

June 1975

India was stunned by imposition of Emergency and imprisonment of the entire opposition leadership by Mrs. Gandhi, who had now assumed the Avatar of a Dictator. Nonetheless people seemed to welcome a return to order from what seemed a state of anarchy. Any form of protest was banned. Trains began to run on time. The prices of essential commodities were under check. A prominent Gandhian – Vinoba Bhave, welcomed Emergency as an Era of Discipline.

Even as a teenager, I loathed the Emergency but truth be told, it had a welcome effect on my personal life. I had secured admission to the most prestigious Engineering College of Madhya Pradesh – Shri G.S. Institute of Science and Technology, Indore. Freshers dreaded their first days, since the college had a reputation for fearsome ragging. But we were the batch of Emergency. No one dared rag us at least till the Emergency lasted. In 1977, as the country celebrated return to Democracy, we had to endure ragging we had missed as Freshers.

The admission also meant moving from the home of my parents in Gwalior, to the home built by my Grandfather in Sikh Mohalla, Indore. From the perspective of today's world of glittering Malls and Multiplexes – Sikh Mohalla was a downmarket, lower middle class locality but to me – it remains, to date; my roots

The name of the locality derived from the Gurudwara at one corner was actually a misnomer. It was home to a close knit socially and culturally active Maharashtrian community, which maintained its own identity but at the same time blended well with others. The few Sikh families in the locality were some of our close family friends.

“It was the Best of Times. It was the Worst of Times...Bliss was it to be young in that dawn”.

For me, it was all too true. For next five years, my social, cultural and political life was a roller coaster ride of fun and never ending excitement. Blood donation camps, Ganesh Festivals, cycle tour lasting 2,000 kms, picnics, election campaigns, Industrial Fairs kept me busy on a 24 by 7 basis. Fortunately, somewhere in between, I also found the time to pass my Mechanical Engineering degree with a first class. It was now time to see the world.

For next nine years, I settled down in the routine of a regular job, progressed from being the grim and grease of a Shopfloor trainee to the air conditioned cabin of a Deputy Manager of a Public Sector organization. In between, I got married to a beautiful girl, who gave me two wonderful daughters. I was then bitten by the ‘MBA’ bug. I took, what in those days of License Raj was an *irrational* decision – that of investing my savings of nine years to do a Masters in Management at the Asian Institute of Management, Manila. At Manila, I was spending my money and not my father’s, as during the Engineering days.

With the result, in next one year, I studied more than I had done in five years of Engineering. I was rewarded by being in the Dean's List throughout the programme, though I had no social life to speak of.

I returned to India and managed to persuade a German Multinational to employ me despite the career break of the stint at AIM. In next six years, I progressed to being a General Manager. This entitled me to move from the suburbs of Mumbai to the Island city. The house that I happened to rent was that where Vinayak Damodar Savarkar once lived – Savarakar Sadan. I did not yet know this but this seemingly innocuous house shift was to change my life in a way that I could not comprehend.

I moved to this house in May 1997. By January 2006, I found myself standing before a three member Division Bench of the Supreme Court of India, headed by the Chief Justice of India arguing passionately that August 15 could be not called Independence Day. Strangely, Bench seemed to have no answer but nonetheless was not inclined to interfere with a “No Order” passed by the High Court.

A lot had happened in between from 1997 to 2005. From heading Corporate Planning, Business Development, Information Technology. International Projects in the German Multinational, I moved to working as a Group Vice President in a large Indian Industrial house working directly with one of the most respected business leaders of the country.

I had also written and published a book – “Freedom Struggle: The Unfinished Story”, formed a Trust, Abhinav Bharat, fought a Public Interest Litigation, filed a Representation before Union of India following a High Court order – all with the help of my dearest wife - Manjiri and our dear friend - Meena. In between, I had also to fight and overcome a life threatening cardiac problem with the help of my sister, Dr. Jyotsna.

Let me now take you to the Representation that has been filed before Union of India following an order of the Honourable High Court of Mumbai dated December 23, 2004 in WP 2947 (Lodg) of 2004. The Union of India was directed by the Court to dispose it off by a reasoned order within six weeks. The Honourable Court repeated its order on April 20, 2005 in WP (PIL) 682 of 2005. Yet the Representation has not been disposed off by any order – reasoned or otherwise. A fact that has been brought to the attention of the Hon’ble High Court, Hon’ble Supreme Court of India as also the Hon’ble Prime Minister of India.

What is in this Representation that prevents the Indian State – which accords the Pride of Place to “Satya Meva Jayate” – May the Truth Always Prevail, from obeying the Court order to dispose it by a reasoned order? Indeed, so much so that the Court itself, even when after having been pointed out the non –compliance of its own orders, has done no more than pass a “No Order”!!

This is the shocking story that I now present for your consideration.

Detailed Representation Submitted by Abhinav Bharat to the Counsel for Union of India at Mumbai For Consideration of the Concerned Authority of the Union of India

This representation is the subject matter of the order dated December 23, 2004 that the Division Bench of Honourable High Court of Judicature at Bombay, Coram; the Chief Justice and Justice Dr. D.Y.Chandrachud, was pleased to pass in the matter of Writ Petition (Lodg) 2947 of 2004. In accordance with the said order of the Honourable High Court; this representation has to be considered by a reasoned order within six weeks from December 23, 2004 by the concerned authority of the Union of India.

1 Abhinav Bharat is a registered Charitable Trust bearing registration number E - 19962 issued by the Charities Commissioner, Mumbai under Bombay Public Trust Act 1950. The objectives of the Trust⁽¹⁾ are:

- 1.1 To spread awareness about the need to reexamine history and re focus on future with renewed hope so as to promote national interest.
- 1.2 To provide literacy in the field of Information and Technology.

- 1.3 To provide poor people who need financial help for medical treatment or any other genuine and acceptable reason which deserves sympathetic action or to create basic health facilities, where required.
 - 1.4 To promote team games like Hockey and Football
 - 1.5 To make available such literature as necessary to promote the objectives of the Trust.
 - 1.6 To give donations as may be decided by the Board of Trustees for causes that will further the objectives of the Trust.
- 2 We believe that the Objectives of the Trust help us fulfill our Fundamental Duties as per Article 51 A, Part IV A of the Constitution, particularly the following:
- 2.1 Section (ii) which requires the citizens “ To cherish and follow the noble ideals which inspired our national struggle for freedom”
 - 2.2 Section (vi) which requires the citizens “to value and preserve the rich heritage of our composite culture.”

2.3 Section (viii) which enjoins the citizens “To develop the scientific temper, humanism and the spirit of inquiry and reform”.

3 During the process of fulfilling the Objectives of the Trust and also fulfilling our Fundamental Duties, we have had access to certain hitherto confidential information from the Public Record Office, U.K., as well as some ignored facts. With a sense of deep shock, we realized that the People of India are in dark about material information in respect of the following for past fifty seven years:

3.1 The Dejure Indian Sovereign between August 15, 1947 and January 26, 1950.

Closely linked to this are the following issues:

3.1.1 The Dejure Indian Sovereign in 1857

3.1.2 The Financial and Military Compulsions of the British behind their decision to give up the Defacto power in August 1947

3.2 The fact that **Universal, Compulsory and Free Primary Education for all** - a prerequisite for a meaningful life for the poor and deprived sections of the society, consistent with provisions of the Article 21 of the Constitution; **is easily possible remains known.**

4. In this representation, we will demonstrate to the satisfaction of all concerned that information about the above mentioned issues lies in the domain of legally verifiable facts and is in the possession of the Union of India. The lack of this material information to the People of India has resulted in the following:

4.1 Serious impediment in the capacity of the citizens to undertake their fundamental duties under Article 51 A Section (ii), (vi) and (viii).

4.2 Violation of the Citizens Right to Information. Introduction to the Freedom of Information Act 2002 has this to say about the Right to Information, “The Right of Information or right to information has been well recognized as being facets of Article 19 (1) (a) – the freedom of speech and expression and Article 21 – life or personal liberty.

