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* a liberal country
in existence for the last
50 years.

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RAJU INTRODUCTION

Good evening, listeners - and, although we are well into January already, a Happy New Year to all of you!

I have with me today, Mr. S. V. Raju, Editor of Freedom First ~~magazine~~ ^{magazine}. Earlier, he was ~~of~~ ^{the} Swatantra Party and in this capacity, was closely associated for many years with Mr. Minoo Masani. ~~of the~~ ^{the} Rajagopalachari

Today, however, we don't speak about politics but we discuss instead - since we are both well over 70 years old - the notable differences between life when we were young men - and life today. In a sense, this itself can be a measure of the distance we have covered from that time to this. So let's start:

Raju, do you agree that there has been big change in the pace of life itself?

etc etc

I think we have come to the end of the time allotted to us. Thank you very much, Raju, for having come and for agreeing to do this interview for us.

** Ex Sec. of the Central Office of the 5 Raj-

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GROWING WITH THE REPUBLIC

A personal assessment

Living Four Eras in One

When we look back we see ourselves straddling Four 'Eras'.

1. The first from the Thirties to 1947 - From a British Colony to a Dominion - (From Viceroy to Governor General but the King of England continues to be the Head of the Indian Dominion (still part of the British Empire - much like Australia is today) *(Catholic Commonwealth)*
2. The second from 1947 to January 26 1956 - (From Dominion to Republic (from subject to Citizen)
3. The third from 1957 - 90 (A State owned/controlled economy also described as a Mixed Economy) .
4. And the fourth from 1991 till today (A free market or Liberalised Economy)

For purposes of this discussion let's call them Eras 1,2,3, ,

Era 1:

- A school-going teenager. Honestly cannot recall any seismic change. From British Colony to British Dominion
- What I recall from that period was alongside the freedom struggle was communal rioting. The closest I came to getting involved in these riots was when I was one day when I was on my way back from school a bullet whizzed above me. There were Tommies (as British soldiers were then called) crouched behind sandbags at King's Circle in Matunga. Rioting was going on in central Bmbay.. This Tommy had fired in the air to disperse a crowd which had defied 144 CrPC.
- I Remember 15th 1947 August as a day of Prabhat Pheries (early morning marches with patriotic songs and Bhajans) School was holiday though we had to participate in the flag hoisting at school many speeches at meetings and over radio, flag hoisting and the

Strong institutions, especially an independent judiciary, a written constitution, a bill of rights, separation of powers, a free press, freedom for opposition parties, were essential for their preservation.

In his speech, Nani lauded the U.S. "for being the first nation in the world to have a guaranteed Bill of Rights." Though he venerated the Indian Constitution, he pinpointed some of its weaknesses, such as the ease with which it could be amended by a two thirds Parliamentary majority. This fact had led to his greatest constitutional law triumph in 1973 in the historic Kesavananda Bharati vs. the State of Kerala case, to preserve the basic structure of the Indian Constitution, against an aggressive Parliament's amending power. The Indian Supreme Court ruled that though the right to property was not a part of the basic structure of the Constitution, the amending power of Parliament could not be used to alter or destroy the framework of the Constitution, itself. During the dark days of the Emergency, the government tried to make the Court overrule its earlier judgment. Once more, Nani's impassioned defense, forced the Chief Justice to dissolve the bench, stopping the effort dead in its tracks. One of the judges observed that Nani's performance had been unparalleled in the history of the Court. In a later work, he spelled out the key elements of the basic structure: "the rule of law, the right to personal liberty and freedom from arbitrary arrest and imprisonment, the right to dissent which implies freedom of speech and expression and a free press...and it is these priceless freedoms, which cannot be destroyed by the Parliament in exercise of its amending power."

During the Emergency, Parliament tried again by rushing through the Forty Second Amendment, while most of India's opposition leaders were jailed. The Amendment was another attempt to supersede the Supreme Court's Kesavananda decision, by "conferring absolute and unlimited amending power on Parliament."

Once more, in May 1980, following his return from Washington D.C., Nani stepped into the breach. In another crucial case, Minerva Mills Ltd. v. Union of India, the Supreme Court struck down the Forty-Second Amendment Act of 1976. After Nani's death in 2002, Congress President Sonia Gandhi, in a gracious tribute, said,

"The basic structure of the Constitution bears testimony to his originality and scholarship. One cannot think of a more eminent name in the Indian legal firmament than Palkhivala's."

