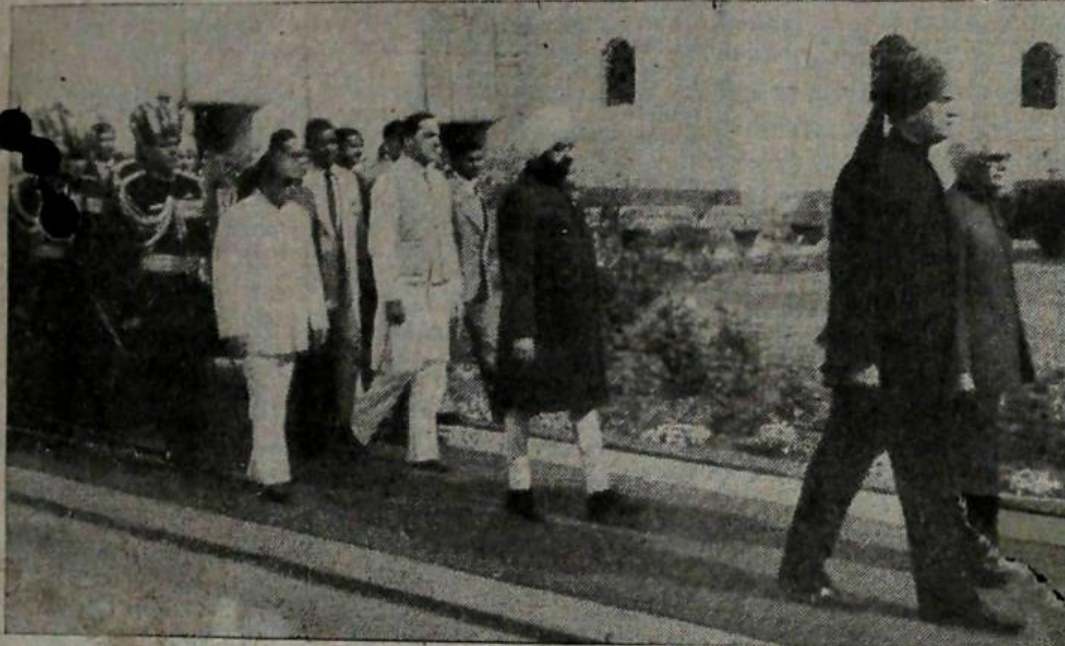


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Roots Of President-PK



As a member of the Constituent Assembly which framed the Constitution of India, MINOO MASANI is concerned with the fundamental problem of the powers and functions of the President which lies at the root of the present controversy. He writes :

"My colleagues and I in the Constituent Assembly carefully considered this matter and we decided to depart from the British precedent by having a written constitution which gave the President powers in excess of what the British sovereign enjoyed under Britain's unwritten constitution. We created a President who was, in my opinion, halfway between the British Crown and the US President, not of course the head of the government as in the USA under the presidential system, but certainly not a puppet or a figurehead."



reason to believe that the latter no longer represents the sense of the electorate, the dismissal of the ministry or the dissolution of Parliament would be constitutional; and cases of emergency might conceivably arise where, through the unfitness or incapacity of the ministry, the exercise of the power of dismissal would be constitutional, justifiable and proper, in order to prevent the adoption of some course to the nation."

To turn to our own Constitution, Article 74 reads :

There shall be a council of ministers, with the Prime Minister at the head, to aid and advise the President in the exercise of his functions.

Article 75 provides :

(1) The Prime Minister shall be appointed by the President and the other ministers shall be appointed by the President on the advice of the Prime Minister; (2) The ministers shall hold office during the pleasure of the President.

Article 78 provides :

It shall be the duty of the Prime Minister to communicate to the President the business of the Council of Ministers relating to the affairs of the Union and proposals for legislation and to furnish such information relating to the business of the Council of Ministers as the President may require. (b) to furnish such information relating to the business of the Council of Ministers as the President may require. (c) if the President is satisfied that a matter on which a decision has been taken by the Council of Ministers is of such importance that it should be referred to the President for his consideration, he may refer the matter to the President for his consideration.

What I have said is borne out by the speech made by Pandit Lal Bahadur Shastri in the Constituent Assembly even while the provisions were in draft in 1947 :

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THOUSANDS of words have been written about the recent exchange between the President and the Prime Minister as if this were a one-day cricket match. Very few have taken the trouble to go through the past record of what is in fact a continuing series of Test matches between the President and the Prime Minister, commencing soon after the Constitution of India was enacted in 1950.

We instituted in our written Constitution a system of checks and balances to the power of any particular authority. Thus, in order to curb the Union Prime Minister and Parliament of the day, we provided for a President who would have teeth, states which would share power with the Union, and a supreme judiciary which could strike down laws of government and laws of Parliament if they conflicted with the fundamental rights of the citizen or other parts of the Constitution.