5 The Dejure Indian Sovereign between August 15, 1947 and January 26, 1950

Today, it is fervent belief of every citizen that India attained Absolute Political Independence on August 15, 1947 as envisaged in the historic resolution of Lahore Congress in December 1929 and the Objectives Resolution adopted by the Constituent Assembly of January 22, 1947. The Union of India by celebrating August 15 as the Independence Day perpetuates this belief.

It is with a sense of deep shock that we have learnt that the Dejure Indian Sovereign between August 15, 1947 and January 26, 1950 was the King of England and that during this period:

5.1 The King of England continued to exercise rights of sovereignty by accrediting the Indian Ambassadors to foreign powers. As a result of this:

5.1.1 India was not a country 'foreign' to the United Kingdom in International law.

5.1.2 India continued to be a part of the British Empire under the provisions of Imports Duties Act 1932 of United Kingdom, Section 21 (1)

For evidence of this, please refer to the copy of the Note of the Prime Minister of United Kingdom - C.P. (48) 254 November 10, 1948 on the Sovereignty of the King of England over India ⁽²⁾.

5.2. Thus the Indian State that came into being on August 15, 1947 had the following characteristics:

5.2.1 The test of an Independent Nation within International law is that Dejure & Defacto Power resides within the State. The Indian State on August 15, 1947 did not fulfill this test.

- 5.2.2 Notwithstanding passage of the Indian Independence Act 1947 by the British Parliament, it remained within “The British Empire”.
- 5.1.3 The Sovereign of the Indian State was the King of England and not the Constituent Assembly representing People of India.
- 5.1.4 The Indian Ambassadors to various countries of the world were representing the King of England, since it was he who was accrediting them.
- 5.1.5 The Head of the State was a British Subject who was appointed by the King of England as the Head of State of India and who ruled in the name of the Indian sovereign i.e. the King of England.
- 5.1.6 The British Subject, who was also the Head of the State, in his capacity as the representative of the King of England, commanded the absolute loyalty of the British troops on the soil of the State. These British Troops were subject to the control of the British Cabinet and were in no way responsible to the Indian Constituent Assembly or the Council of Indian Ministers.

The Head of State appointed by the King of England therefore had awesome authority outside the control of the Indian Constituent Assembly or the Council of Indian Ministers. In light of this, the fact of Dejure power residing within an external person – the King of England is not something that can be dismissed as an issue of semantics or academic interest. It had very material consequences.

For instance, a financial agreement in respect of the Sterling Balances was signed on the eve of transfer of Power - August 14, 1947 between India and the United Kingdom. By this agreement, India accepted that it would be paid less than 1% interest on the Sterling loans extended by it to United Kingdom during the period 1939 - 46. And that despite the Freely Convertible nature of the Sterling Pound on that day, it would not seek to convert these loans into the hard currency of the day i.e. the US Dollar. The sum of the money involved amounted to 1,160 million pounds. This had been borrowed by the Indian Government at 3%. The Convolved nature of the Agreement based on no commercial principles resulted in a loss of US \$2,500 million to the Indian Nation by January 26, 1950. For detailed analysis of the loss of US \$ 2,500 million by accepting transfer of power on August 15, 1947 on the British terms, please refer “Squandering of Indian Sterling Loans to the British”⁽³⁾.

If a nationalistic Indian Council of Ministers after transfer of Power on August 15, 1947; were to insist that the Sterling Loans to the British were to be treated as per the note dated March 20, 1946 by the Economic Advisor to the Reserve Bank of India, Mr. J.V.Joshi ⁽⁴⁾ and not as per this Agreement; the Government of U.K. could advise the King of England, who was bound to act on their advice; to do the following:

- Instruct the Head of State of India - British Subject, appointed by, representing and owing allegiance to the King of England - to dismiss the Indian Council of Ministers and arrest them.
- Instruct the Head of State of India to swear in a new set of Indian Council of Ministers, who would agree to abide by the said financial agreement.
- Instruct the Head of the State of India, to do the above peacefully, if not successful, by force using the British troops at his disposal on Indian Soil as the representative of the King of England and the Indian troops under his command as the Head of the Indian State.

The above action, it may be noted was perfectly legal. If, the Head of Indian State, a British Subject, were not to follow the instructions of the King of England, he could have been tried for treason in the United Kingdom. This was certainly was not Absolute Political Independence as was envisaged in the historic resolution of Lahore Congress in December 1929 and Objectives resolution adopted by the Constituent Assembly on January 22, 1947.

It is only on January 26, 1950, when the Sovereignty of the King of England over India was fully and completely extinguished, can it be claimed that India attained Absolute Political Independence.

Representation Number One

The lack of information about this material fact in the Public Domain:

- *Is Violation of the our Right to Information leading to violation of our Fundamental Rights under Article 19 (1) (a) – the Right to Freedom of Speech and Expression and Article 21 – Right to Life and Personal Liberty, of the Constitution of India.*
- *Is a serious impediment to our fulfilling our Fundamental Duties Article 51 A, Part IV A Section (ii), (vi) and (viii), of the Constitution of India.*

Moreover evidence exists ⁽⁵⁾ to show that important members of the Union of India were engaged in a conspiracy to ensure that the Sovereignty of King of England over India would lie dormant and which could be revived at any time by an act of the Indian Parliament. The full results of this conspiracy are not known but the possible consequences of such a conspiracy are too grave to be ignored.

Abhinav Bharat, therefore represents that the Union of India should make a Gazette Notification that India fully and permanently extinguished the Sovereignty of the King of England on January 26, 1950 and attained Absolute Political Independence on this date and on no other date.

6 The Dejure Indian Sovereign in 1857

We wish to submit that it is a matter of historical fact that between 1707 – 1857, the Moghul Emperor came to be gradually accepted as the Dejure Indian Sovereign, by all classes of the Society. This process culminated with Hindu and Muslim fighting together against their common foe – the British in 1857; laying down their lives while defending the secular reign of their national Sovereign Bahadur Shah Zafar.

To put the matters in perspective, The Butler Committee had opined on 14th February 1929, “It is not in accordance with historical fact that when the Indian Princes came into contact with the British Power they were independent.....in fact none of the States held international status...Nearly all of them were subordinate or tributary to the Moghul Emperor, the Maratha Supremacy or the Sikh Kingdom”⁽⁶⁾.

The genesis of this historical development deserves fuller treatment.

6.1 By the time Aurangzeb died in 1707, he had emerged as the Indian Emperor, who was both the Dejure and Defacto ruler of 21 Subhas (provinces) comprising of present day states of Afganistan, Pakistan, India and Bangladesh. These Subhas were Kabul, Lahore, Multan, Sind, Kashmir, Ajmer, Agra, Delhi, Allhababad, Avadh, Bengal, Bihar, Orissa, Malwa,

Gujarat, Berar, Khandesh, Aurangabad, Bidar, Bijapur and Hyderabad. Except for Kabul which broke away in 1740, this Empire remained intact in a legal sense upto 1858. All the rulers in the country derived their mandate from the seat of the Moghul Emperor.

- 6.2 However, the successors of Aurangzeb lost the power to be the Defacto rulers. The Emperor remained right upto 1858, the only source which could grant a Sanad to govern a Subha but himself had no power to give effect to the Sanad granted by him. And thus the seat of the Moghul Emperor became divided into Dejure and Defacto ruler.
- 6.3 The Marathas were for most part of the eighteenth century, the Defacto rulers of most of the Subhas until they were overwhelmed by the East India Company in 1803.
- 6.4 The East India Company derived its authority to govern in India by virtue of the Sanad granted to it by the Moghul Emperor in 1765 to be the Dewan of the Emperor for the provinces of Bengal, Bihar and Orissa. The East India Company also obtained the approval of the British Parliament for accepting this Subordinate office in the Moghul Empire. This was confirmed by Edmund Burke⁽⁷⁾ in the British Parliament on 15th February 1788, while speaking on the occasion of the Impeachment of Mr. Hastings.

