# THE ORACLE 2014

## CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>NRB News 2014</td>
<td>01</td>
</tr>
<tr>
<td>Welcome Address at Traditional Netaji Birthday Assembly,</td>
<td>13</td>
</tr>
<tr>
<td>January 23, 2014</td>
<td></td>
</tr>
<tr>
<td>- Krishna Bose</td>
<td></td>
</tr>
<tr>
<td>Sarat Chandra Bose 125th Birth Anniversary Lecture, 2014</td>
<td>16</td>
</tr>
<tr>
<td>“Constitutional Law and Peace Accords: the case of the Chittagong Hill Tracts”</td>
<td></td>
</tr>
<tr>
<td>Justice Syed Refaat Ahmed</td>
<td></td>
</tr>
<tr>
<td>Kolkata, 12 July, 2014</td>
<td></td>
</tr>
<tr>
<td>FATHER OF OUR NATION</td>
<td>30</td>
</tr>
<tr>
<td>Netaji’s Message to Mahatma Gandhi [Broadcast on July 6, 1944]</td>
<td></td>
</tr>
</tbody>
</table>
Netaji Research Bureau had a very active and productive year during 2014.

On January 10, 2014, the Sisir Kumar Bose Lecture 2014 was given by Nur Yalman, Emeritus Professor, Harvard University, on the subject “Turning Points in Twentieth-Century Asia: Turkey’s Mustafa Kemal Ataturk and India’s Netaji Subhas Chandra Bose”. Professor Sumantra Bose, Professor of Comparative and International Politics at the London School of Economics, was in the chair.

On January 21, 2014, a Sarat Chandra Bose 125th Birth Anniversary Lecture was given by Professor Leonard A Gordon, author of Brothers against the Raj, on “Responsibility and Freedom: Themes in the Life of Sarat Chandra Bose”. Professor Sugata Bose was in the chair.
Dr. Suri Nair presented a letter written to his late father P.G.S. Nair by Netaji to Professor Krishna Bose, Chairperson of the Bureau, for preservation in the rich archives of NRB.

On January 23, 2014, the traditional Netaji Birthday Assembly was held at Netaji Bhawan in the morning at 10.30 a.m. Shri M.K. Narayanan, Governor of West Bengal, presided over the meeting. Pramita Mallick performed the opening music including the Hindustani song “Netaji Hamare Haste Haste Jeena”. The Governor ceremonially released NRB’s journal THE ORACLE 2014. The “Violin Brothers”, Deb Sankar and Joyti Sankar, and Orchestra presented a beautiful Netaji Birthday Concert.
The Netaji Museum was open from 1 p.m. to 8 p.m. for the public on the birthday. Thousands of visitors visited Netaji Museum to pay their homage to Netaji on this auspicious day. On the other days the Museum is open from 11 a.m. to 4.30 p.m. regularly excepting on Monday which is a museum holiday.

The Government of West Bengal officially celebrated the Netaji Birth Anniversary last year (2014) in Darjeeling. Chief Minister Shrimati Mamata Banerjee presided over the programme where Professor Sugata Bose and Professor Sumantra Bose were present as special invitees.
On January 24, 2014, Gayatri Chakravorty Spivak, University Professor, Columbia University, delivered the Netaji Oration on the subject “Freedom After Independence?” Professor Sugata Bose was in the chair. A large audience gathered in the grounds behind Netaji Bhawan to hear her speak.
On February 2, 2014, NRB observed Sisir Kumar Bose’s 94th Birth Anniversary. On this occasion Shrimati Riddhi Bandyopadhyay presented a concert of songs composed by Dwijendra Lal Roy.

On April 15, 2014 (Poila Baisakh) NRB members and friends gathered at Netaji Bhawan as usual at the invitation of Chairperson Mrs. Krishna Bose to ring in the Bengali New Year with poetry and songs.

On July 12, 2014, a Sarat Chandra Bose 125th Birth Anniversary Lecture was given by Hon’ble Justice Syed Refaat Ahmed, Supreme Court, Bangladesh, on “Constitutional Law and Peace Accords: the Case of the Chittagong Hill Tracts”. Professor Sugata Bose was in the chair.
On July 21, 2014, Mr. George Yeo, Foreign Minister of Singapore delivered a lecture on “India’s Relations with Southeast and East Asia”. Professor Sugata Bose was in the chair.

On July 26, 2014, there was a musical programme named “Sikto Juthir Mala”, songs of Rabindranath Tagore, Kazi Nazrul Islam, Atul Prosad and other poets on ‘Love and Monsoon’ presented by well known vocal artist Sounak Chattopadhyay. A large audience greatly enjoyed the programme.
On August 25, 2014, His Excellency President of India Shri Pranab Mukherjee formally received the first copy of the book “Sarat Chandra Bose: Remembering My Father” by Sisir Kumar Bose at Rashtrapati Bhavan, New Delhi, from the hands of Professor Mrs. Krishna Bose, Chairperson, Netaji Research Bureau. Other distinguished persons were present at the ceremony: Professor Sugata Bose, Member of Parliament, Gardiner Professor of History, Harvard University, Professor Sumantra Bose, Professor of Comparative and International Politics, London School of Economics, Mr. Bikash Niyogi, Managing Director, Niyogi Books, Mrs. Tutul Niyogi, Mr. Nirmal Bhattacharjee, Niyogi Books, Mr. Ronen Sen, former Indian Ambassador to the USA, Mrs. Kalpana Sen, Mr. Tarun Das, former Chief Mentor, CII and Ms. Kiran Pasricha, Director, Aspen India.
Netaji Museum continued to be a major attraction for visitors from different parts of India and abroad. Many young students from disadvantaged backgrounds were allowed free entry. Different school students with their teachers visited the museum with great interest.

Distinguished visitors who came to Netaji Bhawan included the following:

On January 29, 2014, Anand Jai Murti & Sae Murti, Tokyo, Japan

On January 31, 2014, Mr. Wang Xuefeng, Consul General of Peoples' Republic of China in Kolkata

On February 1, 2014, Prof. Homi K. Bhabha

On February 19, 2014, Mr. Chandra Kumar Ghimire, Consul General of Nepal in Kolkata

On February 25, 2014, Rev. Jesse Jackson


On November 7, 2014, Satohiro Akimoto, Senior Vice President, Mitsubishi Corporation. On November 21, 2014, TCA Raghavan, High Commissioner of India in Islamabad, Pakistan, with his wife Ranjana and daughter Antara. He wrote in the visitors’ book, “Wonderful to see and experience a most important page of our history.”

On November 24, 2014, Ms. Khoo Salma, Penang Heritage Trust, Malaysia and Dr. (Mrs.) Gnynn Jakisw. Ms. Khoo Salma wrote in the visitors’ book “Deeply memorable and relevant.” Dr. Jakisw wrote, “Appreciate the conservation of an incredible period of our history.”

On November 26, 2014, Dr. Yasuhisa Kawamura, Minister and Deputy Chief of Mission, Embassy of Japan in India, New Delhi. Dr. Kawamura wrote in the visitor’s book “Deeply moved by vivid memory and common historic heritage still ties our two countries.”

On December 10, 2014, Dr. Mark Moron, Department for Comparative Studies of Civilizations, Jagiellonian University, Krakow, Poland; Former Consul General of Poland in Mumbai, India. He wrote in our visitors’ book, ‘It was most interesting and enlightening to be here and discuss the thought of Subhas Chandra Bose’. Dr. Moron came and spent a few hours for quite a few days in the archives and library for his research.
On December 14, 2014, Hisabeth U. Georg Rudinger from Whizburg, Germany

On December 19, 2014, Mr. Mio Haeda, Ministry of Foreign Affairs, Japan.