Another weakness of the Constitution, was the right to declare a national emergency. As Nani told the

Lawrence audience, "We were foolish enough at the time that we started the republic, to empower the President of India on the advice of the cabinet to declare a state of emergency when the conditions in India were such that the normal machinery of government could not function. There were no limitations in point of time or qualifications on the part of parliament to declare a state of emergency."

He described, vividly, what happened following the Allahabad High Court's convicting Indira Gandhi on two counts of violating India's electoral law, and unseating her from Parliament with a six year disqualification. Nani had sympathised with Prime Minister Indira Gandhi, when she had been convicted by the Allahabad High Court for electoral infractions. He explained why:

"The case had not been handled properly in the lower court, as a result of which the Allahabad High Court reached an adverse decision on the information before it. It was a *wrong* decision because in effect it meant that if any functionary anywhere down the line and beyond the immediate control of the decision-makers did anything wrong, the person at the top was held guilty. If this legal principle was allowed to remain the law of the land, the functioning of Indian democracy would become impossible."

Seeing the decision as a threat to Indian democracy, Nani accepted Prime Minister Gandhi's brief, to defend her against the judgment, which was sure to be appealed to the nation's Supreme Court. He was inundated with protests from friends and admirers. He told his close associate, M. R. Pai, "I would not mind being even permanently misunderstood as I was doing what I consider to be my duty."

Mrs. Indira Gandhi did not wait for a final verdict from the Supreme Court. The Emergency was declared on June 25, 1975. Democracy came to a screeching halt. As the arrest of the opposition began, without hesitation Nani withdrew from her legal defense. His statement, explaining his resignation, read, "While I adhere to my views regarding the legal merits of the Prime Minister's Appeal against the Allahabad High Court's judgment in the election petition against her, the measures taken by the Government this morning are such that, consistently with my lifelong convictions and the values I cherish, I have requested the Law Minister to convey to the Prime Minister my decision to withdraw as counsel from the appeal." It was an act of courage and principle.

In March, 1977, elections were held. The

singing of Jana Gana Mana,. Volunteers in white Khadi distributing sweets (Pedhas).

- Post 15th August was like any other day for.. Getting up early morning standing in queue for milk. On returning from school, standing in queue for foodgrains, kerosene even cloth and, if I remember right we could even purchase exercise note books on our ration card! Rationing – all basic necessities were scarce had been so as long as I could remember because of World War II. The British Indian Army fought alongside the Allies. Rationing was well organised and essential commodities well distributed.
- On the other hand face powder like Yardley or Cuticora, Ponds , various brands of soap and cosmetics, Huntley and Palmers biscuits and many such “imported” stuff were available no rationing for them!
- After 15th August it was like any other day. Also, a daily reminder from our . our freedom fighters over radio and at corner meetings that we were free and and we were our own masters. May be, but I didn't feel any difference. The daily grind as it used to be
- I was schoolboy 14 years of age - apart from school books, notebooks etc I wasn't really aware of goings on. We had our Newspapers The Times of India (owned by Englishmen) Free Press Journal (owned by a patriotic Indian),. The National Standard (now called the Indian Express) and other language dailies. Cinema theatres had with three shows in a day, Aurora cinema close to our school to which we would sneak away to say paying 5 annas ticket equal to some 30 naye paise.
- Not many cars on the road till though there were during the colonial rule imported cars – the latest models I – Morris Minor, Ford, Chrysler, D Soto And many more.
- Three years later we had our own Constitution and on 26th January 1950 we became a Republic with our very head of State –the President – Rajendra Prasad. He was a PhD and was Dr.Rajendra Prasad A highly respected person and a scholar apart from having been a freedom fighter. Our own parliament the Lok Sabha and our own Rajya Sabha. In those days real giants occupied these two

government of Prime Minister Gandhi believed it would win. In prison, the leaders of the opposition parties united, and formed the Janata Party. They swept the polls, and restored the banned freedoms. As Nani concluded his Lawrence address, the audience rose spontaneously in a standing ovation.