In effect, the East India Company and the British Parliament accepted the Moghul Emperor to be the national sovereign of India.

6.5 That the British Parliament and the East India Company accepted the legal position as enumerated by Edmund Burke till 1857 is clear from the following:

6.5.1 Notwithstanding the passage of the Pitt's Act of 1784 by the British Parliament, the official seal of the Governor – General of Bengal, the supreme officer of the East India Company in India continued to describe him as being the Servant of the Moghul Emperor - till 1814.

6.5.2 “Notwithstanding his Majesty's total deprivation of real power and dominion, and authority, almost every state and every class of people in India continue to acknowledge his nominal sovereignty”⁽⁸⁾

The reasons enumerated by Wellesley and his Council had to say for taking the Moghul Emperor under British protection on July 13, 1804,

6.5.3 Notwithstanding the assertion made by the British Government during passage of the Charter Act of 1813 that “the undoubted sovereignty of the crown of the United Kingdom in and over the territorial possession under the control of the East India Company in India”; - the money coined by the Government of India bore the effigy of the Moghul Emperor and was “issued in the 9th regal year of Shah Alam” upto 1835.

6.5.4 Notwithstanding the assertion made by the British Government during passage of the Charter Act of 1833 that the possessions of the East India Company in India were “to be held in trust for His Majesty, his heirs and successors, for the service of Government of India”, the Moghul Emperor continued to exercise rights of sovereignty.

The British continued to acknowledge this exercise of the rights of sovereignty by the Moghul Emperor. Even in 1836, they accepted the position that legally the East India Company was entitled to rule only the provinces of Bengal, Bihar and Orissa as per the terms of the Sanad of 1765. *Accordingly, the North Western Province was therefore styled as the Upper Province of Bengal.*

The last Nazar, was presented to the Moghul Emperor by the East India Company in 1843 by Lord Ellenborough. It was Dalhousie who hatched a scheme of abolishing the imperial title **after** the death of the then reigning Emperor – Bahadur Shah Zafar. The scheme was approved by the British Government in 1856.⁽⁹⁾

6.5.5 Most importantly, notwithstanding the continuous encroachment made by various assertions and declarations by the British Government since 1813, the Judge Attorney General made the following statement during the trial of Bahadur Shah Zafar – **“the British Government neither deprived him or any member of his family any sovereignty”**⁽¹⁰⁾.

6.6 Thus, that in 1857; Bahadur Shah Zafar was the legal sovereign of India is beyond a shadow of doubt. It may be contended that though he was technically the sovereign, he died without ever having contested the claim of Sovereignty of the British Crown over India, first made in 1813 in the British Parliament and on many other occasions thereafter. And therefore his rights of Sovereignty withered away by a natural process to be replaced by the British crown in 1877, when Queen Victoria was proclaimed the Emperess of India on January 1, 1877.

- 6.7 However, it is not in accordance with facts that Bahadur Shah Zafar allowed his rights as Sovereign to wither away by a natural process. In fact, on May 11, 1857, he made a positive declaration proclaiming himself as the reigning Emperor of India and asked all his subjects without distinction of language or religion to unite and throw out the British from India. A fact that was indeed the subject of the Third Charge that was levied against him in his trial.
- 6.8 It should also be taken into account that merely because he was completely dependent on the British, partly from 1765 and almost fully from 1803 did not amount to his having given up his rights as a sovereign. Kindly note that the King of England was in a similar position of depending on the Indian Government for ruling India from August 15, 1947 to January 26, 1950. Yet as has been seen in para 5.1., the Law Officer of the British Government opined that notwithstanding his complete dependence on the Indian Government to rule India, the King of England continued to be the Indian Sovereign. By same logic, the Moghul Emperor continued to Indian Sovereign from 1803 to 1857; notwithstanding his total dependence on the East India Company to rule his domain.

6.9 By deposing the secular Indian Sovereign; – they had themselves acknowledged since 1765 - using unlimited violence in 1857, the British stand guilty of establishing their rule in an illegal manner. Their rule in India was therefore completely illegitimate.

6.10 The British knew the illegality of their rule. Unilaterally, they decided that they would not hand over the Sovereignty over the Indian States to any third party⁽¹¹⁾, that they had wrested from the Indian sovereign by force. A perusal of the records of the British Cabinet meeting clearly show that no rational other than perceived British interests lay at the root of this decision.

This reasoning thus brings us to the following conclusions:

- The fact that the Moghuls came to be regarded as Indians by all classes of Indians once they gave up their Islamic zeal is a very important missing link in the national psyche. The lack of appreciation of this important historical development has been the bane of the Indian State.
- The natural heir to the secular reign of the last Moghul – Bahadur Shah Zafar can only be a Secular State. Thus, only a secular India and not a sectarian Pakistan can claim this heritage. It was therefore the Union of India that was the Paramount Power for the Indian Princes, once the British Crown allowed its

Sovereignty over the Indian States to lapse by Section 7 (b) of the Indian Independence Act 1947. It had no need to sign any treaty of Accession with any of the Indian States to assert its right as the Paramount Power.

- The Indian claim to the State of Kashmir therefore rests on the basis of being the natural heir to the last Indian national Sovereign – Bahadur Shah Zafar and not on account of any treaty of Accession, it may or may not have signed with the then ruler of Kashmir.

Representation Number Two

The lack of information about these material facts in the Public Domain:

- *Are a Violation of the our Right to Information leading to violation of our Fundamental Rights under Article 19 (1) (a) – the Right to Freedom of Speech and Expression and Article 21 – Right to Life and Personal Liberty, of the Constitution of India.*
- *Are a serious impediment to our fulfilling our Fundamental Duties Article 51 A, Part IV A Section (ii), (vi) and (viii), of the Constitution of India.*

Abhinav Bharat therefore represents that the Union of India should make a Gazette notification recording:

- *Bahadur Shah Zafar, a truly Secular Emperor was the National Sovereign of India in 1857, who was deposed in an illegal manner by the British using unlimited violence.*
- *That the Union of India – a secular state, is the natural heir to the secular rule of the last Moghul.*

7 The Financial and Military Compulsions of the British behind their decision to handover Power in 1947

7.1 Financial Bankruptcy of the British

A memo⁽¹²⁾ written by Lord Keynes, “Our Overseas Financial Prospects” was circulated within the British Cabinet on August 14, 1945 by the Chancellor of Exchequer. In very clear and forthright language Lord Keynes pointed out that British Government had lost its financial capacity to hold on to the Colonies - most particularly those in India, Burma, Ceylone and Middle East beyond 1948.

7.2 Military Inability of the British to Hold a Restive India by Force

The British Cabinet in its meeting of 17th June 1946⁽¹³⁾ was made aware of the Conclusions of the Situation in India and its Possible Effect upon Foreign Relations indicating the seriousness of the Indian Situation. They were also informed of Defense Committee on a report by the Chief’s of Staff that the reliability of the Indian Army was open to serious doubt and that the British Government did not have the necessary troops in any part of the Empire to hold a restive India by force. We have in our possession, the Record of all Meetings of the British Cabinet between July 1945 to August 1947. There is no reference whatsoever to any

reason other than Financial Bankruptcy and Military inability to hold a restive India by force for handing over power in India.

In conclusion it can be said that it is in accordance with legally verifiable facts as detailed in para 7, that Indian Independence was the combined result of the Struggle for Constitutional Reform, and the extra constitutional opposition by both Non Violent and Violent means. The belief that Indian Independence was won primarily by Non Violent Satyagraha that induced a Change of Heart in the British forces, who then willingly gave up their colonial power in India and elsewhere in the world; is merely an Article of Faith that is not supported by any hard legally verifiable evidence.

Representation Number Three

The lack of information about this material fact in the Public Domain:

- *Is Violation of the our Right to Information leading to violation of our Fundamental Rights under Article 19 (1) (a) – the Right to Freedom of Speech and Expression and Article 21 – Right to Life and Personal Liberty, of the Constitution of India.*
- *Is a serious impediment to our fulfilling our Fundamental Duties Article 51 A, Part IV A Section (ii), (vi) and (viii), of the Constitution of India.*

The Union of India by its action of printing the photograph of Mahatma Gandhi to the complete exclusion of all other national leaders is actively perpetuating the Article of Faith that it was Non Violence that was the primary factor for Indian Independence.