On December 23, 2014, Shri Keshari Nath Tripathi, H.E. Governor of West Bengal, visited the Netaji Bhawan and Museum to pay his tribute to Netaji Subhas Chandra Bose after taking charge as Governor. Professor Mrs. Krishna Bose, Chairperson, Netaji Research Bureau along with the Council Members, Professor Sumantra Bose, Ms. Raka Sen, Shri Biplab Ganguly and Shri Pradeep Gooptu showed him round the Netaji Bhawan and Museum. He first went to Netaji’s bedroom and offered flowers on Netaji’s bed. He concluded his visit by meeting the press/print media. He wrote in the Visitors’ Book “Darshan” of Netaji Subhas Chandra Bose through his photographs and letters is as important as meeting him personally. I am proud of visiting his house and the museum.

On December 27, 2014, Bishwadip Dey, IFS, DCM, Embassy of India, Thimpu, Bhutan

On 27th December 2014, Hirofumi Horie, Senshu University, Institute of Humanities Japan
With the financial assistance of Ministry of Culture, Government of India, a sophisticated security surveillance system has been installed at Netaji Bhawan. A 63 KVA Liquid Cool Generator set and an addressable Fire Alarm system have been put into operation. A Conservation Laboratory has been set up at Netaji Bhawan with the cooperation of INTACH and a very large number of documents from the NRB archives conserved during the year. Netaji Bhawan is a hundred years old heritage building. Roof waterproofing of this heritage building has been completed. The Museum Book Shop has been renovated and the NRB publications together with other sponsored and recommended publications have been properly displayed. The Sarat Bose Hall including its audio and video systems has been modernized and upgraded. Netaji Museum is being renovated and upgraded with state-of-the-art technology. A virtual tour of the museum is now available on Netaji Research Bureau’s website (www.netaji.org). The upgrade of the air conditioning system has been completed. The rear corridor of the heritage house has been restored to its original glory.

Netaji Research Bureau continues to be on a strong financial foundation with an augmented corpus. We observed the 125th birth anniversary of Sarat Chandra Bose by special lectures, musical programmes etc. during the year 2014.
Welcome Address at Traditional Netaji Birthday Assembly, January 23, 2014

-Krishna Bose

H.E. the Governor of West Bengal, Shri M.K. Narayanan, Professor Leonard Gordon, Ambassador Kesavapany, distinguished guests,

On behalf of Netaji Research Bureau, I welcome you all to this “amrita sadan”, the house of immortality. The beautiful blend of voice and violin has created just the right atmosphere for the celebration of Netaji’s 117th birth anniversary.

Last year, Shri Narayanan, you spoke of “the Bose mystique” and how - in addition to his “intellectual splendor and moral grandeur” - Netaji’s “total dedication to the cause of the Nation” made him such a hero to our generation. You stole a march over Sugata last year, but you cannot steal a march over me. We look forward once more to your words of inspiration for the new generation of young men and women.
I can have no formal words of welcome for Professor Leonard Gordon who has become an adopted son. He first came to our home at 1, Woodburn Park fifty years ago as an earnest graduate student of Harvard University and has returned to Kolkata, his second home after New York, many times since. We thank him for inaugurating our year long program on Sarat Chandra Bose’s 125th birth anniversary with a learned lecture two days. We will have the Netaji Oration by Gayatri Spivak tomorrow evening at 6.30 pm.

Ambassador Kesavapany has with the blessings of Mr S.R. Nathan, former President of Singapore, helped rekindle interest in Netaji’s lasting legacy across the whole of Southeast Asia. We are delighted he is here with us to build an intellectual and cultural bridge between Singapore and India.

Sugata had wished to be here to welcome you this morning, but he has been spirited away by our Chief Minister to Darjeeling, where the official function of West Bengal will be held in the Mall. I understand a message of national unity will be broadcast from the Himalayas to the Indian Ocean on this auspicious day. There was one other occasion when I gave the welcome address on Netaji’s birth anniversary when our former President Venkataraman took Dr Sisir Kumar Bose to a special ceremony in Port Blair on the Andaman Island.

Netaji certainly was more successful than any other leader in instilling a spirit of unity among all the religious and linguistic communities of India. Ever since his famous speech in 1928 at the Maharashtra Provincial Conference in Pune he had envisioned India as an “Independent federal Republic”. He respected cultural differences, but was able to inspire people to transcend them in the cause of an overarching Indian unity. On his birthday seventy years ago Netaji was in Burma. On 7th January 1944 he had moved the headquarters of the Azad Hind Government from Singapore to Burma. The INA went into action in early February on the Arakan front. And, then, on 18th March 1944, with “Chalo Delhi” on their lips, Netaji’s soldiers crossed the Indo-Burma frontier and carried the battle for freedom on to Indian soil. In a special Order of the Day, Netaji proclaimed: “We shall carve our way through the enemy’s ranks - or if God wills, we shall die a martyr’s death. And in our last sleep we shall kiss the road that will bring our Army to Delhi. The road to Delhi is the road to Freedom. Chalo Delhi.”

Thousands of Hindus, Muslims, Sikhs and Christians, Punjabis, Pathans, Tamils, Marathi and Telegu-speakers gave their lives in the battlefields around Imphal and Kohima. It is our duty to properly honor these unknown soldiers of India’s freedom who sacrificed their all so that we may be free.
I got a special insight into the kind of national unity Netaji had forged when many of his comrades came as guests to our home and virtually became members of our family. S.A. Ayer and Lakshmi Swaminathan were from Tamil Nadu; Janaki Thevar is Tamil but she had never seen India when she joined the Rani of Jhansi regiment; Prem Sahgal and Gurbaksh Singh Dhillon were from Punjab; Abid Hasan was from Hyderabad; Mehboob Ahmed from Bihar and so many others from diverse backgrounds. The man without whose help Sisir Kumar Bose could not have built up the Netaji Research Bureau was Naga Sundaram, an ordinary Tamil soldier in the Field Propaganda Unit of the INA, who fought in Imphal. We went with him to see the difficult terrain around Imphal where he and his comrades waged a life and death struggle in 1944.

Netaji had told them: “There, there in the distance - beyond that river, beyond those jungles, beyond those hills lies the promised land - the soil from which we sprang - the land to which we shall now return. Hark! India is calling - India’s metropolis Delhi is calling - three hundred and eighty eight millions of our countrymen are calling.”

Today, more than a billion Indians need to heed that call to service and sacrifice once more, if we are to fulfill Netaji’s dream of all-round and indivisible freedom.

Jai Hind!
Sarat Chandra Bose 125th Birth Anniversary Lecture, 2014

“Constitutional Law and Peace Accords: the case of the Chittagong Hill Tracts”
Justice Syed Refaat Ahmed

In the Preamble to the Constitution of the People’s Republic of Bangladesh the People, having proclaimed their independence and, through a historic struggle for national liberation, established an independent sovereign Republic, by enacting and giving themselves the Constitution pledge

“that it shall be a fundamental aim of the State to realize through the democratic process...- a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens”

and affirm their

“sacred duty to safeguard, protect and defend this Constitution and to maintain its supremacy as the embodiment of the will of the people of Bangladesh so that [they] may prosper in freedom and may make [their] full contribution towards international peace and co-operation in keeping with the progressive aspirations of mankind”
Significantly, the Constitution does not provide a definition of what the notion of Rule of Law is precisely intended to encompass. This, I submit, is by design rather than oversight and in acknowledgement of the evolving frontiers of that all important concept. I subscribe wholly to what Tom Bingham, Lord Chief Justice of England and Wales has had to say in his compelling work “The Rule of Law” (Penguin, 2011: pp. 7-8). In a similar context of the draftsmen’s notable omission of an otherwise expected “pithy definition” in the Constitutional Reform Act of 2005, Bingham observes:

... I think, they recognized the extreme difficulty of devising a pithy definition suitable for inclusion in a statute. Better by far, they might reasonably have thought, to omit a definition and leave it to the judges to rule on what the term means if and when the question arises for decision. In this way a definition could be forged not in the abstract but with reference to particular cases and it would be possible for the concept to evolve over time in response to new views and situations.