It is for the same purpose of preserving a balance that the Constitution provides that the President of the republic shall not be elected by Parliament but by the entire people through an electoral college including members of state legislatures.

Unfortunately, all these three checks have been eroded during the past 35 years. The President has been reduced to a figurehead, the autonomy of the states has been eroded by the Centre and the supreme judiciary was also denigrated during the regime of Mrs. Indira Gandhi.

Since the right to dissolve Parliament has come to us from the practice of parliamentary democracy in Britain, it is worthwhile recalling what that great constitutional authority, Dicey, had to say in his classic work about the right of the Crown to dissolve Parliament:

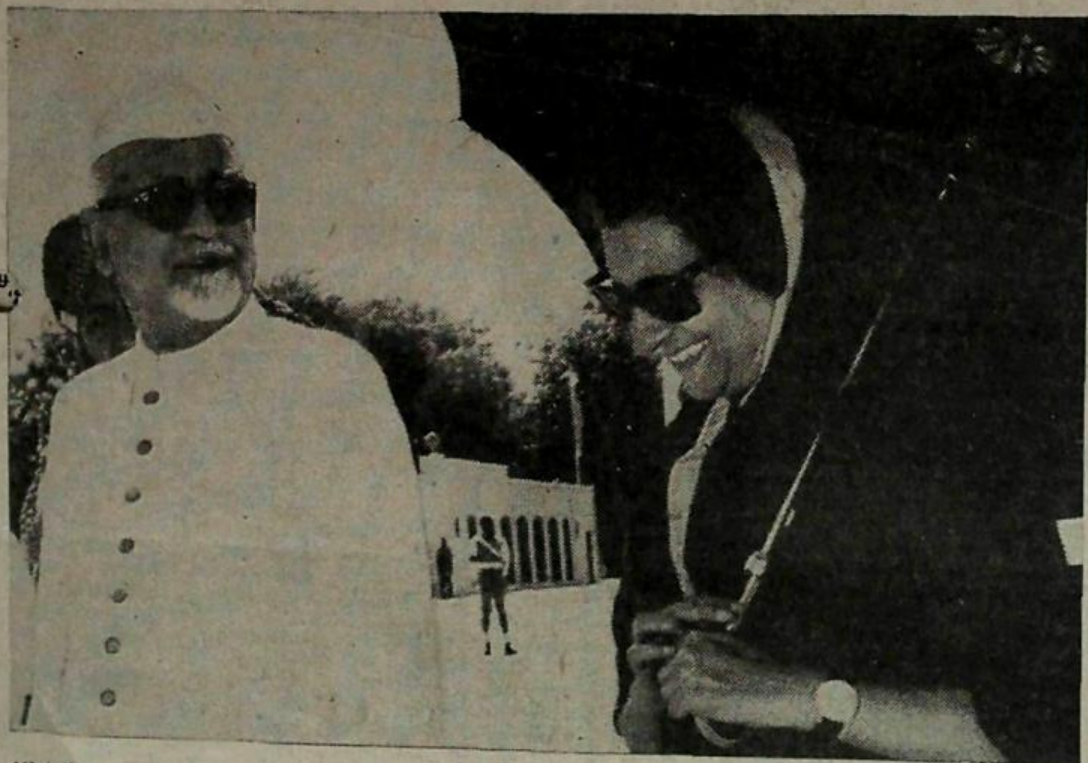
There are certainly combinations of circumstances under which the Crown has the right to dismiss a ministry who command a parliamentary majority and to dissolve the Parliament by which the ministry are supported. . . . The reason why the House can in accordance with the Constitution be deprived of power and of existence is that an occasion has arisen in which there is a fair reason to suppose that the opinion of the House is not the opinion of the electors. A dissolution is in its essence an appeal from the legal to the political sovereign.

A consensus has emerged in England among the experts that the Crown has an unfettered dis-

cretion to accept or reject the Prime Minister's advice to dissolve Parliament but that this right would be exercised only in exceptional circumstances. Dr. Arthur Barriedale Kieth holds the view that the Crown is clearly not bound to grant dissolution when asked for. The same view was held by Sir Ivor Jennings, another authority on the subject, who objected to the sovereign being reduced to the condition of a "nodding automaton". Yet another who held that view was that great Commoner, Winston Churchill.

THE British precedents in regard to the dismissal of a government are relevant. Three distinct grounds have been adduced for the dismissal of a cabinet. First, if in the Crown's judgement, the ministry has lost the confidence of the people. Secondly, if the Crown is satisfied that the ministry has forfeited the confidence of the House of Commons. Thirdly, if the ministry is guilty of conduct that justly calls for dismissal. Naturally, in all cases, the electorate must be asked to give its verdict and that verdict must be respected.

