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Heresies About The Constitution

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OF late we have witnessed a spate of constitutional heresies. The last one which did the rounds was about the President's power, or prerogative if you please, to dismiss a duly elected government which fully enjoys the confidence of the House and against whom there are extensive but unsubstantiated allegations of corruption. In view of the unequivocal disclaimer by Rashtrapati Bhavan of any such intention on the President's part this needless controversy should be laid to rest.

The latest heresy floated by Mr Akhani is that the President can be called upon by the government of the day to resign and, if he does not accede to this advice, he can be impeached on the ground of "violation of the Constitution" as provided for in Article 61 of the Constitution.

At the outset let us be clear about certain fundamentals. It is indisputable that the President is only the formal or constitutional head and the real executive powers are vested in the council of ministers. But does that reduce the President to a figurehead or a mere rubber stamp? "Far from it...the President in India is not at all a glorified cipher...but actually vested with a pervasive and persuasive role." This is the supreme court's pronouncement in Shamsher Singh on which Mr Akhani strongly relies.

It is also well-settled that, in terms of Article 74, both before and after the 42nd amendment as judicially interpreted, the President is required to act in accordance with the advice of the council of ministers and it is impermissible for him to act contrary to or independently of such advice. But this is not an absolute principle of universal application but a general rule which may be displaced by the compulsion of exceptional situations, some examples of which are given by the supreme court decision in Shamsher Singh:

(a) Choice of the Prime Minister; (b) Dismissal of a government which has lost its majority in the House but refuses to quit office; and (c) Dissolution of the House when an appeal to the country has become a compelling necessity.

Scope Of Advice

Moreover, the advice under Article 74 is to aid and advise the President in the discharge of the executive power and functions under Article 53 of the Constitution. Consequently, the scope and ambit of the advice necessarily relate to the administration and governance of the country and to matters with respect to which Parliament has power to make laws.

Whether the President should resign or not is a matter for his individual judgment and conscience. In a situation of that kind the President cannot from the very nature of things be tendered ministerial advice under Article 74 to resign upon pain of impeachment for refusing to follow such advice. To hold otherwise would make the head of the state, the symbol of our nation, a mere automation, a robot deprived of any freedom of thought or action in a matter of vital concern to him and the nation. It is impossible to countenance such an interpretation.

Furthermore, the suggested interpretation would provide a convenient handle for any government, which, because "of the handling of the national affairs by an inept and bungling Prime Minister" (Mr Akhani's quote), finds itself in an uncomfortable position in the House, to pre-empt the President in an appropriate situation for exploring the possibility of calling upon any other person to form the government or ordering dissolution. Thus, by the crude expedient of pressurising the President to accept ministerial advice to resign, and, should he refuse to cave in, by initiation of impeachment proceedings and during their pendency making him *functus officio* by having recourse to Article 70, the President of the Indian Republic can be got rid of. This is the horrendous consequence of Mr Akhani's argument which it is hoped does not reflect the government's thinking.

Not Binding

A moment's reflection will reveal that such ministerial advice to the President would be patently *mala fide*, and it is elementary that a *mala fide* act is null and void and binds none. The President is certainly not bound to accept such tainted advice.

Mr Akhani has seriously misapprehended the scope of Article 70 of the constitution which enables Parliament to make appropriate provision for discharge of the functions by the President in any unspecified contingency. The purpose of Art. 70 is not to pass laws which make the President *functus officio* but to provide for unexpected contingencies like the occurrence of vacancies in the offices of both the President and the Vice-President. Pursuant to this article Parliament has passed the President (Discharge of Functions) Act, 1969, whereunder the chief justice of India, or, in his absence, the seniormost judge of the supreme court shall discharge all the functions of the President when there is a vacancy in the offices of both President and the Vice-President.

Ultimately, successful working of our constitution will depend, not so much on the interpretation placed by judges and jurists on Articles 74 and 78, but on the spirit of mutual trust and accommodation between the head of the state and the head of the government. Let us hitch our wagon to that star.