Indeed the constituents of the Rule of Law are readily discernible in the supremacy of the Constitution “as the solemn expression of the will of the people” (Article 7), the Fundamental Principles of State Policy comprising of lofty but judicially non-enforceable guidelines “fundamental to the governance of Bangladesh” (Part II; Article 8), separation of the Judiciary from the Executive (Article 22), promotion of international peace, security and solidarity (Article 25), equality before law (Article 27) and the prohibition against discrimination (Article 28) among others. But even in the plethora of pledges, convictions, aspirations and guarantees one remains hard-pressed to decipher the true essence of the notion of Rule of Law.

Perhaps the answer lies latent in the very genesis of the Constitution as a social contract aiming for the establishment of a democratic society free from exploitation through limited government. In the annals of the liberal tradition of political thought this best corresponds to John Locke’s narrative of the relation between the ‘Sovereign State’ and the ‘Sovereign People’ in the context of the people being recognized as the legitimate source of the State’s powers. As David Held in “Models of Democracy” (Stanford University Press, 1996: pp. 74-88) has exhaustively discussed, a compact as the Constitution is basically a license to limited government upon express conditions attached marking, in Locke’s vision, the essential transitory device from a state of nature to that of regulated governance. Held satisfactorily shows that the notion of limited government circumscribed by a duty owed to the citizenry is in Locke’s view a license granted to regulate the enjoyment of rights informed by a pre-license reality. That reality, as evident in the law of nature, is one of any individual’s liberty being limited by the enjoyment of such liberty by another. Such prohibition against encroachment into or infringement of enjoyment of another’s rights reinforces the obligation commonly owed to preserve each other Èand permits further deterring the domination of one individual or group by another. This Locke views as the basic principle of morality as developed within the law of nature.
According to John Locke the transition from the state of nature to limited government is informed however by inadequate regulation of guarantees to life, liberty and property and the resultant conflicts. David Held writes in “Models of Democracy” that the device adopted to oversee this transition is a social compact to organize into an independent society that gives up certain facets of its autonomy to a civil association to govern in a manner as ideally best serves the governed. The citizenry organized in a civil-political society retain the powers as final arbiters of the quality of governance and of resultantly ushering change in the instrument and mode of governance. Locke presciently opined that in return for legislative and executive rights so relinquished by the citizenry, the social compact significantly made the citizenry the repository of “sovereign power” or capacity to determine the beneficial use of such rights. Such consent actively and directly given to establish a governmental structure led to such consent being deemed to be expressed through the people’s representatives to govern as trustees as per the social compact. Locke also envisioned the law-making power to be in consonance with the law of nature, i.e. the principles of morality.

The right to life and liberty, so essential to human existence, also have a priority attached and are deemed non-derogatory. These are, therefore, immutable or unalterable. These transcend the process of transformation from the basic form of human association, i.e. the state of nature, to that of an independent society and a ‘civil association’ in the form of a government. This perhaps was the notion behind, for example, Hans Raj Khanna, J.’s dissenting view in the Habeas Corpus Case (ADM Jabalpur vs. Shivakant Shukla reported in 1976 2CC 521; AIR 1976 SC 1207) that the right to life is a natural right incapable of suspension at any time. As Abhinav Chandrachud has observed in “Due Process of Law” (Lucknow: Eastern Book Company, 2011: page 128), here Khanna, J.’s dissent is predicated on the unalterability of natural law. I would submit that the corollary view would be that any attempt to curb certain of these fundamental rights would undermine the morality of the law. In Khanna, J.’s dicta, there is a clear endorsement of John Locke’s notion of rights existing in a pre-‘civil association’ natural state that transcend the process of transformation of human society and the source of which shall always be natural law. Accordingly, Khanna, J. found that Article 21 of the Indian Constitution may not be treated as the only or essential repository of the right to life and personal liberty “Making of India’s Constitution” (2nd Edition, Lucknow: Eastern Book Company, 2008: page 536). In this regard Khanna, J. aptly observed:

Even in the absence of Art 21 in the Constitution the State has got no power to deprive a person of his life or personal liberty without the authority of law. That is the essential postulate and basic assumption of the rule of law in every civilized society.

The moral moorings of the Rule of Law clearly are undeniable in the observation above.
Predicated on that premise, it is my proposition that a positivist-naturalist deconstruction of the ratio of any judgment applying the law in general to secure substantial justice permits concomitantly of the moral construction of the underlying constitutional/legal system. It is with that view I present a test judgment authored by myself several years ago as in my view best permits of such deconstruction and reveals the moral moorings of the Rule of Law’s attestation by the Constitution.

In April 2010 the High Court Division of the Supreme Court of Bangladesh delivered a judgment disposing of two Writ Petitions touching on the Chittagong Hill Tracts Peace Process. In that case, since reported as *Mohammad Badiuzzaman Vs. Bangladesh and Others [7LG (2010) HCD 208 and 15BLC (2010) 531]*, but more commonly referred to as the *Chittagong Hill Tracts ("CHT") Cases*, the High Court Division faced with a constitutional challenge to the execution of the CHT Peace Accord of 1997 found the Peace Accord to be a political accord between belligerents and, thereby, not to be a subject of Judicial Review. However, a concomitant and corresponding challenge to the CHT Regional Council Act, 1998 stemming from the execution of the CHT Peace Accord was found to be a colourable piece of legislation given that the establishment of the Regional Council and its consequential powers envisaged in the Act were found to be potentially destructive of the fabric of a unitary Republic.

The legal challenge mounted in the two Writ Petitions was at once against the constitutionality of a political process as well as the legislation that it spawned in the enforcement process. An admixture of politics and law, and questions of legality and justice permeated the deliberations before the Court, thereby, often constraining the Court to consider:

i. the law as it is and as it ought to be;

ii. that there is an archetype of law the approximation to which all legal systems aspire and such an aspiration being a moral one, the law is intrinsically a moral phenomenon; and

iii. that there is an intrinsic moral importance to the Rule of Law.

A notable feature of the *CHT Cases* was how the issues of legality of various legislations spawned of the 1997 Peace Accord played out against a long-outstanding debate over the political past, present and future of the CHT. Under that broad sweep of the confluence of law and politics, issues of distinct identity, local self-government, a re-engineering of the ethnic complexion of the region, de-militarization and sustainable development of a once conflict zone, resettlement and reintegration of displaced communities, land rights etc. all competed for the Court’s equal attention and consideration.
The core constitutional challenge in the CHT Cases was mounted against the 1997 Peace Accord signed by the Convenor of the National Committee on CHT ("NCCHT") and the Chairman of the Parbotty Chattagram Jana Shanghati Samity ("PCJSS") on the ground of its failure to satisfy the requirements of Article 145(1) of the Constitution of Bangladesh. Article 145 (1) concerns contracts and deeds made in exercise of the executive authority of the Republic and which alone are required to be expressed to be made in the name of the President. However, it was also the reality that, and as is increasingly true of democratic orders worldwide, there was noted an imposition on the Judiciary of the authority to decide questions that are best left to politicians. This much enhanced role has justifiably led some to fear the Judicialization of Politics in the sense of judicial tyranny, i.e. the reality of an unelected body imposing its will and political view on the governed with which it has no direct fiduciary relationship.

