brushed aside. ^{This} shows the extremes to which well intentioned persons can be driven by a misguided passion for bringing about social change through the enacting of laws.

One of the earliest expressions of the other point of view is to be found in the Biblical precept: "Render therefore unto Ceaser the things which are Ceaser's, and unto God the things *that*

~~which~~ are God's."

The basic thesis of what may be called the individualist or libertarian philosophy is that the modern State is at once an all-powerful Leviathan and a devouring Moloch; that its organised coercion is inherently bound to carry within it the seeds of corruption and despotism; and that all genuine progress made by man through history has been that which has come freely and voluntarily from within.

In our own time, Mahatma Gandhi has been the foremost exponent of the thesis that "that Government is best which governs least." Pyarelal reports in the Harijan of October 25, 1952, a discussion on these matters that took place between Gandhiji and some of his colleagues in the Aga Khan Palace Detention Camp on 13th December, 1942, during 'Quit India' days. Talking of "the owning class and the distribution of its assets among the people", Gandhiji said: "So long as we have not got power, conversion is our weapon by necessity. But after we get power I maintain that conversion would have to be our weapon of choice. Conversion must precede legislation. Legislation without conversion remains a dead letter. As an illustration, we have today the power to enforce rules of sanitation but we can do nothing with it because the public is not ready."

Picking up the thread where it had dropped from Gandhiji's hands, Acharya Vinoba Bhave has now come forward with the slogan that instead of Rajniti (politics or statecraft), he would like to have Lokniti (people's policy). Deprecating dependence on the State, political parties and elections resulting in majority

rule, Vinobaji points out that inspiration for the concept advanced by him is provided by ancient Indian tradition. In the old days, religious issues, which then aroused as much excitement as do ideological issues today, were not settled by majority rule. People voluntarily worked together to the extent that they agreed and settled their differences by discussion and debate.

Varying the metaphor, Vinobaji has posed the conflict by distinguishing between Himsashakti, the power of violence; Dandashakti, the power of legislation and the State; and Janashakti, the power of the people. Eschewing the first two, he for one would rely on Janashakti to bring about social changes through the voluntary action of the people. While others talk of decentralisation of industries and economic power, Vinobaji understands that this must in fact mean the decentralisation of initiative. Bhoodan Yagna is thus a concrete embodiment in action of the idea of decentralisation.

"So long as the people believe that the State alone can guarantee the progress of society, the leadership of the world will remain in the hands of those who wield power", observes Vinobaji.

"The law like rain," Vinobaji goes on to say, "does not spread equally over the fields. But in Bhoodan every individual will get justice."

"My duty is clear", he asserts, "it demands that without taking recourse to legislation we should be able to bring about a change of heart among the people so that they may voluntarily distribute land without waiting for any legislation. Is it

because of legislation that mothers suckle their children?" At Monghyr, on October 21, 1953, Vinobaji went further and exhorted the people "not to give land under the threat of force or law."

The second most important figure in the Bhoodan movement, though a socialist, has now come out equally clearly against the path of redemption through law-making. Addressing the session of the All India Sarvodaya Sammelan on April 19, 1954, Jayaprakash Narayan expressed the view that the land problem could not be solved by legislation. It was in the course of his historic announcement of Jeevandan that he said: "Laws are enacted but it is to be seen how far they are useful. Early marriage and untouchability are prohibited by law; we find them still going on."

In a speech at Poona in June, 1954, Jayaprakash expressed the view that "even the socialist way of social change through legislation implies violence because legislation means coercion."

"No heart or mind has been changed by law; no individual made virtuous by coercion", says Jayaprakash, and proceeds to give an insight into the political theory of the Bhoodan movement. "It does not aim," he writes, "at capturing the State in order to use it for its ends. As a corollary, it does not wish to create or become a political party in order to capture the State. It aims rather at persuading the people, independently of what the State may or may not want, to carry out a revolution in their own lives, and through that a revolution in society. It aims further at creating those conditions in which the people may manage their affairs directly, without the intermediation of parties and parliaments. Gandhism, like anarchism or communism, visualizes ultimately a stateless society. In the present world

the state not only in its totalitarian form but also in its welfare variety is assuming larger and larger powers and responsibilities. The welfare state, in the name of welfare, threatens as much to enslave man to the State as the totalitarian. The people must cry halt to this creeping paralysis. The fact that the welfare state is a creature of the people, in the sense that it is set up by them, does not affect the matter. The device of democratic elections cannot equate five hundred representatives with eighteen crores (counting only the adults) of the people. To the extent the eighteen crores look after their affairs directly, to that extent the powers and functions of the State are restricted and real democracy is practised.