This view extends as far back as the commentaries of Lord Halsbury who wrote: "In cases where the ministry still retains the confidence of the House of Commons, but the Crown has



"Why are you opposing Zakir Saheb's election as President?" Indira asked. I said, "because India needs a President who can dismiss you if you should violate the Constitution. Do you think Zakir Saheb would ever dismiss you?" She laughed and said, "No, of course not."

view

Clash

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government, that power really resides in the ministry and in the legislature and not in the President as such. At the same time we did not want to make the President just a mere figurehead like the French President. We did not give him any real power but we have made his position one of great authority and dignity. You will notice that he is also the commander-in-chief of the defence forces just as the American President is.

ONE would have thought that the language of the Constitution is perfectly clear. According to the Concise Oxford Dictionary, the word "to aid" means "to help" and "to advise" means "to offer counsel to". The essence of advice is that it leaves the person advised free to accept or reject it. It is perfectly obvious that the ministers are the President and that the final decision on all matters should remain with the State who would nor-

mally be guided by the advice of the cabinet or the council of ministers. That does not however take away from his legal and constitutional right to overrule the cabinet whenever he feels called upon to do so and to face the consequences.

Indeed Dr. Rajendra Prasad, President of the Constituent Assembly, gave expression to this view when, on May 23, 1949, he said that Article 74 (i) "does not lay down that the President is bound to accept the advice."

For anyone to argue that the Constituent Assembly gave the President no independence and

both the President and the governors should be prepared. It was specifically laid down in the draft Instrument that, for the purpose of making certain appointments, the advice of the government of the day would not be taken but that the President would be advised by an advisory board of 15 members of Parliament in the matter of making certain appointments under the Constitution. It was suggested that the appointment of the judges of the Supreme Court and the high courts, the attorney-general of India, ambassadors and members of the public ser-

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wanted him to accept the "advice" of the Prime Minister and cabinet even when he wanted to overrule or dismiss them is to imply that my distinguished colleagues in the Constituent Assembly were all nincompoops!

There was a proposal at one stage that an Instrument of Instructions for the guidance of

vice commission and the election commission would require consultation with the board.

The object was clearly to prevent ministers putting their own men into high office. However, no Instrument of Instruction was finally adopted and the Consti-

Continued on Page IV

Thin isn't in any more

Americans have been eating more candy, beef, cream and corn chips and are buying walking shoes and practising more aerobics in its gentler, less stressful forms. If this keeps up, it may become stylish to be a little bit fatter.

A report on new health trends in the US.

SAY goodbye to the days of no pain, no gain. Americans are trying to exercise without sweating, diet without giving up cake and eat without cooking. If this keeps up, it may become stylish to be a little bit fatter, some trend watchers say.

Americans have been eating more candy, beef, cream and corn chips, and are buying walking shoes and practising more aerobics in its gentler forms.

Reclining chairs, a national symbol for taking it easy, are selling briskly. Pizza delivery is booming, snacking at home is on the rise, and dieting is declining.

"I'm not saying nutrition is a dead issue," said Hary Balzer, who analyses eating habits for the NPD Group, a market research company in Chicago. "But the intensity, the willingness to act on it, has slowed down. Easy is now the key word."

Some consumer researchers do not agree that the passion for fitness and nutrition is waning.

But many others are certain a shift is occurring, and they attribute it to greater maturity and better judgment among the population, not to backsliding or laziness.

Yet all the researchers believe that the evangelical fervour for keeping lean and fit is giving way to a less obsessive approach. "People are not running as much because they finally realised that the only animals that run that much are white rats on treadmills," said Leo Shapiro, who owns a market research company in Chicago.

An aging population may also find it tougher to keep its weight down. Arnold Brown of Weiner, Edrich, Brown Inc. in New York, which helps business analyse change, attributed what he called the "slackening off" to the onset of middle age among the large "babyboom" generation of the postwar era.

Baby boomers continue to care deeply about health, fitness, and appearance, he said, but now have the idea that "exercise doesn't have to be stressful".

Magazines like *The Runner* now print stories promising "High Success on Low Mileage." Health articles warn that stringent dieting can slow down the body's metabolism, making weight loss impossible after an initial drop in weight.

Nancy Sills, 33, a lawyer, said she did not exercise as much as she used to or worry as much about what she eats. "I can't bring myself to diet anymore," she said. "It's too painful. I don't want to not eat bagels for breakfast."

Ms. Sills typifies a pattern in data collected by the NPD Group, which studied eating habits in 2,000 households. In the last two years, Mr. Balzer, the NPD

analyst, said, the percentage of people on diets fell to 19 per cent from 27 per cent. Last year, for the first time in five years, snacking in the home increased. Popular items included ice cream, candy, chips and popcorn.