In being so asked to determine the validity of the Peace Accord itself, it appeared that the expectation was for the Court itself to devise a more equitable sharing of the powers between the organs of State of collectively addressing the concerns of the people in which the Executive, in particular, should not feel alone in deciding on issues. Generally, opponents of such an enhanced role for the Judiciary baulk at the very idea of any such association and interaction with the Executive as detracts from the Judges’ sole fundamental role to implement the popular and sovereign will reflected in legislative enactments. For the courts to assume otherwise would be to act in irreverence of democracy. The view is further that interaction with the Executive presupposes a level of specialist knowledge informed by preconceived knowledge of issues and parties that Judges are either not equipped with or are not deemed to have in the discharge of their constitutional functions freely, fairly and objectively. Judges are least suited, therefore, to anticipate legislation. Nor should the Judiciary embroil itself in politically-charged issues as are best left to the Executive. Being forewarned of such arrogation of authority, the reality can be of the Judiciary being left to uncomfortably deal with sensitive issues in instances where the Executive has abdicated its responsibility to first address the same as a matter of governance by exercise of its political power. The fiduciary bind that the Executive has with the people stands negated when unpopular decisions are left to be made by the courts at their discretion. Indeed the risk is of the courts being given or assuming too much discretionary, and perceptibly unfettered, powers by default. A greater ignominy, in my view, is of the Judiciary falling prey to the machinations of the Executive in situations where the responsibility to make unpopular decisions are shoved on to the courts. Alarming still is the scenario where electoral calculations lead the Executive to resort to constitutional devices to further entrenching their position and give rise to the prospects of the courts ensuring the adherence to the form of law and not to the substance or morality of the law. Happily, however, the Court in the CHT Cases at least was not faced with such a predicament.
The Court in the CHT Cases was driven by the same rationale of judicial restraint. Nowhere is the resultant judicial skepticism of the spectre of Judicialization of Politics more evident than in the following extract from the Judgment:

*Drawing on an observation of the Court in *Indra Sawhney vs. Union of India reported in AIR 1993 (SC) 477* this Court cannot but help observe at the outset that the facts and issues raised in these two Writ Petitions place certain complex political, legal and constitutional questions for our consideration and determination and from which have stemmed, evidently, deeply entrenched political positions which could be or ought to have been settled more satisfactorily through an integrated political process based on a broad consensus at the initiative and behest of the elected branches of the Government. But that has not been done and the issues have been left to fester for far too long. The Judiciary has, therefore, had to step into a peace process in which the Executive and the Legislature still have a fair share of their responsibility to discharge. It shall be prudent at this juncture to point out, and as will be evident from the findings and observations hereinafter, that this Court having so stepped into that stagnant peace process shall necessarily have to guide the elected organs of the State through certain pathways to be pursued to revive or resuscitate the peace process with a view to its fruitful culmination. In that exercise this Court is mindful, however, of the limits on its ability to make comprehensive, detailed and specific prescription which must remain within the domain of authority of the elected lawgivers and policy makers. This Court is alerted to the pitfalls of doing otherwise by Justice Sandra Day O’Connor who musing on her experiences in the U.S. Supreme Court in “ The Majesty of The Law; Reflections of a Supreme Court Justice (Random House, 2003) writes at page 247:

“Our efforts to describe broad legal principles assured by the Constitution have sometimes run aground when the Court attempted to translate those principles into detailed, workable rules that achieve the constitutional goal.”

Justice O’Connor observes that should courts not exercise restraint in this regard the authority of courts to enforce individual rights Ocan be stretched too thin”. (Emphasis added)

These considerations, accordingly, broadly set the pace for the Court to uphold the Rule of Law by making both legal and moral decisions to secure substantive justice.
The High Court remained satisfied that the Peace Accord was signed against the reality of “political activism in the CHT” as had fundamentally to do with “the absence of express safeguards of tribal rights and interests in the Constitution” and that the Accord was “but an intermediate stage in a political process that commenced many years prior to 1997 and is in fact an ongoing one.” The fulfillment of the Accord’s primary objective of securing a political resolution of the politico-military conflict, the Court found, inevitably led to the exhaustion of its “essential political substratum”. Further, the Court found the Accord to be born of a certain political exigency that informed the mutually accepted manner of its execution and, accordingly, termed it a “Treaty of Peace’ that proceeds beyond a mere truce and aims at a permanent end to an insurgency based on commitments of sustainable peace”. But the Accord was found to be a treaty with a difference. Predicated on the definition of a treaty being an agreement between belligerent powers stipulating terms of truce and conditions of peace, the Court found the Accord to answer to this description with the qualification that it was not entered into between independent entities both having the right of self-government. The PCJSS in this regard was found not possessed of such right. These features cumulatively made a constitutional analysis upon a strict constructionist approach untenable given that the Accord neither answered to the description of Article 145 ‘contracts or deeds’ nor indeed to Article 145A ‘international treaties’. The Court, therefore, restrained itself from a misguided foray into the realm of executive action. It thus held:

...the multi-dimensional Peace Accord does not permit of a neat categorization under the Constitution. Being an essential link in a long-standing and ongoing political process this intrastate peace pact between belligerents is not strictly contemplated for in our Constitution and must, therefore, be found to be indeterminable as to its nature and validity by reference to the Constitution. It is here that we find the relevance of and the merit in Dr. Kamal Hossain’s submission that the Constitution indeed lacks in process formulation and the CHT peace process with the Peace Accord as its vital component, therefore, considered on their own do not indeed permit of a constructionist approach. In a similar vein Mr. Devasish Roy appearing for the Respondent Regional Council has argued to this Court’s satisfaction that the CHT Peace Accord is neither an executive deed nor a contract within the meaning of Article 145, but is merely a political document/agreement setting out the political goodwill between the NCCHT negotiating on behalf of the Government and the PCJSS representatives of the tribal people to bring an end to the armed hostility in the CHT. It is further submitted that it is in that spirit of political engagement and accommodation that the Peace Accord was negotiated and executed by the then Chief Whip Mr. Abul Hasnat Abdullah in 1997, it always being the intention of both parties concerned to accept him as representing the Government of Bangladesh in that exercise.

In the view of this Court, the Peace Accord is further a checklist of measures to be adopted by the Legislature and the Executive to ensure sustainable peace and does not of itself create substantive and enforceable rights and obligations but merely charts the pathways through which this may be achieved.
It is at this juncture that the Judgment adopts the more familiar paradigmatic approach in judicial reasoning in testing the validity of the various enactments stemming from the execution of the Accord. Here the Court at the outset found that “the Peace Accord was never intended to be an end in itself but merely a means to an end. The prime indicator of such status of the Peace Accord is that it was not deemed necessary to subject it to a process of constitutional entrenchment. It is also markedly deficient in having any built-in safeguards or penalties for its non-compliance as would positively have deterred non-implementation by the Government. Nor does it provide for a quid pro quo arrangement and concomitant carrying out of mutual obligations. In other words, the Peace Accord was clearly never intended to be the preeminent piece of legal document affecting the rights and interests of the parties thereto. It is evident that such purpose was to be served by the various legislations premised on the Peace Accord with the responsibility, thereby, squarely placed on the Legislature to frame laws as would secure the implementation of the Peace Accord within the constitutional framework.”

It is consequentially with a purpose deemed more appropriate to its constitutional mandate in judicial review that the Court probed into the extent to which the Legislature may have either discharged or abdicated its responsibility to best “secure the implementation of the Peace Accord within the constitutional framework.” The Court thus engaged in examining the validity of certain amending pieces of legislations of 1998 pertaining to three District Councils in the CHT and the CHT Regional Council Act of 1998.

The Regional Council established under the Act of 1998 was found by the Court to prima facie exhibit all the characteristics of local government, i.e. administration of local affairs by locally elected persons, through the agency of the Regional Council, with the legislative intent clearly being for the Council to function as a local government within the meaning of Article 59 of the Constitution. The Court accepted the Petitioners’ argument that in these circumstances it was incumbent upon the Legislature to designate the CHT region as an administrative unit for the purposes of Article 59. The Legislature having evidently failed to do so, the Court remained satisfied that the entire Regional Council Act is unconstitutional. In this regard it was held that “the Regional Council has been clothed with all the attributes and functions of a local government body, it has all the attributes of such a body but its status in this regard as a local government body, absent an express designation of its territorial operational base, i.e., the CHT as an administrative unit, appears to have been ‘purposefully shielded’.” These findings were in rejection of the Regional Council’s own assertion that it makes no pretensions to be a local government body but rather its purpose is to coordinate and supervise the activities of the local government bodies in the CHT in order to present a common forum for addressing common issues. Also not accepted was the view that the Regional Council Act merely facilitates a better functioning by the local government bodies at the district level and intends for the Regional Council to contribute to democratic governance by serving as a mere conduit between the Government at Dhaka and
the three local government units at the district level. What sealed the fate of the legality of the Act of 1998 was a further incongruence detected in its contended declared objective and the construction of certain of its provisions. Certain provisions of the Act, as indeed acknowledged by the Attorney General to be so incongruent but attributable to a bona fide legislative error, led to the unavoidable conclusion that constitutional infractions by the Regional Council itself will not result in termination or dissolution of the Council. In other words, the Court found, the Act permits the Regional Council to operate in derogation of the Constitution with a considerable degree of impunity. This, the Court accepted, gave “a grandstand view of a full-frontal attack on the Constitution” reinforcing the view that the Act of 1998 is but a device to the dismantling of the unitary character of the State and in its various provisions constitutes “a fraud on the Constitution”.