*** ENTERTAINMENT ***

MOTION PICTURES

AAKHREE RAASTA — Super hit movie Amitabh, Sridevi, Jaya Prada, Anupam Kher, Sadashiv Amrapurkar. Daily 4 shows **Darpan** (Andheri) **Natraj** (Chembur) **Jaya** (Borivli). From Friday **Citylight**, **Shyam** (Jageshwari).

DACAIT 4th week! **Rahul Rawail's** thrilling hit! **Raakhee**, **Sunny Deol**, **Meenakshi Sheshadri**, **Suresh Oberoi**, **Paresh Rawal** and **Raza Murad**. **Dreamland** — 2.15, 5.45, 9.15, **Diamond** (Borivli).

IMAANDAAR 5th Sizzling Week! **Sunay Dutt**, **Farha**, **Saigal**, **Mehmood**. **Pran**. **Minerva** Daily 11.30, **Vandana** (Ambernath) 4 shows.

ITTHAAS (Adults) 6th Week! **Raj Kumar**, **Shabana**, **Anil Kapoor**, **Rati Aghihotri**, **Suresh Oberoi**, **Danny**. **Apsara** 3, 6, 9.15.

KARMA — 39th giant screen week! **Subhash Ghai's** starstudded hit! **MARATHA MANDIR** — 11.30 (70 mm).

KAUN KITNEY PAANI MEIN (Adults). 8th week! **Mahendra Sandhu**, **Anuradha**, **Danny**, **Amjad**. **Super** — Daily 11.30.

LOHA — 15th tremendous week! **Dharmendra**, **Shatrughan**, **Karan**, **Madhavi**, **Mandakini**, **Amrish**. **Super** — 2.30, 5.45, 9 **Purnima** (Kalyan).

MORNING MATINEE SHOWS

Rupam — Daily 11.30 **Arjun Hingorani's** musical hit! **KAHANI KISMAT KI** **Dharmendra**, **Rekha**.

Swastik — Daily 11.30. **Evergreen** musical rag! **HUM DONO** **Dev Anand**, **Sadhana**, **Nanda**. From Friday **RAAZ**.

FOREIGN FILMS

Akashwani 4.00, 6.30. Cartoon adventure. **THE CARE BEARS MOVIE**. Also **Sterling** 11.30, 1.30.

New Talkies 12.30, 4.30, 8.30. **BEN-HUR** (U). Tomorrow **KAGEMUSHA**.

Citylight Daily 4 shows. Sex fantasia extraordinary like never before! **NIGHT GAMES**. From Friday **AAKHRI RAASTA**.

Eros 2nd Week Plans Open! 1, 3.45, 6.30, 9.30. **Oscar** (Last 2 Days) 3.30, 6.30, 9.30. **Steven Spielberg's THE GOONIES** (U). A thrilling adventure filled with humour and heart-pounding peril! **Warner** release.

Liberty Deluxe 2, 4.15, 6.45, 9.30. Plans open today for ninth and positively final week! Last nine days!! See it tonight, or you'll be banging your head against your pillow for having missed the most sensuous erotica!!! Filmed on location... Between the sheets... Panoramic experience spanning sunset with sunrise with moments of pure passion... **NIGHT GAMES**. Strictly Adult... Last 2 days. **Citylight** (Matunga)... **Liberty** Matinee 11.30. **Burt** caster's **THE TRAIN** (U).

New Excelsior Opens Friday! Daily 4 shows. 1.30, 4, 6.30, 9.30 (Adults). Plans now open! Chilling thriller of the day the world stood on brink of disaster! 20th Century Fox presents **WARNING SIGN**. **Sam Waterston**, **Kathleen Quinlan**, **Yaphet Kotto**.

New Empire 2.00, 4.30, 7.00, 9.30. Second week's plans open. This is the season for ripe, juicy **Alfonso** manoeuvres... This is the season for **FINAL JUSTICE**... Our word is "final". There never was a more luscious crop... "Come"!!! Savour the delights... Satisfy yourself... But don't be too greedy! There are thousands thronging outside for the next show. And power cut or no power cut, the dazzling beauties of **FINAL JUSTICE** generate enough excitement to sizzle all **Bombayites**, and leave them crispy, gushing, and gasping for more... more... more!!! Matinee 11.30 **GUPTIASHASTRA**.