Abhinav Bharat therefore represents that:

- ***The Union of India should take active steps to make the People at Large aware of the significant and material fact about the attainment of Indian Independence.***

- ***The Union of India should therefore immediately forthwith abandon its present practice of excluding photographs of all national leaders other than Mahatma Gandhi on the Currency Notes.***
 - ***These steps should include publishing the photographs of all esteemed National Leaders associated with Indian Freedom Struggle, whose portraits adorn the walls of the Parliament today; on currency notes.***

 - ***Thus photographs of national leaders, like Lokmanya Tilak, Babasaheb Amedkar, Netaji Subhas Chandra Bose, amongst others; should also be printed on the Currency Notes by Union of India along with that of Mahatma Gandhi.***

8. Attainment of Universal Compulsory and Free Primary education

8.1 The Union of India was one of the 160 countries that made a Commitment at the World Education Forum in 2000 to achieve Education For All. This is being monitored by UNESCO, which has now released its EFA - Global Monitoring Report, 2005.⁽¹⁴⁾

8.2 This report has brought out the fact that the Union of India which prides itself as an Economic Superpower, an IT Superpower, a Nuclear Superpower or a superpower in whatever else, denies 57,435,840 or 49.5% of the Children in the Age Group of 6-10, primary education. In other words, 50% of our Children are denied their fundamental Right to Life as defined in Article 21 of the Constitution of India.

8.3 Economic and Social Indicators taken from this UNESCO report show that in Purchasing Power Parity terms, India, China and Sri Lanka countries are comparable. Yet social indicators in respect of Infant mortality and people below poverty line vary significantly. In all cases, India is the worst offender. For instance, the Infant Mortality Rate (IMR) in India is 65 per 1000 against 37 in China and 20 in Sri Lanka

8.4 The EFA report also establishes that the Social Indicators are the symptoms – the main disease being lack of Education. The data in respect of the Status of Education in India, China and Sri Lanka, is worth a study.

8.4.1 In Sri Lanka, only 2,236 (0.14%) children in the age group of 5 – 14 are denied primary education.

8.4.2 In case of China some 7,903,272 (7.3%) children upto the age of 14 are denied Primary education.

8.4.3 In India a staggering 57,435,840 or 49.5% children in the age group of 6 to 14 are denied primary education. They are thus denied a Right to a Meaningful Life as guaranteed under Article 21 of the Indian Constitution.

The lack of Education particularly for the Girl Child has far reaching consequences – one of which is a high Infant Mortality Rate. A literate Girl Child is far more empowered to attain financial independence, delay her marriage and the age of conception and to protect her baby from diseases than an illiterate Girl Child. This is something that needs no debate.

- 8.5 The UNESCO – EFA Global Monitoring Report 2005, records that the Union of India has accepted that the Right to Universal, Compulsory and Free Primary Education is legally enforceable right in India.
- 8.6 Now that the Union of India has levied an Education Cess on the tax payers in the country, the argument of paucity of funds with Union of India or the States that constitute this Union; is demonstrably false.
- 8.7 The Union of India has access to the best of the brains who study in numerous Educational Institutes that are run by and or aided by the Union of India and or the States that constitute this Union.
- 8.8 The Union of India has access to best delivery mechanism in such Institutes to ensure that the legally enforceable right of Universal, Compulsory and Free Primary Education is fulfilled to nearly 6 crore children, who are today denied this right. This delivery mechanism is the scheme of National Service Scheme (NSS) and National Cadet Corps (NCC) that are already in place.
- 8.9 The Union of India has only to make sure that NSS and NCC are reoriented to propagate the cause of Universal, Compulsory and Free Primary Education and make it compulsory in all Institutes of Higher learning, whether or

not aided by Union of India or its constituent States. Such compulsion will be facilitated by introducing Socially Oriented Fees in Institutes of Higher Learning. For instance in Germany, socially oriented fees prevail in Institutes of Higher learning. No fees is charged and the students are required to spend two years in the service of nation

8.10 The Union of India has taken up the dubious cause of Cost Oriented Fees in Institutes of Higher learning. By introducing Cost oriented fees, the Union of India is creating a situation where the nexus of one citizen with that of the other will only be of money and nothing else. We submit that a Cost Oriented fees in the Institutes of Higher Learning will have long term detrimental impact on the Society. A Doctor or an Engineer, who has seen the lifetime savings of her parents disappear as they funded her education is unlikely to have much time for social responsibility. A Management Graduate, who has funded her education through loans will focus towards repaying the loan and ensuring that her investment has a positive Net Present Value (NPV). It is not unreasonable to expect that such citizens are likely to actively resist the introduction of compulsory service in NSS and NCC even for such socially responsible purpose as Universal, Compulsory and Free primary education for deprived sections of the society.

In the years to come, there is therefore a very real and frightening possibility that we will have such Citizens in positions of Power and Authority, for whom the only nexus that lies between One Citizen and the Other would be that of monetary transaction. No civilized society – much less an ancient civilization like ours can exist on this basis.

Representation Number Four

The UNSECO – EFA Global Monitoring Report 2005 has recorded that the Union of India now accepts that Universal, Compulsory and Free Primary Education is a legally enforceable right that it is denying to close to 6 crore children.

Abhinav Bharat therefore demands that:

- **The Union of India must ensure that No Child in the Republic of India is denied this legally enforceable right of Universal, Compulsory and Free Primary Education; after a predefined date, say March 31, 2010.**
- **The Union of India must make a detailed action Plan for doing so and make it available in the Public Domain. This detailed plan must include the following:**

- **Details of the Executive Agency charged with executing this action plan.**
- **The rewards & punishment to concerned officers, linked to execution of this plan.**
- **The Union of India must request that UNESCO makes available EFA- Global Monitoring Report for India, on a six monthly basis and meet the expenses necessary for enabling the UNESCO to do so.**
- **The Union of India must explore the Option of Utilizing the Best of the Indian brains to contribute to this noble cause by:**
 - **Introducing Socially Oriented Fees in Institutes of Higher Learning.**
 - **And simultaneously making reoriented NSS and NCC compulsory for all students.**

It is requested that this Representation may be considered by a Reasoned order within six weeks from December 23, 2004 as per the Order of the Honourable High Court of Judicature at Bombay.

Given below is our address for communication:

Abhinav Bharat

4/71 Savarkar Sadan, Dr. M.B. Raut Road

Shivaji Park, Dadar (W)

Mumbai – 400028

Thanking you

Yours truly,

Pankaj Phadnis

Authorized Signatory

Abhinav Bharat

References

- (1) Pages 28-39 of the Petition dated October 30, 2004 filed by Abhinav Bharat in the matter of Writ Petition (Lodg) 2947 of 2004 in the Honourable High Court of Judicature at Bombay. Three copies of the Petition have been given to the Counsel for Union of India on November 22, 2004.
- (2) Page 46 Appendix 1, Para 9 and Appendix 2 para 2 of the Petition dated October 30, 2004 filed by Abhinav Bharat in the matter of Writ Petition (Lodg) 2947 of 2004 in the Honourable High Court of Judicature at Bombay. Three copies of the Petition have been given to the Counsel for Union of India on November 22, 2004.
- (3) Pages 458 – 469 of “Freedom Struggle – The Unfinished Story” by Pankaj K. Phadnis, published by Abhinav Bharat in October 2002 and available at Strand Book Stall, Mumbai.
- (4) Pages 613 and 614 “History of Reserve Bank of India”, Edited by Shri C.D.Deshmukh.
- (5) Page 43, para 2 of the Petition dated October 30, 2004 filed by Abhinav Bharat in the matter of Writ Petition (Lodg) 2947 of 2004 in the Honourable High Court of Judicature at Bombay. Three copies of the Petition have been given to the Counsel for Union of India on November 22, 2004.