Two philosophical views dominate in this context determining the positioning further of the issue of the morality of law. Debate in this regard has been dominated by HLA Hart and Lon Fuller from the positivist and naturalist perspectives respectively, their differing positions on the centrality of the moral question being noteworthy. Herbert Hart while not wholly denying any necessary connection between law and morals sees no reason to draw a corresponding concomitant connection between the validity of a law and its resultant justice or injustice. Lon Fuller’s thesis has as its starting point the identification of eight ‘precepts’ or ‘desiderata’ that must inform any law-making process in order to produce good law. Thus, according to Fuller, for any legal system to exist, there must be rules that are published, prospective, intelligible, free from conflict and contradiction, permitting of easy compliance, constant and permitting of congruence between the declared objective and official action. These cumulatively constitute for Fuller ‘the inner morality of law’. The preponderant view here is that any given legal system will have its validity gauged according to how closely it approximates to total compliance with such precepts of inner morality. By that reason the quest for total approximation is seen as a moral aspiration sustaining the argument that law therefore is inherently a moral phenomenon. As Nigel Simmonds highlights in “Law As A Moral Idea” (Oxford University Press, 2007: page 100) “instances of law count as such in virtue of their approximation to an archetype which is an intrinsically moral ideal” and that indeed “all instances of law participate in the ideal to some extent.”

It is this “inner morality of law”, or rather the failure of the CHT Regional Council Act of 1998 to measure up to certain precepts of the archetypical “good law”, that appears to have dictated the finding against its legality in the CHT Cases. The objection to the Act of 1998 gauged against Fuller’s ‘desiderata’ was that that it failed to approximate to the precepts of being intelligible, free from contradiction, easy compliance and congruity of declaration and enforcement.
Further, as stated at the very outset of this Lecture, the most fundamental of the principles of morality, i.e. mutual preservation without infringing on others’ rights was also a core issue to be determined in the CHT Cases. Nigel Simmonds has aptly argued that “the intrinsic moral importance of the rule of law is to be found in its embodiment of a form of moral association wherein one may enjoy a degree of independence from the power of others.” (“Law As A Moral Idea”: page 72). The CHT Cases required the High Court Division to therefore examine the extent to which, inter alia, Articles 27 (“Equality before law”), 28(4) (“special provision in favour of women, or children or for the advancement of any backward section of citizens”) and 29(3) (nothing to prevent the State from “making special provision in favour of any backward section of citizens for the purpose of securing their adequate representation in the service of the Republic”) of the Constitution permit of affirmative action based on positive discrimination for certain backward sections of the citizenry and whether the Legislature through the impugned amendments to the district councils legislation sanctioned a violation of constitutionally guaranteed rights. The question of political autonomy as considered earlier also tied in with this enquiry of affirmative action with the Respondents propounding a concept of autonomy not only offending against the Constitution’s provisions of local government but fundamentally its basic structure projecting the unitary State. In this context, bearing in mind Article 26 (“Laws inconsistent with fundamental rights to be void”) and the guarantees under Articles 27 and 31 (“Right to protection of law”) the Court highlighted the moral moorings of the Rule of Law thus:

...provisions and mechanisms of affirmative action based on the notion of positive discrimination must ...be measured against the standards enshrined in Articles 26, 27 and 31 of the Constitution and a concept of autonomy that deters active discrimination of others. Writing on ‘Democratic Autonomy’ David Held in “Models of Democracy” (2nd Edition, Stanford University Press, Stanford, California, 1996) explains that the appeal of democracy, especially in a truly pluralistic socio-political setting is its ability “to offer a basis for tolerating and negotiating difference” (Page, 297). That justifies the subscription to a concept of “autonomy” which, in this Court’s opinion, should be the yardstick to determine the vires of the impugned legislations in particular. It is evident to this Court that the Peace Accord in fact recognizes Bangladesh’s political circumstance as one constituted, to apply David Held’s tests, by a “plurality of identities, cultural forms and interests,” which, therefore, allow Bangladesh’s political culture to offer itself as a basis for “negotiating difference”. Proceeding on that premise that the Peace Accord can be seen as providing political formulae for the creation of the best circumstances for the peoples of the CHT as a whole “to develop their nature and express their diverse qualities”, “protection from the arbitrary use of political authority and coercive power”, “involvement of citizens in the determination of the conditions of their association” and “expansion of economic opportunity”, these are aspirations that Held identifies as essential constituents of democratic autonomy with “autonomy” connoting the capacity of people “to be self-determining” (Ibid., page 300). But fundamental to the operation of such a principle of autonomy is the notion that rights have a structural dimension bestowing opportunities and imposing duties. In other words, all citizens enjoy rights subject to and qualified by the rights of others.
That is the core thesis of the ‘principle of autonomy’ that has been enunciated thus:

“persons should enjoy equal rights and, accordingly, equal obligations in the specification of the political framework which generates and limits the opportunities available to them; that is, they should be free and equal in the determination of the conditions of their own lives, so long as they do not deploy this framework to negate the rights of others” (Held, page 301)"

In other words, “autonomy” empowers citizens to be active participants in democratic governance and inherently involves the prescription for specifying the limits on independent action so that such action does not curtail or infringe the liberties of others. It is in that light that this Court will in particular consider the validity of the various provisions of the four impugned legislations or the Impugned Acts.”

Accordingly, various amended provisions in the 1989 District Council Acts allowing for preferential treatment of tribals to the detriment of and exclusion of non-tribals were found to be discriminatory in the absence of objective standards providing the necessary yardstick for determining such distinction.

It is to be noted at this juncture that Fuller and Hart’s views briefly converge to suggest a separate sphere of operation of the substantive justice or injustice that may follow from laws. Divergence follows immediately thereafter in the positivist prescription of the courts being bound by the principle of absolute fidelity to and strict legality of the black-letter law without resorting to extraneous considerations. It is here that morality in its substantive sense enters the fray truly setting apart the naturalist tendency to invite extra-legal considerations – political, social and moral – to inform the delivery of substantive justice. This Fuller, in contradistinction to his notion of ‘the inner morality of law’, views as the law’s ‘external’ morality reflected in the law’s enforcement to deliver substantive justice.

I recall Mr. Justice Philip Sales of the High Court of Justice of England and Wales having commented that given the reality, and an alarming one at that, of people losing confidence in the capacity of democratic politics solving problems, the constitutional order of separateness of the three organs of state may be revisited and modified to accommodate mechanisms of general dialogue between the Executive and the Judiciary. Dialogue on specific cases would still remain out of constitutional bounds. Mr. Justice Sales’ views bear merit at least in the sense of covert utilization of judicial process for entrenchment of political positions giving way to a greater more overt harmonization of judicial-executive efforts at beneficial governance. The CHT Cases manifest a good example of the Judiciary’s engagement in that harmonizing exercise.
There is of course the other argument that the phenomenon simply is of a bigger socio-legal landscape as necessitates greater more forthright judicial activism and this has nothing to do with under-performing politicians or a timid legislature. The caveat to such enhanced activity is that Judges, therefore, ought not to overreach themselves, thereby, undermining the deference due from them to the democratic compact. That deference is owed of course to the sovereign will of the people expressed through a truly representative Legislature. Deference, by extension, to the Executive is neither necessary nor desirable.