"The experience of communist countries shows that if the immediate steps that are taken are not consistent with the ultimate goal, we may arrive at places that are vastly different from the destination. Placing before them the great ideal of a stateless society, the communists set out to do everything through the power of the State. The result was that the State went on acquiring greater and greater powers and, in place of the State withering away, there emerged the total State."

It may be easy to discount the point of view urged by Acharya Vinoba Bhave and Jayaprakash Narayan by describing them as people who can afford to take this line, ⁱⁿ the absence of an opportunity of exercising State power and authority. This is ^{however,} hardly possible, in regard to the opinions expressed at the recent Conference of the All India Sarvodaya Sammelan by none other than Dr. Rajendra Prasad, the President of the Republic. The best form of democracy, according to him, is possible when

the individual is properly disciplined and there is no necessity for the administration to exist.

"Totalitarian nations exercise control over human life at every step", said Dr. Rajendra Prasad. "Nations which do not accept totalitarianism are also tending to move in the direction of expanding controls. We are seeing in this country that the control of the administration over the individual is growing. A proof of this is in the piling of laws passed by the legislatures and Parliament day by day. There seems to be no end to it. The administration and some people believe that laws can solve all problems. We want laws to end the dowry system, to abolish the zamindaries and to enable the Harijans to enter the temples. We also want laws to safeguard the property attached to temples and to improve the relationship between the workers and the employers. We enact legislation to save ourselves from epidemics and disease. No one knows how much more legislation we want."

This great debate as to the role of legislation will undoubtedly proceed for many decades and generations to come. Perhaps all one may at this stage say is that a single-track approach on this issue needs to be avoided. Human progress is many sided and democracy has many facets. Parliamentary Government based on the party system is one facet of the free way of life. There is another side to democracy which consists in the initiative and activity of the individual and the group coming forward voluntarily in furtherance of some purpose which is considered to be of value. This is the "grass roots" aspect of democracy and is well understood in the Anglo-Saxon countries as well as those of Scandinavia.

The popular film Mr. Smith Goes to Washington is illustrative of the very important part played in American democracy by the initiative of the aroused citizen who gets together with his fellows at the parish pump level to combat corruption or undo an injustice.

It is significant that such an advocate of the Welfare State as Professor William A. Robson should, in an article in The Political Quarterly of April-June, 1954, contributed on return from a protracted visit to India, write: "The problem of dealing with poverty in some of its aspects -- or at least of making a start -- is not only one of lack of resources. It is also a problem of awakening the social conscience and of developing a sense of compassion."

para] While there are undoubtedly dangers arising from the absence in recent centuries in India of that tradition of sturdy individualism on which democracy is reared in the most advanced countries of the world, India possesses on the other hand an age-old tradition of arriving at the real answer to the choice between anarchy on the one hand and regimentation on the other. In his Inaugural Address at the Annual Conference of the Indian Committee for Cultural Freedom in 1953, Mr. C. Rajagopalachari, then Chief Minister of Madras, recalled attention to this national asset. ¶ "State regulation", observed Rajaji, "began as a protest against the anarchy created by indiscriminate individual freedom and the greed and competition that resulted from it. The practice of State regulation has resulted in the discovery of several evils in the remedy worse than the disease. In the cycle of human progress the slogan of 'freedom' has therefore been raised as a counter to

excessive State-regulation." According to Rajaji, "The culture of people is essentially the prevailing pattern of joyous restraint accepted by the people..... Not freedom which may deteriorate into licence and anarchy, not State-regulation which may deteriorate into tyranny, but 'self-control' is the right slogan. As against the culture of unrestrained liberty which is the slogan on one side and the culture of all-round State regulation which is the slogan on the other side, India stands for self-control, which is neither freedom nor regulation from outside. This is what Gandhi stood for, what the Bhagwat Gita preached and what was solemnly voiced forth in the ancient Upanishads." Rajaji's conclusion therefore ^{is} ~~was~~ that "it is self-restraint, control from within, that makes art artistic, beauty beautiful, and order orderly and enjoyable."