Oscar Daily 3 shows. From Friday — thrilling hit! 9 **DEATHS OF NINJA**.

★ CLASSIFIEDS ★★ CLASSIFIEDS

GODOWNS & GARAGES

A WELLKNOWN LIMITED COMPANY requires godown of about 1000 sq. ft. around Sewri bus terminus on lease basis. Please apply to Box E 546—K Times of India, Bombay 400 001.

AVAILABLE STORAGE SPACE, both open and covered, at Byculla and Andheri. Contact **Bulwark Warehousing Company**. Phone 8510426-27.

GODOWNS WANTED:- ANDHERI, **Sewree**. Area:- 1000 — 10,000. (Available godowns, plots:- **Mulund**, **Vikhroli**, **Khatkopar**. 500 — 10,000. (Warehousing ownership) buying, selling. Post Box:- 17823, Bombay-400 080.

(A45021)

WANTED

Warehouse required on out-right purchase basis preferably on the outskirts of Bombay. Please write giving details of area, location, items which can be warehoused, expected price, etc. to: Box E 299—S, Times of India, Bombay 400 001.

GODOWN 500 TO 80000 FORT TO **Dahisar** — Mazagaon to Thane — **New Bombay**. Ownership | tenancy | lease | deposit — buying | selling. **Rameshbnai Kander** — 322890 | 329516. (3—7) 5114674 | 5135124. (Ag20983)

OPPOSITE DOMBIVLI MIDC ON KAL- **Vas** — Sheel Road godown / showroom or warehouse complexes of 100 sq. ft. each. Contact **Mr. Phanse** behind **Surya Mahal Karyalaya**, **Dombivli** (East).

WANTED GODOWN OF 500 750 square feet between **Andheri** | **Dahisar**, ground floor on rental deposit basis. Write Box D 906—S Times of India, Bombay 400 001. (AA26409)

KENNEL, PETS & LIVESTOCK

BOXER PUPS FOR SALE CONTACT **Jayesh** 10, **Surya Niwas Gushala Lane**, **Malad** (East) **Bombay** 400 067

MEDICAL

EXPERIENCED THEATRE / MATERNITY nurses, receptionist ayahbais wanted. Phone 536813 / 542503. Apply with bio-data expected salary. **Excel Nursing Home**, 589, 19th Road, **Khar**, **Bombay**-400 052.

FOR SALE SADSOPH OPERATING microscope. Contact: "Ruby" 351318. (AA26316) (Ag21068)

TRAINED NURSE WANTED **URGENTLY** FOR **REPUTED** **NURSING HOME**. **CONTACT** **Dr. MASRANI**, **SHANKER LANE**, **KANDIVLEE** (WEST). **PHONE** 695710/682332

RAHEJA HOSPITAL MAHIM, BOMBAY- 400 016, requires Sr. Medical Officers (M.S.) Jr. Medical Officer — graduate with surgical experience. Attractive terms. Apply within ten days. (Ag20842)

WANTED M.B.B.S. DOCTOR TO WORK as R.M.O. with one year experience preference will be given to M.B.B.S., D.A. (one room kitchen self contained flat provided) Apply immediately **Pragati Hospital**, **Janki Nilwas**, **Ganesh Gawde Road**, **Mulund** (West). (Ag20882)

WANTED PAEDIATRICIAN AS A partner for a proposed paediatric hospital in thickly populated Central suburb. Reply Box E 479—K Times of India, Bombay 400 001. (A45013)

Wanted a R.M.O. resident Psychiatrist (for De-addiction centre) and O.P.D. assistant for **Shree Nityanand Arogya Ashram**, **Ganeshpuri**, **Dist. Thane**.

Applying stating age, full Qualification, experience & expected salary to the Secretary, Medical Committee C/o. T. R. Jain, 601, **Jolly**