It is with that motto that the High Court Division observed that the CHT peace process to be sustainable must be informed by concerted innovative efforts at constant evaluation and reinvention and proposed concrete guidelines, but only as indicators, of the broad spectrum of issues to be considered in that regard. In upholding the Rule of Law, this was the ultimate frontier that the Court wanted to traverse charting certain pathways for the Legislature and the Executive to explore. Herein, the Court established the legal system’s distinct moral virtue of achieving as complete a substantive justice as permissible.

The Judgment in the CHT Cases, read with care, chronicles at length the inequities of history visited upon the CHT at material times. It followed therefore that justice in these cases had not only to be legalistic but inspired also by the need to do good. Thus, the Court took into account "the political vicissitudes of the tribal peoples" best introduced in the Memoirs of the former Chakma Chief, Raja Tridiv Roy entitled “The Departed Melody” (PPA Publications, Islamabad, Pakistan, July 2003: pp. 330-331). Considered also were statistics and indicators (communication, education, non-agricultural land, electrification, health and sanitation, safe drinking water, annual per capita income, availability of plain land) already identified by the Government that the present Chakma Chief and Counsel for the Respondents Devasish Roy submits indicate that the tribal population of the CHT constitute a backward section of our society.

Notably further, a paradigmatic shift in international law governing indigenous populations from an integrationist approach to one more assertive of recognizing the indigenous and tribal groups’ entitlement to self identification and ensure their empowerment in order that they may exist as distinct peoples should they so wish gets highlighted in the Judgment. This is so in recognition of Bangladesh’s obligations as a ratifying state under the ILO Convention on Indigenous and Tribal Populations, 1957 (Convention No. 107) and the relatively recent ILO Convention No. 169 of 1989 as, according to Devasish Roy, serves as a review of the former endorsing the paradigm shift “both on moral and practical grounds”.

Mindful of its limitations at implementing a peace process as this and of its limited mandate under Judicial Review, the Court reminded the Executive of its failings thus:
It has not escaped this Court’s attention that the peace process has not been served well by inordinate delay in its full implementation and that time has not indeed been kind to the peace process. The present fractious, volatile and deeply entrenched and polarized political situation in the CHT amply attest to that. It is certainly an irony that the peace process as aims at democratic governance has not thus far been able to ensure the practice of democracy in the CHT to any discernibly commendable extent. One of the best possible ways for the local government or District Councils to have been actively engaged in the management of their own affairs was to have regular elections to the District Councils that would not only have strengthened participatory politics as well as the process of integration of the peoples of the CHT, but would have been an antidote to anarchy and defused the power of anarchic forces. It is this Court’s considered view that democratic governance by the active exercise of participatory politics in the three Hill Districts is and always will be the lifeblood of the peace process and should be encouraged and pursued in all earnest.

Proposed *inter alia* therefore have been the formation of a statutory public authority to act as a facilitator of local governance and to act as a conduit between the elected district councils and the Government, the setting up of a commission to ascertain and determine backwardness of the people of the CHT on the basis of reliable and quantifiable data, a better concordance of the municipal law with international law in general and ILO Convention No. 107 in particular. It is in this context that the Court enunciated the most far-reaching of the pathways thus:

*It is inevitable that the sustainability of the peace process will depend on innovation and progressional development of ideas and measures that shall, however, always need measuring against the Constitution. Should, in this regard, any kind of exigency demand action not strictly envisaged in the Constitution, lawmakers shall prudently henceforth allow for the Constitutional entrenchment of the same.*

Nowhere in the Judgment is the paradigmatic shift for moral reasons gaining currency under ILO Convention No. 169 of 1989 better endorsed than the above proposition. It is also a recognition that the impugned legislations struck down as ultra vires the Constitutional as setting up a Ôparallel governmentÔ and as a collective device at establishing regionalism and paving the way for the ultimate dismantlement of the unitary fabric of the Republic may have fared better with the aid of constitutional entrenchment sanctioning a level of regional autonomy within the framework of a unitary State as achieved, for example, in Italy, Spain and China.
In the final analysis, this was the stage in the CHT Cases, therefore, at which the moral considerations became relevant and evident. The view taken was that even from a positivist/legalist angle the law is not a mere system of rules (*lex lata*) but encapsulates principles such as that of equity. By skilled application of such principles to legal rules the judicial process distils a moral content out of the legal order. On the other hand, subscription to the naturalist point of view enabled the Court to exercise discretionary powers (which it can exercise in any case under Judicial Review and given that it is the master of its own procedure in Writ jurisdiction) to avoid manifest situational injustice. This was achieved by reference to a whole host of factors – historical, political, social, economic – extraneous to the black-letter law as is and existing rules to determine what the law ought to have been and can be (*lex ferenda*).

The CHT Cases presently await final determination by the apex court being the Appellate Division of the Supreme Court of Bangladesh which is clothed under the Constitution to do “*complete justice*” (Article 104). Pending such determination it is safe to opine that these cases have enabled a broadened vision of the concept and essence of the Rule of Law. To revert to Tom Bingham in “The Rule of Law” (page 174):

*The concept of the rule of law is not fixed for all time... (I)n a world divided by differences of nationality, race, colour, religion and wealth it is one of the greatest unifying factors, perhaps the greatest, the nearest we are likely to approach to a universal secular religion. It remains an ideal, but an ideal worth striving for, in the interests of good government and peace, at home and in the world at large.*

I ask, is that an ideal, therefore, not worth aspiring for? The People of Bangladesh in the solemn expression of their sovereign will have declared it so as surely have peoples all around the world. That very pursuit of an ideal speaks of the moral virtue of individual legal systems and of humanity collectively. It speaks no less of law as a moral idea.

Thank You
FATHER OF OUR NATION
Netaji's Message to Mahatma Gandhi
[Broadcast on July 6, 1944]

Mahatmaji,

Now that your health has somewhat improved and you are able to attend to public business to some extent, I am taking the liberty of addressing a few words to you with a view to acquainting you with the plans and the activities of patriotic Indians outside India. Before I would do so, I would like to inform you of the feelings of deep anxiety which Indians throughout the world had for several days, after your sudden release from custody on grounds of ill-health. After the sad demise of Srimati Kasturbaji in British custody, it was but natural for your countrymen to be alarmed over the state of your health. It has, however, pleased providence to restore you to comparative health, so that 388 millions of your countrymen may still have the benefit of your guidance and advice. I should next like to say something about the attitude of your countrymen outside India towards yourself. What I shall say in this connection is the bare truth and nothing but the truth. There are Indians outside India, as also at home, who are convinced that Indian Independence will be won only through the historic method of struggle. These men and women honestly feel that the British Government will never surrender to persuasion or moral pressure or non-violent resistance.
Nevertheless, for Indians outside India, differences in method are like domestic differences. Ever since you sponsored the Independence Resolution at the Lahore Congress in December 1929, all members of the Indian National Congress have had one common goal before them. For Indians outside India, you are the creator of the present awakening in our country. In all their propaganda before the world, they give you that position and the respect that is due to the position. For the world-public, we Indian nationalists are all one – having but one goal, one desire and one endeavour in life. In all the countries free from British influence that I have visited since I left India in 1941, you are held in the highest esteem, as no other Indian political leader has been, during the last century. Each nation has its own internal politics and its own attitude towards political problems. But that cannot affect a nation’s appreciation of a man who served his people so well and has bravely fought a first-class modern power all his life. In fact, our worth and your achievements are appreciated a thousand times more in those countries that are opposed to the British Empire than in those countries that pretend to be the friends of freedom and democracy. The high esteem in which you are held by patriotic Indians outside India and by foreign friends of India's Freedom, was increased a hundred-fold when you bravely sponsored the “Quit India” Resolution in August 1942.