Dieters are defining the concept more liberally. MRCA Information Services, a market research company that also follows eating habits in 2,000 households, found that in 1984, dieters ate 46 per cent more chocolate bars and 59 per cent more pretzels than in the early 1980s, as they consumed twice as many croissants.

Faith Popcorn, whose Brain Reserve Inc. in New York studies social trends, said women's average weights are rising, and the acceptance of the fuller figure can be seen at the movies. She called it a "turn away from extremism," stemming partly from the interest in child bearing among baby boomers. With AIDS and the association of emaciation with wasting diseases, she said, "the whole idea of being thin is not 'in' anymore."

The use of cream products in cooking, which had been declining, is at the highest level in 20 years. Annual candy consumption rose by nearly 3 pounds (1.3 kgs) per person between 1981 and 1985, according to figures compiled by the U.S. Commerce Department.

Consumption of beef, too, declining, rose to 79.8 pounds a year per person in 1986, from 76.5 pounds in 1980, according to the Agriculture Department. Some restaurants sense a change.

"People aren't shying away from meat so much," said David La-Pointe, manager of Bitable, a New York restaurant, which put meat on its menu last month for the first time.



Yogis inhale water...

The Sadhana Way

by Hareesh Raja

THE upper respiratory system in the human body is at work round the clock. The air that we take in through the nose is conveyed to the lungs through the trachea. In case the nose is clogged or the lungs need a larger quantity of air, then we begin to breathe through the mouth.

Air passages behind the nose and the mouth are also connected to air cavities behind the eyes and the eardrums. These passages help to protect the delicate organs of the audio-visual system against fluctuations in the external atmospheric pressure.

People who suffer from chronic colds or those who breathe in toxic fumes, like tobacco smoke suffer from impaired vision or hearing in the long run. If the upper respiratory system remains congested with mucous secretions and other impurities like dust particles and microbes in the air, there are chances of bacterial infection.

In Hatha yoga there are simple techniques for cleaning the upper respiratory system. These ensure healthy breathing and a sensitivity for subtle experiences, that lead to inner awakening.

Neti can be called a "nasal douche". Take warm water which is slightly above body temperature. Add salt to this water at the rate of half a teaspoon per glass (300 ml.) This is equal to the salinity of the mucous secretions in the respiratory system.

If the water is warmer or colder or the salt is more or less; there will be some irritation in the inner system which may cause discomfort.

Yogis take clear cold water from a stream in the hollow of their hands and inhale it directly through one nostril. The water is then expelled from the other nostril by tilting the head towards the other side. When water is expelled from the mouth the head is tilted backwards.

One can buy a "neti lota" from any good yoga institute or even a feeding cup for invalids from a chemist's shop. What is



"JALA NETI": What is required for this is a small pot with a spout which can be inserted through one of the nostrils.

required is a small pot with a spout which can be inserted in one of the nostrils.

Care should be taken that water does not enter the windpipe. This can make one cough or choke. However, just practise a few deep gargles till the choking sensation subsides.

Initially, some discomfort is caused by droplets of water sticking to the mucous membrane after practising neti. These can be expelled by rapidly exhaling air by contracting the stomach in rapid jerky moves in quick succession.

There is another method in Ayurveda to administer nasal medication. This is by pouring a steady stream of water over the forehead, with the head leaning forward, followed by the head bending backwards. This results in the inner fluids gradually pouring out.

I experienced "jala neti" by accident when I went surfing. I was suffering from congested sinuses. When the incoming waves of the tide beat against my face some salt water entered through my nose. For a while, I was choking and quite uncomfortable. Later that day I started expelling all the accumulated congestion and my sinuses cleared. I began to feel more comfortable.

Now I practise neti every day

before my morning bath. This protects me from coughs and colds and allows balanced breathing while I meditate. I do not use a special neti pot because a clean glass mug comes in more handy and saves time.

Some subtle experiences while meditating manifest themselves in this upper respiratory area. The humming sound that you hear while you yawn originates in the lungs and hits the inner ear from this area. This sound is the beginning of a vibrant mantra. Same goes for the nasal sounds you produce in your vocal chords. They vibrate at the root of the nose where the two nostrils separate. The visions of blue light you sometimes see are created by inner vibrations of the optic nerve that passes through this area on its way to the occipital lobe of the brain.

Neti is also practised with soft cotton strings. This is known as "sutra neti". We shall discuss this process in greater detail in due course.

Meanwhile, people who suffer from frequent nasal bleeding should not practise "jala neti" or if they do, only under expert supervision. People who are sensitive to the administration of nasal drops also should learn to practise neti under the guidance of a qualified yoga teacher.