Following dinner at President Smith's home, Nani and Nargesh, departed, for the University of Wisconsin, at Madison. We had been together almost the whole day. Nani made me promise, to visit whenever I was in India. I kept it, with great pleasure, for almost the next twenty years.

Nani's greatness transcended his magnificent accomplishments. It shone in his character, conscience and conduct. Nani was born in Mumbai in 1920, to a devout Parsi family. His father, Ardeshir, owned a laundry, called "Harrisons". Nani had two siblings, brother Behram and sister Amy. The family was close. Nani wrote in *We the People*: "To my parents, to their love care and guidance, I owe a debt which could never be repaid. From them I learnt that all the loveliness in the world can be reduced to the first syllable." His father inculcated a "passion for literature", and charity. When two, he was about to eat some almonds. His father told him to remember a neighbour, an orphan. He gave the entire bowl to the neighbour, a hint of his later contributions to innumerable causes, including the quiet donation of rupees two crores, to Sankara Netralaya, a charitable eye hospital in Chennai.

Like many great figures, Nani, at an early age, developed a sense of destiny, mission and Providence. But he was also, I would venture, a Karma ~~Yogin~~ who followed the path of desireless action, who acted righteously, but never sought personal reward or self aggrandizement. He wrote, "I have deep faith in the existence of a force that works in the affairs of men and nations. You may call it chance or accident, destiny or God, Higher intelligence or the Immanent Principle. Each will speak in his own tongue." Nani believed in the equality of all the great religions.

As a child he demonstrated will power. He suffered from "a dreadful stammer." So, he threw himself into elocution competitions, and overcame the impediment. He believed it was providence, "... without Providential grace, my own will to get over the handicap would have been in vain" He was consumed with books and study. Gifted by nature with a brilliant intellect and photographic memory, he earned a master's in English Literature at St. Xavier's College, and applied for a lectureship at Bombay University. Fate intervened. A Parsi girl was offered the position. So Nani enrolled at the Government Law College.

He stood First Class First, in both the first LL.B and Second LL. B. exams. He won every possible prize, along the way.

He joined the chambers of the famed Sir Jamshedji Kanga, in 1944. Within a few years he was the luminary of the bar. We have already mentioned his greatest case - Kesavananda Bharati vs. the State of Kerala. Nani defended other important causes whether they were popular or unpopular, as long as they concerned the principle of constitutional justice. He defended the Indian Princes against the Government's violation of the Constitution when it passed an executive order abolishing their Privy Purses; freedom of the press, when the Government attempted to crush dissent, by controlling the import of newsprint. Nani's arguments convinced the Supreme Court to strike down the restrictions. He argued, "Newsprint does not stand on the same footing as steel...Newsprint will manifest whatever is thought of by man." In the St. Xavier's College case, he successfully defended his alma mater's right to administer its own affairs, to appoint and dismiss teachers, and admit students of the minority community. He charged no fee.

During the 1960's he was offered a seat on the Supreme Court, but declined. In 1968, the position of Attorney-General, in Prime Minister Indira Gandhi's Government. He almost accepted, but destiny or an inner voice made him pull back. He wrote in *We the People*: "That night I went to bed and looked forward to my usual quota of deep slumber. But suddenly and inexplicably, I became wide awake at three o'clock in the morning with the clear conviction, floating like a hook through my consciousness, that my decision was erroneous and that I should reverse it before it was too late". The very next morning, his acceptance was withdrawn. Fate had saved him, to oppose the same Government in three of his greatest cases: Bank Nationalization (1969), the Princes' Privy Purse (1970), and Kesavananda Bharati (1973).

Though he refused to participate in active politics, Nani belonged to a host of corporations, public, cultural and charitable. Most prominent perhaps, was his membership of Tatas, which he was invited to join in 1960. Of the many Tata Chairmanships, two deserve special mention- Tata Consultancy, and Tata Exports, later renamed Tata International. The former became India's largest software company, the latter, one of the country's greatest export houses.

Though unsought, honours poured in. Princeton also conferred a "Doctor of Laws", during his ambassadorship. In India, Mumbai University and Annamalai University, did the same. Among other

august houses – chief among them all Pandit Jawaharlal Nehru who was the very much loved by the people. Parliament and its dignity was his passion.