From my experience of the British Government while I was inside India – from the secret information that I have gathered about Britain's policy while outside India – and from what I have seen regarding Britain's aims and intentions throughout the world, I am honestly convinced that the British Government will never recognize India's demand for Independence. Britain's one effort today is to exploit India to the fullest degree, in her endeavour to win this war. During the course of this war, Britain has lost one part of her territory to her enemies and another part to her friends. Even if the Allies could somehow win the war, it will be the United States of America, and not Britain, that will be the top dog in future and it will mean that Britain will become a protégé of the U.S.A. In such a situation, the British will try to make good their present losses by exploiting India more ruthlessly than ever before. In order to do that, plans have been already hatched in London for crushing the nationalist movement in India, once for all. It is because I know of these plans from secret, but reliable sources, that I feel it my duty to bring it to your notice. It would be a fatal mistake on our part to make a distinction between the British Government and the British people. No doubt there is a small group of idealists in Britain – as in the U.S.A. – who would like to see India free. These idealists who are treated by their own people, as cranks, form a microscopic minority. So far as India is concerned, for all practical purposes, the British Government and the British people mean one and the same thing. Regarding the war aims of the U.S.A. I may say that the ruling clique at Washington is now dreaming of world domination. This ruling clique and its intellectual exponents, talk openly of the “American Century,” that is, that in the present century, the U.S.A. will dominate the world. In this ruling clique, there are extremists who go so far as to call Britain the 49th State of the U.S.A.
There is no Indian, whether at home or abroad, who would not be happy, if India's freedom could be own through the method that you have advocated all your life and without shedding human blood. But things being what they are, I am convinced that if we do desire freedom we must be prepared to wade through blood.

If circumstances had made it possible for us to organize an armed struggle inside India, through our own efforts and restores, that would have been the best course for us. But Mahatmaji, you know Indian conditions perhaps better than any body else. So far as I am concerned, after twenty years’ experience of public service in India, I came to the conclusion that it was impossible to organize an armed resistance in the country without some help from outside – help from our countrymen abroad, as well as from some foreign power or powers. Prior to the outbreak of the present war, it was exceedingly difficult to get help from a foreign power, or even from Indians abroad. But the outbreak of the present war threw open the possibility of obtaining aid – both political and military – from the enemies of the British Empire. Before I could expect any help from them, however, I had first to find out what their attitude was towards India's demand for freedom. British propagandists for a number of years, had been telling the world that the Axis Powers were the enemies of freedom and therefore of India's freedom. Was that a fact? I asked myself. Consequently, I had to leave India in order to find out the truth myself and as to whether the Axis Powers would be prepared to give us help and assistance in our fight for freedom.

Before I finally made up my mind to leave home and homeland, I had to decide whether it was right for me to take help from abroad. I had previously studied the history of revolution all over the world, in order to discover the method, which had enabled other nations to obtain freedom. But I had not found a single instance in which an enslaved people had won freedom without foreign help of some sort. In 1940, I read my history once again, and once again I came to the conclusion that history did not furnish a single instance where freedom had been won without help of some sort from abroad. As for the moral question as to whether it was right to take help, I told myself that in public, as in private life, one could always take help as a loan and repay that loan later on. Moreover, if a powerful Empire, like the British Empire, could go round the world with the beginning bowl, what objection could there be to an enslaved and disarmed people like ourselves taking as a loan from abroad. I can assure you, Mahatmaji, that before I finally decided to set out on a hazardous mission., I spent days, weeks and months in carefully considering the pros and cons of the case. After having served my people so long, to the best of my ability, I could have no desire to be a traitor, or to give anyone a justification for calling me a traitor.

It was the easiest thing for me to remain at home and go on working as I had worked so long. It was also an easy thing for me to remain in an Indian prison while the war lasted. Personally, I had nothing to lose by doing so. Thanks to the generosity and to the affection of my countrymen, I had obtained the highest honour, which it was possible for any public worker in India to achieve. I had also built up a party consisting of staunch and loyal colleagues who had implicit confidence
in me. By going abroad on a perilous quest, I was risking – not only my life and my whole future career, but also what was more, the future of my party. If I had the slightest hope that without action from abroad we could win freedom, I would never have left India during a crisis. If I had any hope that within our lifetime we would get another chance – another golden opportunity for winning freedom, as during the present war, I doubt if I would have set out from home. But I was convinced of two things: firstly, that such a golden opportunity would not come within another century, and secondly, that without action from abroad, we would not be able to win freedom, merely through our own efforts at home. That is why I resolved to take the plunge.

Providence has been kind to me, in spite of manifold difficulties; all my plans have succeeded so far. After I got out of India, my first endeavour was to organize my countrymen, wherever I happened to meet them. I am glad to say that everywhere I found them to be wide-awake and anxious to do everything possible for winning freedom for India. I, then, approached the governments that were at war with our enemy in order to find out what their attitude was towards India. I found out that contrary to what British propagandists had been telling us for a number of years. The Axis powers were now, openly, the friends of India's freedom. I also discovered that they were prepared to give such help as we desired and as was within their own power.

I know the propaganda that our enemy has been carrying on against me. But I am sure that my countrymen, who know me so well, will be never being taken in. One, who has stood for national self-respect and honour all his life and has suffered considerably in vindicating it, would be the last person in this world to give in to any other foreign power. Moreover, I have nothing to gain personally at the hands of a foreign power. Having received the highest honour possible for an Indian at the hands of my own countrymen, what is there for me to receive from a foreign power? Only that man can be a puppet, who has either no sense of honour and self-respect or desire to build up a position for him through the influence of others.

Not even my worst enemy can ever dare to say that I am capable of selling national honour and self-respect. And not even my worst enemy can dare to assert that I was nobody in my own country and that I needed foreign help to secure a position for myself. In leaving India, I had to risk everything that I had, including my life. But I had to take that risk, because only by doing so could I help the achievement of India's freedom.

Their remains, one question to answer with regard to the Axis Powers. Can it be possible that I have been deceived by them? I believe it will be universally admitted that the cleverest and the most cunning politicians are to be found among Britishers. One who has worked with and fought British politicians all his life, cannot be deceived by any other politicians in the world. If British politicians have failed to coax or coerce me, no other politician can succeed in doing so. And if the British Government, at whose hands I have suffered long imprisonment, persecution and physical assault, has been unable to demoralize me, no other power can hope to do so.
Moreover, as you personally are aware, I have been a close student of international affairs. I have had personal contacts with international figures before the outbreak of this war. I am, therefore, no novice, who could be duped by a shrewd and cunning politician. Last but not least, before forming an opinion about the attitude of the Axis Powers, I established close personal contact with important leaders and personal contact with important personalities in Axis countries who are responsible for their national affairs. Consequently, I make bold to say that my countrymen can have the fullest confidence in my judgment of international affairs. My countrymen abroad will testify to the fact that since I left India, I have never done anything which could compromise in the least, either the honour or the self-respect or the interests of my country. On the contrary, whatever I have done has been for the benefit of my nation, for enhancing India's prestige before the world and for advancing the cause of India's freedom.