- (6) Page 528 of “Readings in Constitutional History of India, 1757 – 1947” Edited by S.V.Desikachar, Oxford University Press, 1983.
- (7) Pages 42-45 of “Readings in Constitutional History of India, 1757 – 1947” Edited by S.V.Desikachar, Oxford University Press, 1983.
- (8) Page 133-134 of “Readings in Constitutional History of India, 1757 – 1947” Edited by S.V.Desikachar, Oxford University Press, 1983.
- (9) Page 21 of “British Paramountcy and Indian Renaissance” Bharatiya Vidya Bhavan, 1988.
- (10)Page 326, Appendix C of “Kaye’s and Malleson’s History of Indian Mutiny of 1857-58”, Longmann’s Green and Co. 1898.
- (11)British Cabinet Meeting of 8th March 1946, CM(46), 22nd Conclusions, available from Public Record Office U.K.
- (12)Pages 54-60 of the Petition dated October 30, 2004 filed by Abhinav Bharat in the matter of Writ Petition (Lodg) 2947 of 2004 in the Honourable High Court of Judicature at Bombay. Three copies of the Petition have been given to the Counsel for Union of India on November 22, 2004.

(13)Pages 61 – 81 of the Petition dated October 30, 2004 filed by Abhinav Bharat in the matter of Writ Petition (Lodg) 2947 of 2004 in the Honourable High Court of Judicature at Bombay. Three copies of the Petition have been given to the Counsel for Union of India on November 22, 2004.

(14)UNESCO – EFA Global Monitoring Report – 2005 available at <http://portal.unesco.org> .

April 14, 2006

To,

The Secretary
Ministry of Home Affairs
North Block
New Delhi

Dear Sir,

Subject: Bombay High Court/OOCJ Writ Petition (L)
No 2947/04 & WP (PIL) 682 of 2005Abhinav
Bharat vs Union of India and Ors

We wish to invite your kind attention to letter no. F.No. 44(4) / 2005 – Judl sent to you from Ministry of Law and Justice, Department of Legal Affairs dated 18th January 2005 (wrongly typed as 2004) by which you were forwarded 3 copies of the detailed representation submitted by us, which was the subject matter of order dated December 23, 2004 of a Division Bench of the Bombay High Court. This representation was as per the order of the Court and was required to be disposed off by a reasoned order by the appropriate authority of the Union of India within 6 weeks of December 23, 2004.

The Joint Secretary and Legal Advisor had also pointed out that the 3 points out of the four raised in the representation concerned the Ministry of Home Affairs.

This is to place on record that you have not complied with this order of the Court nor the subsequent order of the Court in WP (PIL) 682 of 2005 dated April 20, 2005 to the same effect.

During the course of subsequent research done by us, we have come across the following Judgments of Supreme Court of India, which by omission have not been cited before either the High Court or the Supreme Court so far.

- State of Surashtra v Abdulla Jamdar Mohamad, AIR 1962 Supreme Court 445 (V 49 C 70) of October 3, 1962 delivered by a five member bench of the Supreme Court of India
- Mehta M.C. v Union of India (1988) 1 SCC 471: AIR 1988 SC 1115

The facts stated in our representation as also on oath in the Writ Petitions have so far not drawn any response from you , which lead us to believe that these are correct. In the context of the Judgments cited above, the correctness of the facts would give rise to **“Serious Questions of Substantial Law of General Importance that needs to be authoritatively settled by a Constitution Bench of the Supreme Court of India”**.

We therefore once again call upon you to comply with the orders of the Court to dispose off the three of the four points of our representation by a reasoned order in the next three weeks. We may also mention that on our part, we visited the National Archives of India on April 10, 2006 (Visitor Pass No 412123) to inspect the following documents:

- The letter of appointment of the Governor General of India during the period August 1947 to January 1950
- The letter of Accreditation of the Indian Ambassadors to the United States of America during the period August 1947 to January 1950
- The letter of appointment of the Prime Minister of India during the period August 1947 to January 1950

These documents would help prove or disprove the assertions made by the Law Officers of the Government of the United Kingdom in their note which was circulated the British Cabinet by Mr. Clement R. Attlee – the Prime Minister of United Kingdom – C.P. (48) 254 of November 10, 1948; that the King of England continued to the Indian Sovereign.

We plan to visit the National Archives of India once again on May 1 and May 2 and would request you to make sure that these are made available to us for inspection. You would appreciate that we are making this effort to ensure that neither your valuable time nor that of the Court is unnecessarily wasted and therefore look forward to your kind cooperation.

Thanking you

Yours truly,

Pankaj Phadnis
Authorized Representative,
Petitioner in Person.

CC: Joint Secretary and Legal Advisor, Government of India,
Ministry of Law & Justice, Department of Legal Affairs,
Judicial Section
Shastri Bhavan, New Delhi - 110001

April 14, 2006

To,

The Director
Department of Elementary Education & Literacy
Ministry of Human Resource Development
Shastri Bhavan
New Delhi

Dear Sir,

Subject: Bombay High Court/OOCJ Writ Petition (L)
No 2947/04 & WP (PIL) 682 of
2005Abhinav Bharat vs Union of India and
Ors

We wish to invite your kind attention to letter no. F.No. 44(4) / 2005 – Judl sent to you from Ministry of Law and Justice, Department of Legal Affairs dated 18th February 2005 by which you were advised to dispose off the point no. 4 of the detailed representation submitted by us. This was the subject matter of order dated December 23, 2004 of a Division Bench of the Bombay High Court and which as per the order of the Court was required to be disposed off by a reasoned order by the appropriate authority of the Union of India within 6 weeks of December 23, 2004.

This was finally purported to have been disposed off by your letter No F 4-1/2005 – EE-4 of July 8, 2005. We had pointed out by our letter of July 12, 2005 that this was not so since your reply made no mention of the process of Monitoring and Accountability necessary to ensure that no child between the age of 6 to 14 in the Republic of India is denied his legally enforceable right of free and compulsory primary education of eight years. Nonetheless, you had informed us that in your view you had complied with the orders of the Court without in any way responding to any of the issues raised in our letter of July 12, 2005.

We have now come across the full page advertisement released by you in the Times of India of April 10, 2006 in which the activities of the Sarva Shiksha Abhiyan are detailed and which informed that Rs 6,598 crores were spent in 2004/05 and Rs 7,440 crores will be spent in 2005/06 for the cause of Compulsory and Free Primary Education.

We are sure that in light of this massive expenditure you will find it very easy to update the information given by the Minister for Health and Family Welfare and Parliamentary Affairs on March 10, 2003 in Rajya Sabha in response to the Unstarred question no 1908 in respect of Statewise Enrolled and Out of School Children.

We shall also be grateful if you could kindly also inform us if the updated information shows that the goal of Universal and Compulsory Primary Education of eight years for all children in India will be attained by the target date of March 31, 2010 and if not the action taken by you against those responsible for the delay in fulfilling the Fundamental Right to Meaningful Life guaranteed under Article 21 of the Constitution of India. Should this information be provided to us in next three weeks, we would accept without any reservation that you have complied with the order of the Court in respect of Point 4 of our representation.

We would like to add that during the course of subsequent research done by us, we have come across a Judgment of Supreme Court of India - Mehta M.C. v Union of India (1988) 1 SCC 471: AIR 1988 SC 1115, which by omission have not been cited before either the High Court or the Supreme Court so far.

In the context of the Judgment cited above, in case you are not able to give the information as requested for, it would give rise to **“Serious Questions of Substantial Law of General Importance that needs to be authoritatively settled by a Constitution Bench of the Supreme Court of India”**

It is our earnest desire that we do not have to engage the valuable time of the Court and therefore look forward to your kind cooperation in getting the above information.

Thanking you

Yours truly,

Pankaj Phadnis

Authorized Representative

Petitioner in Person.