- There are many stories about his love of parliament. There is this one often heard: another great freedom fighter G.Mavlankar was the Speaker of the Lok Sabha then. Once Nehru 'summoned' Mavlankar to his room. Mavlankar told the messenger that the Speaker cannot be summoned by any minister even if he is Nehru. Instead of being offended a contrite Nehru went to Speaker Mavlankar's room and apologised!.
- In these three years (1947 -50) there were no drastic changes – shortages continued, rationing continued, the queues continued and we could still get the imported Huntley and Palmers biscuits. And we could still see the latest models of cars and even buses on the road run by the BES&T (Bombay Electric Supply and Tramways Ltd) run by Englishmen. Though slower than cars and trains they were the poor man's conveyance running through the principal arteries of Bombay (what is now Mumbai). which ended at Sion of Shiv where there was an Octroi naka. Beyond were undeveloped stretches of open land and salt pans.
- Two years later in 1952 we had our first general elections. Those days the elections to the Lok Sabha and to the state assemblies were held simultaneously. The Indian National Congress to which part the British handed over power from the British on 15 August 1947 were returned by an overwhelming majority. All other parties put together did not go beyond two figures. I couldn't vote then because I was 19 aornd the voting age then was 21.
- And so the first five years of the Republic passed without any major issues. But looking back one could from hindsight realise that India was slipping. While there were no famines in free India (barring the Bihar famine in ther 1960s) footages were becoming chronic. The rationing system which worked so well before independence started faltering through mismanagement and corruption. As a Queues veteran of many years' standing I could feel the difference - often having to return empty-handed without the rations (because the shopkeeper was selling off at a higher price to the better off and to restaurant through a back-door) or passing off to ration-card holders like me. grains that wouldn't be fit for cattle.

significant awards, was the Living Legend of the Law Award of the International Bar Association. In the late 1980s the Government of India conferred the Padma Vibhushan, one of its highest awards.

I met Nani for the last time in 1998. Every visit, Nani invited me to lunches – at Bombay House, the Ripon Club and to dinners, at his home, “Commonwealth”. At every dinner, grilled chicken livers were served with drinks! On every occasion, Nani spoke of his concern of government policies that prolonged poverty, corruption, regional rivalries.

When I visited him in 1998, I knew that he had not been well, had undergone heart surgery, and suffered paralytic strokes. Yet, he continued to work. I went to Bombay House, since I did not want to burden him by being invited to dinner. As soon as I entered his office, we embraced, and his first words were, “When are you coming to dinner?” I protested, but he insisted. His mind was clear and sharp, as ever. It was my last memorable evening with

him and Nergesh.

Nani was devastated, when Nargesh, his lifelong companion and anchor, passed away in 2000. He lost the power of speech. His heart troubles continued. Many years before, he had written, “I believe the journey will be over at the predestined hour, irrespective of the medical care which money can buy.”

That hour came on the 11th, December, 2002.

Of the countless tributes, during his life, the most apt was, India's elder statesman's - Chakravati Rajagopalachari's:

“Nani is God's gift to India.”

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- Mohan
- Shortages continued, the queues grew longer, corrupt practices grew like wildfire. There were many opportunities to "make money". Telephones for instance. A private company. Bombay Telephones was taken over by the government. There was a waiting list many years' long unless you belonged to what was called "special category" one in such category were political parties. You could also transit into the "special category" for a price. Railway reservations or long distance. One could go on.

- While corruption increased the country continued trudging at a snail's pace. It is famously known as the "Hindu Rate of Growth" around 3 to 4 per cent per annum. This, at a time when many of the war ravaged nations in Europe and Japan were recovering at a steady pace ~~from the ravages of war.~~

- In 1956 came the first hammer to sunder the integration of States achieved by the great Sardar Vallabhbhai Patel - The States Reorganisation Commission was formed, soon Andhra was carved out of the old Madras State and Maharashtra and Gujarat out of the old Bombay State. The process continues to this day. ~~To the communal riots were added the linguistic riots. Gandhi's 'hartal' during British rule has 'morphed' in the modern day 'Bandh' violently imposed by goons in the name of various political parties. Law and Order has taken a beating.~~ Pohar

- 3 May 1957
- The 2nd Five Year Plan in 1957 was a watershed. The Plan decided that the State would control the commanding heights of the Economy. This meant that the government would not only manage its primary responsibility of governance but also manage the economy and run Industry and Trade with the private enterprise playing the role of the junior partner.