Mahatmaji, since the beginning of the War in East Asia, our enemies have been carrying on a raging and tearing campaign against Japan. I shall, therefore, say something about Japan particularly because at the present moment, I am working in the closest co-operation with the government, army and people of Japan. There was a time when Japan had an alliance with our enemy. I did not come to Japan, so long as there was an Anglo-Japanese Alliance. I did not come to Japan, so long as normal diplomatic relations obtained between the two countries. It was after Japan took what I consider to be the most momentous step in her history namely, declaration of war on Britain and America that I decided to visit Japan of my own free will. Like so many of my countrymen, I had read anti-Japanese propaganda material for a number of years. Like so many of my countrymen, I did not understand why Japan went to war with China in 1937? And like so many of my countrymen, my sympathies in 1937 and 1938 were with Chungking. You may remember that a President of the Congress, I was responsible for sending out a medical mission to Chungking in December 1938. But what I realized after my visit to Japan and what many people at home do not realize, is that since the outbreak of the War in East Asia, Japan's attitude towards the world in general, and towards Asiatic nations in particular, has been completely revolutionized. It is a change that has overtaken not merely the government, but also the people of Japan. A new consciousness – what I may best describe as an Asiatic consciousness – has seized the soul of the people of Japan. That change explains Japan's present attitude towards the Philippines, Burma and India. That is what explains Japan's new policy in China. After my visit to Japan and after establishing close contact with the present day leaders of that country, I was fully satisfied that Japan's present policy towards Asia was no bluff, but was rooted in sincerity. This is not the first instance in history when an entire nation has been seized with a new consciousness. We have seen instances of it before in France during the French revolution and in Russia during the Bolshevik revolution. After my second visit to Japan in November 1943, I visited the Philippines, met Filipino leaders there and saw things for myself. I have also been in Burma for a fairly long time, and I have been able to see things with my own eyes, after the declaration of independence. And I have been to China to find out if Japan's new policy was real, or it was a fake. The latest agreement between Japan and the National Government of China
has given the Chinese people practically all that she had been demanding. Japan under that agreement has agreed to withdraw her troops from China on the termination of hostilities. What then is Chungking-China fighting for? Could one believe that Britain and America are helping Chungking-China out of purely altruistic motives? Will not Britain and America demand their pound of flesh in return for the help that they are now giving to Chungking to make her continue the fight against Japan? I clearly see that Chunking is being mortgaged to Britain and America, because of past hatred and antagonism towards Japan. So long as Japan did not initiate her present policy towards China, there might have been some justification or excuse for Chinese to seek British and American aid for fighting Japan. But now that an entirely new chapter in Sino-Japanese relations has begun, there is not the slightest excuse for Chungking to continue her meaningless struggle against Japan. That is not good for Chinese people; it is certainly not good for Asia. In April 1942, you said that if you were free to do so, you would work for an understanding between China and Japan. That was an utterance of rare statesmanship. It is India's slavery that is at the bottom responsible for the chaos in China. It is because of the British hold over India that the Anglo-American could bluff Chungking into hoping that sufficient help could be brought to Chunking to enable Chungking to continue the war against Japan. You were absolutely right in thinking, Mahatmaji, that a free India will automatically bring about an honourable understanding between Chungking and Japan, by opening the eyes of Chungking to the folly that she is now committing. Since I came to East Asia and visited China, I have been able to study the Chinese question more deeply. I find that that there is a dictatorship ruling in Chungking. I have no objection personally to dictatorship, if it is for a righteous cause. But the dictatorship that rules at Chungking is clearly under foreign American influence. Unfortunately, the Anglo-Americans have been able to deceive the ruling clique at Chungking into thinking that if Japan could be somehow defeated, then China would become the dominant power in Asia. The fact, however, is that if Japan were defeated by any chance, and then China would certainly pass under American influence and control. That would be a tragedy for China and for the whole of Asia. It is through this false hope of becoming the dominant power in Asia, if Japan could be somehow defeated, that the ruling cliques at Chungking has entered into an unholy alliance with the ruling clique at the White House and at Whitehall. I know something of the propagandist activities of the Chung-king Government in India and of its efforts to play upon the emotions of the Indian people and win their sympathy. But I can honestly say that Chunking, which has been mortgaged to Wall Street and Lombard Street, does not deserve the sympathy of the Indian people any longer, especially after Japan has initiated her new policy towards China.

Mahatmaji, you know better than anybody else how deeply suspicious the Indian people are of mere promises. I would be the last man to be influenced by Japan, if her declarations of policy had been mere promises. But I have seen with my own eyes how, in the midst of a world war, Japan has put through revolutionary changes in countries like the Philippines, Burma and National China. In General Tojo, Japan has a leader and a Prime Minister, who is true to his word and whose actions are in full conformity with his declarations, and a leader, in moral stature, towers head and shoulders above contemporary statesman.
Coming to India, I must say that Japan has proved her sincerity by her deeds. There was
time when people used to say that Japan had selfish intentions regarding India. If she had them,
why should she recognize the Provisional Government of Free India? Why should she decide to
hand over the Andaman and Nicobar Islands to the Provisional Government of Free India? Why
should there, now, be an Indian Chief Commissioner of the Andaman and Nicobar Islands stationed
in Port Blair? Last but not least, why should Japan unconditionally help the Indian people in East
Asia in their struggle for their independence? There are Indians all over East Asia, and they have
every opportunity of seeing Japan at close quarters. Why should three million Indians distributed
all over East Asia, adopt a policy of the closest co-operation with Japan, if they had not been
convinced of her bonafides and of her sincerity? You can coerce one man or coax him into doing
what you want him to do. But no one can coerce three million Indians distributed all over East
Asia.

If Indians in East Asia had taken help from Japan without putting forward their own efforts
and without making the maximum sacrifice, they would have been guilty of wrongdoing. But as
an Indian, I am happy and proud to be able to say that my countrymen in East Asia are putting
forward the maximum efforts to mobilize men, money and materials for the struggle for India's
freedom. I have had experience at home in collecting funds and materials and in recruiting men
for national service for a period of twenty years. In the light of this experience, I can properly
asses the worth and value of the sacrifice that our countrymen in East Asia are now making. Their
effort is magnificent. It is because they are putting forward a magnificent effort themselves and
are prepared to make the maximum sacrifice that I see no objection to taking help from Japan
for such necessary articles as arms, ammunition, etc. that we ourselves cannot produce.

Mahatmaji, I should now like to say something about the Provisional Government that we
have set up here. The Provisional Government of Azad Hind (or Free India) has been recognized
by Japan, Germany and seven others friendly powers and this has given Indians a new status
and new prestige in the eyes of the whole world. The Provisional Government has, its own object,
the liberation of India from the British yoke through an armed struggle. Once our enemies are
expelled from India and peace and order is established, the mission of the Provisional Government
will be over. It will then be for the Indian people themselves to determine the form of government
that they choose and also to decide as to who should take charge of that government. I can assure
you, Mahatmaji, that I and all those who are working with me regard themselves as the servants
of Indian people. The only reward that we desire for our efforts, for our suffering and for our
sacrifice is the freedom of our motherland. There are many among us who would like to retire
from the political field, once India is free. The remainder will be content to take up any position
in Free India, however humble it may be. The spirit that animates all of us today is that it is more
honourable to be even a sweeper in Free India, than to have the highest position under British
rule. We all know that there are hundreds of thousands of able men and women at home to whom
India's destiny could be entrusted, once freedom is achieved.
How much help we shall need from Japan till the last Britisher is expelled from the soil of India, will depend on the amount of co-operation that we shall receive from inside India. Japan herself does not desire to thrust her assistance upon us. Japan would be happy if the Indian people could liberate themselves through their own exertions. It is we who have asked for assistance from Japan after declaring war on Britain and America, because our enemy has been seeking help from other powers. However, I have every hope that the help we shall receive from our countrymen at home will be so great that we shall need the minimum help from Japan. Nobody would be more happy than ourselves, if, by any chance, our countrymen at home should succeed in liberating themselves through their own efforts or if, by any chance, the British Government accepts your 'Quit India' Resolution and gives effect to it. We are, however, proceeding on the assumption that neither of the above is possible and that an armed struggle is inevitable.

Mahatmaji, there is one other matter to which I shall refer before I close and that is above the ultimate outcome of this war. I know very well the kind of propaganda that our enemies have been carrying on in order to create the impression that they are confident of victory. But I hope that my countrymen will not be duped thereby and will not think of compromising with Britain on the issue of independence under the mistaken notion that the Anglo-Americans will win this war. Having traveled round the world under war-time conditions with my eyes open, having seen the internal weakness of the enemy on the Indo-Burma frontier and inside India, and having taken stock of our own strength and resources, I am absolutely confident of our final victory. I am not so foolish as to minimize, in the least, the strength of the enemy. I know that we have a long and hard struggle in front of us. I am aware that on the soil of India, Britain will fight bravely and fight hard in a desperate attempt to save her Empire. But I know also that, however long and hard the struggle may be, it can have but one outcome—namely, our victory. India's last war of independence has begun. Troops of the Azad Hind Fauj are now fighting bravely on the soil of India and in spite of all difficulty and hardship they are pushing forward slowly but steadily. This armed struggle will go on, until the last Britisher is thrown out of India and until our tri-colour national flag proudly floats over the Viceroy's House in New Delhi.

Father of our Nation: In this holy war for India's liberation, we ask for your blessings and good wishes.

JAI HIND.