CC: Joint Secretary and Legal Advisor

Government of India,

Ministry of Law & Justice, Department of Legal Affairs

Judicial Section, Shastri Bhavan,

New Delhi - 110001

April 30, 2007

To,
Shri Manmohan Singh
Hon'ble Prime Minister
Union of India
New Delhi

Dear Sir,

From the newspaper report, it appears that the Union of India has planned functions to commemorate the 150th anniversary of the Great War of Independence of 1857.

We wish to congratulate the Government led by you for taking this initiative which is undoubtedly in the national interest. However, may we be permitted to point out that commemoration of the 150th anniversary of the Great War of Independence of 1857 will be incomplete without the Government of the day addressing the fundamental question in respect of 1857.

As you are no doubt aware that as the current legally accepted position, Bahadur Shah Zafar is a convicted criminal found guilty of the following four charges:

Charge 1

For that he being a pensioner of the British Government in India, did, at Delhi, at various times between the 10th of May and 1st of October 1857, encourage, aid, and abet Muhammad Bakht Khan, subadhar of the regiment of artillery, and divers others, native commissioned officers and soldiers unknown of the East India Company's Army, in the crimes of mutiny and rebellion against the state.

Charge 2

For having at Delhi, at various times between the 10th of May and 1st of October 1857, encouraged, aided and abetted Mirza Mughul, his own son, a subject of the British Government in India, and divers others unknown, inhabitants of Delhi, and of the North West provinces of India, also subjects of the said British Government, to rebel and wage war against the state.

Charge 3

For that he, being a subject of the British Government in India, and not regarding the duty of his allegiance did at Delhi on the 11th May 1857, or thereabouts, as a false traitor against the State, proclaim and declare himself the reigning King and Sovereign of India, and did, then and there, traitorously seize and take unlawful possession of the

city of Delhi; and did moreover at various times between the 10th of May and 1st of October, 1857, as such false traitor aforesaid treasonably conspire consult and agree with Mirza Mughul, his own son, and divers, other false traitors unknown, to raise, levy and make insurrection, rebellion, and war against the State; and further to fulfill and perfect his treasonable design of overthrowing and destroying the British Government in India, did assemble armed force at Delhi and send them forth to fight and wage war against the British Government.

Charge No 4

It accused the prisoner of having, at Delhi, on the 16th of May, 1857, or thereabouts, within the precincts of the palace at Delhi, feloniously caused and became accessory to the murder of 49 persons, chiefly women and children of European and mixed European descent.

These charges proceed on the assumption that Bahadur Shah Zafar was a pensioner of the British Government in India represented by the East India Company. On the other hand based on the principles laid down in the Judgment of a Constitution Bench of the Hon'ble Supreme Court of India **AIR 1962 Supreme Court 445 (V 49 C 70)** in respect of Change Over of Sovereignty – Bahadur Shah Zafar was the national sovereign of India in 1857.

It is therefore important for the people at large to know, which of the above two views are subscribed to by the Union of India. If Bahadur Shah Zafar is a convicted criminal, it makes no sense to spend tax payers monies to glorify a criminal. On the other hand, if Bahadur Shah Zafar was the national sovereign of India in 1857, there is every reason to commemorate the 150th anniversary of 1857.

We wish to also bring to your kind notice that not only is it in the Public Interest for the people at large to know the views of Union of India regarding the status of Bahadur Shah Zafar in 1857, but that your Government is also under the order of Division Bench of the Hon'ble High Court of Judicature at Bombay to dispose off the representation of Abhinav Bharat in this regard.

The full facts of the correct and complete legal position in this regard is as given below:

1 Abhinav Bharat had filed a WP 2947 (Lodg) of 2004 in the Hon'ble High Court at Bombay. The prayer (b) of the Petition was

“It is therefore prayed that The Honourable High Court may be pleased to issue a Writ of Mandamus or any other suitable writ to Government of India:

(b) To issue a Gazette notification recording the fact that the Dejure Indian Sovereign in 1857 was Bahadur Shah Zafar.

- 2 On December 23, 2004, the Hon'ble Court was pleased to order that Abhinav Bharat would make a detailed representation to Union of India and that Union of India would dispose off the representation by a reasoned order within six weeks of December 23, 2004.
- 3 Accordingly, Abhinav Bharat had made a detailed representation to the Union of India to Union of India.
- 4 The Joint Secretary & Legal Advisor vide his Office Memorandum no F.No 44(4)/2005 Judl dated 18th January 2005 had forwarded the representation in respect of the status of Bahadur Shah Zafar to the Secretary Ministry of Home Affairs for disposal by a reasoned order in terms of the orders of the Hon'ble High Court within six weeks.
- 5 As a result of non compliance of the orders of the Hon'ble High Court by Union of India, Abhinav Bharat had filed another WP (PIL) 682 of 2005. The prayer (b) of the Petition was

“It is therefore prayed that The Honourable High Court may be pleased to issue a Writ of Mandamus or any other suitable writ to the Union of India for directions in respect of the following:

- (b) The Union of India shall issue a Gazette notification recording that:

- (i) Bahadur Shah Zafar, a truly Secular Emperor was the National Sovereign of India in 1857, who was deposed in an illegal manner by the British using unlimited violence.
- (ii) That the Union of India – a secular state, is the natural heir to the secular rule of the last Moghul.

6 On April 20, 2005, the Hon'ble High Court was pleased to pass the following order: "It is unfortunate that despite the orders of the Court, the representation of the Petitioner has not been disposed by a reasoned order. The learned Solicitor General submits that the representation would now be disposed of by a reasoned order within six weeks from today. We order accordingly. No further directions are necessary. The Petition is disposed of. In case the representation is not decided within six weeks from today, the Petitioner would be at liberty to approach this Court."

7 Once again on due to continued non compliance by Union of India with the orders of the Hon'ble Court forced us to approach the Hon'ble Court under the liberty granted to us. On July 13, 2005, the matter was heard by the Hon'ble Court, wherein the Hon'ble High Court was pleased to pass No Order.

8 In the SLP 23289 of 2005 against the No Order of July 13, 2005, we had pointed out that there was not even a claim of compliance by Union of India in respect of three of the four issues raised in the representation which was to be disposed off by a reasoned order by Union of India. One of these three non addressed issues

included the representation in respect of the status of Bahadur Shah Zafar. However, the Hon'ble Supreme Court by its summary dismissal of the SLP on January 2, 2006 found it fit not to interfere with the No Order of July 13, 2005. A Review Petition RC 1/ 2007 was also dismissed on January 10, 2007.

9 Nonetheless, the fact remains that the order of the Hon'ble Court of April 20, 2005 was not the subject matter of the No Order of July 13, 2005. The SLP 23289 of 2005 and RC 1/2007 was against the No Order of July 13, 2005. There has been no challenge to the order of April 20, 2005 either by us or by Union of India. It is therefore the obligation of Union of India to comply with the order of April 20, 2005 and dispose off the representation in respect of the status of Bahadur Shah Zafar by a reasoned order, amongst other things.

10 It appears that Union of India recognizes this correct legal position This is evident from the letter No 23/5/2005 – Judl & PP of May 9, 2006 from the Under Secretary to the Government of India to us, wherein we were informed that “the requisite information is being collected from various Ministries / Departments of the Central Government. We shall revert to you shortly”.

We trust you would now recognize that not only is it in the Public Interest for the people at large to know the views of Union of India regarding the status of Bahadur Shah Zafar in 1857 but that your Government is also legally bound to disclose its opinion on the subject as per the order of April 20, 2005 in WP (PIL) 682 of 2005 of the Hon'ble High Court of Judicature at Bombay.

We therefore urge you to do so at the earliest.

May we submit that it would be in the fitness of things to do so not later than May 11, 2007 when Union of India would commence its programmes of celebrations of the Great War of Independence of 1857

We shall be shortly publishing a book “ The British Mutiny of 1857” that gives a new perspective about 1857 setting out its significance as also its relevance for building a composite culture in our country.

We would be most honoured if you permit us to present a manuscript copy of this book to you on May 11, 2007.