- With the State focussed on large projects, large dams, large steel mills micro issues, not so grand, got neglected. And it also gave birth in a big way to what C. Rajagopalachari christened Licence-permit-quota raj. This gave enormous powers to government servants, which was not only a stranglehold over businessman and industrialists small and big but on the ordinary folk what is now popularly known as the Aam Admi.

- My life as that of the ordinary man in the street was badly affected. I soon found that even for the simplest things I needed some

The Legacy of Nani Palkhivala

Minoo Adenwala



On the occasion of the late Nani Palkhivala's 91st birth anniversary in January this year we are privileged to publish this article by Minoo Adenwala, Lawrence University, USA.

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As a Lawrence University faculty member, since 1959, I was familiar with the legend of Nani Palkhivala. Through the following years, I remained a distant admirer, marvelling at his continuing accomplishments, in law, scholarship, economics, education, business, philanthropy, and public service. His erudition and command of Indian and Western history, literature and philosophy amazed me. Long before the end of the "permit, license raj" Nani belonged to that small band of intellectuals, who kept the flame of free enterprise alive, when to many, the cause seemed hopeless. Never did I imagine, that chance or fate, would lead to our meeting, and a friendship, spanning twenty years.

It began in 1979. Lawrence University, in Appleton, Wisconsin, invited Ambassador Nani Palkhivala in 1978, to receive an honorary Doctor of Laws, at our June graduation. Nani accepted. Unfortunately, the date later conflicted with the arrival of Prime Minister Morarji Desai's visit to the U.S. Nani had to decline. Lawrence responded by making an unusual exception. It invited Nani to address a special university convocation, where the honorary degree would be conferred, at a date convenient to the Ambassador.

On the 28th March 1979, President Thomas Smith of Lawrence, and I, drove down to Milwaukee, Wisconsin to greet Ambassador Palkhivala and wife, Nargesh. I had not eaten. I suggested that we take the Palkhivalas to a good dinner. Tom Smith agreed. I was delighted! After President Smith greeted the couple warmly, I asked whether

they cared to go out to dinner. Nani replied, that they had dined well, on the plane. "That's too bad," I blurted out. Tom Smith stifled a chuckle. The Ambassador, looked a bit puzzled, but said nothing! Not a propitious introduction!

His major convocation address, the next day, was, at 4.00 p.m. The large Lawrence Chapel, was packed. Following the faculty procession and before Nani spoke, President Smith conferred the honorary degree of, "Doctor of Laws". In part the Lawrence citation read,

"As India's leading author, scholar, teacher and practitioner of constitutional law, you have defended the individual, be he prince or pauper, against the state; you have championed free speech and an unfettered press; you have protected the autonomy of the religious and educational institutions of the minority, and you have fought for the preservation of independent social organizations and multiple centres of power. Never more did you live your principles, than during the recent nineteen month ordeal which India went through in what was called 'the Emergency'. Under the shadow of near tyranny, at great risk and some cost, you raised the torch of freedom."

Nani acknowledged the "special" convocation, as "one of the happiest and proudest days, of my life." He titled the address, "A New Birth of Freedom." It referred, of course, to India's rejection of the draconian Emergency, but was also, a clause, culled from Lincoln's Gettysburg Address. Not many knew this!

Without props or notes, Nani spoke to a spellbound audience. The speech, though an analysis of political history, the events leading to the Emergency and its demise, was also an exposition of Democratic Political Philosophy. Democracy was, he believed, a delicate and "rare human achievement".

Nani, like Edmund Burke, was a passionate believer, not just in Democracy, but Constitutional Democracy. Individual liberty and fundamental rights, were as, or more important, than the franchise.

godfather's help "Siparish" as the Hindi word goes or bribe. Ration shops now called fair price shops had painted boards (because of the frequent use) saying "Out of Stock. I soon discovered that everything that was out of stock, was indeed available - for a price. The more controls that were imposed only made things worse. Roads got worse badly maintained because the repairs were carried out with sub-standard material. Footpaths almost disappeared being appropriated by slums or hawkers.

- The Administrative Services were much sought after. In fact IAS the quantum of dowry for an IAS bridegroom depended not only on his income but also how much "commission" he got in terms of unaccounted money.