Yours truly,

Pankaj Phadnis
Authorized Signatory.

TO

THE HON'BLE' CHIEF JUSTICE AND THE OTHER
HON'BLE' JUDGES OF THE HON'BLE' SUPREME
COURT OF INDIA

MOST RESPECTFULLY SUBMITTED:

1. We had filed an application dated April 30, 2006 under RTI Act 2005 before the Central Public Information Officer of the Hon'ble Supreme Court of India in order to know the following:

“As per the Press reports, an official function to mark the Independence Day was held for the first time on August 15, 2006. Please furnish copies of all documents/ file notings in respect of the decision to hold an official function to mark the Independence Day for the first time ever in the Supreme Court of India.”

2. By letter No Dy. No 219/RTI/2007 of 24th May 2007, the Central Public Information Officer had kindly informed us that:

“no official function to mark the Independence day was held on 15th August 2006 by the Supreme Court of India. Hence no documents/file notings on this issue. However, this is for your information that the Supreme Court Bar Association had decided on its own and celebrated the Independence Day on 15.08.2006 in the premises of the Supreme Court of India”

- 3 A further RTI application dated June 11, 2007 was filed by us to know the following:

‘As per your letter Dy No 219/RTI/2007 of 24th May 2007 “no official function to mark the Independence Day was held on 15th August 2006 by the Supreme Court of India. Hence no documents/file notings on this issue”.

Please let me know if

- (a) An official function to mark the Independence Day on August 15 has ever been held at any time by the Supreme Court of India
 - (b) If not, the reasons if any available on any records of the Supreme Court of India including minutes of meetings, file notings etc
 - (c) If it has ever been held and then discontinued upto 2006, then the reasons if any available on any records of the Supreme Court of India including minutes of meetings, file notings etc”
- 4 By letter No Dy. No 252/RTI/2007 of 28th June 2007, the Central Public Information Officer had kindly informed us that “With reference to your application dated 11.6.2007, the information regarding points 2(iii) (a) to (c) is as under:

(a) No

(b) Not Applicable. No information is available

(c) Not Applicable. No information is available

5. Thus, it is clear that an official function to mark the Independence Day on August 15 has never been held at any time by the Hon'ble Supreme Court of India. And that no information is available for the reasons that have led the Hon'ble Supreme Court of India to do so
- 6 An official function to mark the Independence Day on August 15 is normally expected of all the Offices of the Republic of India. The fact that for the past 57 years, the Hon'ble Supreme Court of India has not held such a function for which no information is available has only come to our knowledge from the reply received on our RTI application of June 11, 2007.
- 7 We verily believe that the absence of an official function to mark the Independence Day on August 15 by the Hon'ble Supreme Court of India can only be on account a considered view, whether written or oral, taken by the first Chief Justice of Independent India and subsequently accepted by all his successors.

- 8 We have been researching the issue of Indian Sovereignty and have also taken recourse to seeking a judicial resolution of our findings. Though, this process has so far not reached its logical conclusion. The details of our efforts have been communicated to the Honourable Prime Minister vide our letter dated April 30, 2007. We have not received any response to this letter

- 9 A full copy of the Representation dated January 3, 2005 referred is Hereto Annexed. This was to be disposed off by a reasoned order within six weeks by Union of India as per the order dated December 23, 2004 in WP (Lodg) 2947 as also order dated April 20, 2005 in WP 682 of the Hon'ble High Court at Mumbai. To date there is not even a claim of compliance in respect of Representation number 1 to 3 by the Union of India. The claim of compliance in respect of Representation number 4 is not correct.

- 10 We have also researched at the National Archives in New Delhi in May 2006. From File No 75/3/47 – Public (B) of the Ministry of Home Affairs, “Viscount Mountbatten – Indian Dominion Swearing in Ceremony”, we are aware that the Oath of Allegiance as also Oath of Office taken by the Governor General of “Independent India” on August 15, 1947 was as under:

Oath of Allegiance

“I Rear Admiral Viscount Mountbatten of Burma do swear that I will be faithful and bear true allegiance to His Majesty King George the Sixth, His Heirs and Successors according to Law. So Help Me God”

Oath of office

“I Rear Admiral Viscount Mountbatten of Burma do swear that I will well and truly serve His Majesty King George the Sixth, His Heirs and Successors in the Office of Governor General of India. So Help Me God”

11 We verily believe that on account of this oath taken by the Head of State of Dominion of India - as also several other acts of His Majesty's Government of Dominion of India, its Sovereign was undoubtedly “His Majesty King George the Sixth, His Heirs and Successors”. There can not be anybody's contention that ‘King George the Sixth, His Heirs and Successors’ are the Sovereigns of Union of India.

12 In **AIR 1962 Supreme Court 445 (V 49 C 70)**, State of Saurashtra v Mohamad Abdulla, a Constitution Bench of Hon'ble Supreme Court of India, has held that an act of State is an exercise of sovereign power against an alien and is neither intended nor purports to be legally founded. The appeal of the State of

Saurashtra against Mohamad Abdulla was allowed on the ground that the act of State of Saurashtra was against the resident - Mohamad Abdulla, of an alien state – the State of Junagarh; was neither intended nor purported to be legally founded. The State of Junagarh, was held to be an independent sovereign state on account of Section 7 (b) of the Independence of India Act, which provided for lapse of sovereignty of the British Crown over the Indian States. This was notwithstanding the fact that the State of Junagrah had fallen in disorder following the flight of its Ruler, the Nawab and was subsequently placed under the rule of an Administrator appointed by the Dominion of India. Even the appointment and rule of the Administrator of Dominion of India was held not to have resulted in change in de jure sovereignty of the State of Junagarh until a formal proclamation to this effect was made. In other words, it was held that so long as two States have different de jure sovereigns, they are undoubtedly states alien to each other.

13 Therefore, **Dominion of India**, whose sovereign de jure was King George the Sixth, that came into existence on August 15, 1947 and **Union of India**, whose sovereign de jure is the President of India representing People of India, that came into existence on January 26, 1950 **are states alien to each other.**

14 There is therefore no reason or rationale for Union of India to hold official functions to mark August 15 as the Independence Day of Union of India.

Prayer

It is prayed that the Hon'ble Supreme Court of India may be pleased, if deemed fit, to communicate the reasons for not having ever so far held, an official function to mark the Independence Day on August 15

For this act of kindness, we shall forever remain grateful.

Pankaj Phadnis

Authorized Signatory

Abhinav Bharat

4/71 Savarkar Sadan, Dr. M.B. Raut Road

Shivaji Park, Dadar (W)

Mumbai – 4000028

Dated this July 5, 2007

I hope by now you are convinced that the issues that we have raised need serious consideration. A State that accords “Satya Meva Jayate” the pride of place in its national emblem can not wish away facts if they happen to be inconvenient or go against the grain of accepted wisdom.

The State that is Bharat does not merely comprise of the Legislature, the Executive and the Judiciary. In the famous words of Abraham Lincoln, it is “For the People, By the People, Of the People”.

Let us not lose sight of the fact that, We the People of Bharat have the ultimate responsibility to ensure that we leave behind a nation for our children that is better than what we inherited from our parents.

On our part, we have published “Freedom Struggle: The Unfinished Story” in 2002 that forms the bedrock of our efforts. We are now in the process of partially updating this book in the form of a Trilogy:

- The British Mutiny of 1857
- Homage to Great Bharatiya Leaders
- Abhimanyu Betrayed

Please permit to present extracts from each of these books for your kind consideration

- “The Relevance of Bahadur Shah Zafar Today” extracted from ‘The British Mutiny of 1857’

- “Quest for Power Exposed – Mahatam’s Treatment of Subhas Bose” extracted from ‘Homage to Great Bharatiya Leaders’
- “Murder Most Foul”, extracted from ‘Abhimanyu Betrayed’
- “Sindhutva” extracted from ‘Freedom Struggle – The Unfinished Story’

Those of you, rather all of you, who I hope would like to buy these books and contribute to the socially responsible causes of Abhinav Bharat, may want to visit www.abhinavbharat.org for details.