And during this horrible period perhaps the worst that I as a lower-middle class and as an honest taxpayer had to endure.

- One could go on. We were in the grip of that phenomenon called We soon became victims of what came to be known as stagflation.
- This was perhaps the longest Era I and many other fellow citizens had to face - over 30 years! Till the economy collapsed and the Government of India had to be bailed out by the World Bank and the IMF, who insisted that India had to give up its stranglehold on industry and business and allow the free play of market forces.
- The result is evident from this four era which began year in 1991 - the liberalisation of the economy.
- The war ravaged economies had gone way beyond scarcity to plenty in less than 20 years. It took us a little less than 50 years!

Manish

from obtaining certificates of birth going on to certificates for domicile, caste, income, tax clearance, no objections and marriage all the way finally to death certificates. Here the euphemism for the term is "speed money" – not perceived as bribes, incurred to overcome waste of time and energy in filing multiple applications with irrelevant attachments duly self-certified/notarized or even to buy peace and do away with their nuisance value. When a cost-benefit analysis is carried out, this 'speed money route' is found to be cost-effective to justify the illegal gratification! The under-the-table 'tenner' of the good old days stands replaced today by *peti* and *khoka* – slang for lakhs and crores – or by demanding a share in the profits of the business as sleeping partnerships or equity. The heavy capitation fees running into lakhs for medical and engineering colleges are sought to be recovered by the doctors and engineers by extracting exorbitant fees.

Corruption in India has a history. Dr. Shetty writes that Sir Thomas Roe of the British East India Company could only meet the Mogul Emperor after bribing his way through. On the present front we've Atal Bihari Vajpayee and Dr. Manmohan Singh as our honourable Prime Ministers, but both have been victims of the evils of the oft mouthed phenomenon called '*Coalition Dharma*', tolerating the wrong doings and acts of omission and commissions of their own cabinet colleagues be it Tehelka cash, Kargil coffins or the massive 2G/3G spectrum.

To quote the learned Dr. Shetty: "So more corruption at the bottom is directly proportional to the mega sinners at the top", indeed it is! He points out that the "Indian psyche is peculiarly sentimental like the aha of the coke bottle." How many of us remember the fodder scam, the Telgi scam and many others. Sentimentality has a short-lived memory and such brains rave, rant and forget. The TV debates satisfy our appetite and the buck stops there. We are not emotional and emotionality has a thinking component. Look what happened to Madoff or an Arthur Anderson or the Enron officials in the US? That is being 'emotional' where the issues reach a logical end. The thinking component guides the strong emotion... So many of my literate and illiterate friends have told me that they would have been happy if the parliament terrorist attack would have killed many corrupt politicians.

"Well we want things to move... The revolution should happen but the heat should not touch our skin. We silently consent to all nonsense due to our apathetic attitude... We also misinterpret the philosophy of Karma, God will punish them is our refrain and we wait. For us death is also a comma and not a full stop... Caste affiliations and blind reverence distorts our vision towards the sins of the ones we revere... Affluent kids have started

Facebook groups against corruption; they cannot stop their parents from bribing to enhance their business. Nor do they take stands at small crimes around them. To prevent malaria we need to clear our surroundings. And this net activism is good but the real live practice should begin around us among issues that affect us directly. That gives us energy for a face to face fight and not a network dialogue...

"An RTI activist is killed in Maharashtra, no heart bleeds when a young man stands up against the might of the corrupt rich and is killed... it's ok if people amass wealth is an accepted norm. We are a world power says Obama and that's not true as our roots are infected... An average Indian is honest just like a Manmohan or a Vajpayee but they refuse to rock the boat. Just being proud of our Kargil martyrs is not enough and building monuments (we looted this too) is also an act of little meaning. The need of the hour is to rock the boat... When will we do it? Is a trillion rupee ~~question~~ question."

Only a psychiatrist like Dr. Shetty could put it across so succinctly.

When and how many will stick the neck?

What can one say of a land where a discredited and soon-thereafter sacked Chief Minister is the first to receive President Obama at the Mumbai airport on his arrival and the tainted CM of the neighbouring State belonging to what it claims to be a 'Clean Party with a Difference' travels by a special IAF aircraft with the Honourable Dr. Manmohan Singh from Puttupurati to Delhi?

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110 words