The Relevance of Bahadur Shah Zafar Today

Some may find the concept of considering Bahadur Shah Zafar as a national sovereign in 1857 rather fanciful – for he commanded no army, ruled over no territory and was completely dependent on the British for his every act. For those of such friends, I have a simple request to make. Let them look at the plight of the King of England himself. By an act of the British Parliament itself, the King of England was in a similar situation in respect of Bharat from 15th August 1947. He commanded no army in Bharat nor ruled over any territory in Bharat. He was completely dependent on the Indians for everything in respect of the Bharatiya possession. Yet, the British Government continued to hold that he remained the King of India. The sovereign of Bharatiya nation. The view to this effect by the Lord Chancellor was circulated by the Prime Minister of United Kingdom on November 10, 1948 to the British Cabinet in November 1948. The Lord Chancellor had been very firm in rejecting the contention that the King of England had waived his functions of sovereignty by the Independence of India Act 1947. Thus, by the British legal opinion even in 1948, the King of England was the national sovereign of India despite commanding no army, ruling over no territory; being dependent on the Indians for everything in respect of India. If this were so, on what grounds can the claim of Bahadur Shah Zafar to be the national sovereign in 1857 be rejected? Under which rule of law can there be one set of standards for the King of England and a different one for the King of Bharat?

There may be some who would like to quibble that the King of England continued to exercise functions of sovereignty in India – even in 1948. He for instance, was accrediting Indian Ambassadors to foreign powers. Bahadur Shah Zafar was not so fortunate. On the other hand, till 1835 the British coinage in Bharat bore the seal of the Moghul Emperor. A nazar had been presented to him in 1841. Crystal clear evidence that Bahadur Shah Zafar had indeed been exercising functions of sovereignty. Sovereignty that had been recognised to be as such by the British themselves. It is only during the period, 1841 to 1857; that the unfortunate Bharatiya King had been prevented from so exercising functions of sovereignty by the British. There is no evidence that he had given up this prerogative on his own. Indeed, he had successfully resisted the British attempts to make him vacate the ancient seat of power – the Red fort in Delhi. Seen from this context, the so called Sepoy mutiny of 1857 assumes the nature of a just and legal attempt by the national sovereign to reassert his control

For far too long, Bharat and Pakistan have relentlessly focussed on the non issue of Kashmir, sending the pick of their youth to die a futile death in the sterile, sub zero climate of Siachen and Kargil, instead of attempting to provide basic amenities to their malnourished, illiterate millions, for many of whom simple things like toilet facilities, or access to clean drinking water, are an unaffordable luxury.

For far too long, the people of Bharat and Pakistan have locked themselves in a mind set of religious frenzy comparable to that which prevailed in Europe during the days of religious crusades, hundreds of years ago. The mind set that has driven these desperately poor nations to embark on a dangerous Nuclear Arms race even as millions within these countries lack basic amenities.

For far too long, the people of the Bharatiya subcontinent have tolerated the British loot of their nation for almost two hundred years, almost as a matter of no consequence, preferring instead to direct their anger against each other.

For far too long the last Bharatiya common sovereign – Bahadur Shah Zafar, has lain unsung in his grave at Rangoon, lamenting the needless deaths and deprivation of his people. It is time to take a new look at our history. From our eyes and not that those of the British.

Bahadur Shah Zafar's act of dismissing his Diwan in 1857 worthy of great respect. Bahadur Shah was a prisoner. He was fighting with his back to the wall. He resisted all pressures and temptations to sign away Sovereignty. Not only did he not betray his heritage, he actually rose in defiance and annulled the Sanad granted to the British. It is this glorious heritage that we betray when we refuse to accept that the Hindu-Muslim War ended with the death of Aurangzeb in 1707. It is time, we finally accept that the successors of Aurangzeb were as much a part of this nation as anyone else. It is only then that we

would be able to comprehend that from Shah Alam to Bahadur Shah Zafar, the Moghul Emperors were all truly Bharatiya. Like all of us, they had their share of human follies. That is understandable. What is important is to look at the heritage they have left behind for us. This heritage is the common property of the present day states of Bharat, Pakistan and Bangladesh. However, before this heritage can be reclaimed there are certain prerequisites. Most important is that Bharat and Pakistan have to stop looking at each other through blood tainted eyes. Ever ready to obliterate each other by the press of the nuclear button. This is of course easier said than done. Nor is it a call for unilateral lowering of guard by Bharat. Nothing can be more disastrous than that. Bharat can not afford to ignore the lesson taught by Shivaji. It is only when he infused the spirit of fighting for their nation in the Hindus that the Muslims sued for peace. The process of real synthesis can start only when both sides can wield the sword. 'Ever capable to wield the sword but ever ready to foreswear its use' has to be the watchword in the new millenium. Yes, many would say that this has been tried out many times by Bharat but failed to dim the animosity in the hearts of Pakistanis.

There is some merit in this argument. It is completely unrealistic to expect that the poison that has been injected into the body polity since the days of Khilafat in 1920 will suddenly disappear and the amity of Tilak-Jinnah days will come to prevail. Things will take time to normalise but a start has to be made.

Bharat has to take the lead. A good starting point would be for the Government of India to petition the Supreme Court to legally declare that the British presence in the Bharatiya Sub Continent after the historic annulment of the Sanad by Bahadur Shah Zafar on 11th May 1857 was completely illegal. There is no reason to even wait for the Government to take action. There is the possibility of a Public Interest Litigation (PIL) that can be initiated by any citizen truly desirous of dissipating the war clouds on the horizon.

The myth that British did us a favour by colonizing us has to be laid to rest. Whatever good they did was completely incidental to their primary purpose – which was to loot this country. The myth needs to be laid to rest for it cripples the self-confidence of many of us – its destruction will pave the path for an emergence of a resurgent nation.

The most important outcome of these developments would be that the Bharatiya mindset that hates Pakistan and continues to remain beholden to the British would change. It is in this mindset change that a brighter future lies. When would the Pakistanis respond ? One does not know. The wait could be long but that is no reason for giving up hope. One day they will. It is in this hope that the relevance of Bahadur Shah Zafar in the Twenty First Century lies.

Quest for Power Exposed

Mahatma's Treatment of Subhas Bose

By 1939, it was not the Great Flip Flop show of the Mahatma but the uncompromising support of Subhas Bose to the cause of Independence that now held sway. Gandhi era that had begun in 1920 was now coming to a close. Hence forth, it was going to be this bright star, Subhas Bose, in the firmament of the Freedom struggle, whose lead the country was going to follow. The Mahatma was soon to find that he had to match the mood of the people set by Bose or risk political oblivion. It is to this fascinating story, we shall now turn.

The last we talked about Bose was that he had been exiled to Europe to recover from the dreaded tuberculosis, that had become his companion in the British prison. He returned in 1936 to become the President of the Congress in 1938. By 1939, he had become a *Persona non grata* in the very same organisation. What did Subhas Bose do? Did he sell his soul to the devil? Did he betray the cause of Independence? Did he commit a crime? We all know that the worst enemies of Subhas Bose would not dream of levying these allegations. Then what did he do? Why did the full wrath of the Mahatma fall on this immensely popular public hero? If there is one part of the Gandhi era that leaves even the die hard Gandhiji's followers fumbling for a coherent answer, it is his treatment of Subhas Bose in 1939.

So much so that the much acclaimed film Gandhi sidestepped the issue by pretending that Subhas Bose did not exist. Movies can take these liberties with the facts. We can not. Let us now take a look at this part of the story. This sorry episode shows the Mahatma's Quest for Power as nothing else does so clearly.

On 9th May 1933, the political elite in the Congress was deeply perturbed by the stinging rebuttal of the very efficacy of the Gandhiji's style of leadership. The criticism cut to the wound for it came from Vitthalbahi Patel, the elder brother of Sardar Patel, a close associate of Gandhiji and himself a veteran of the freedom struggle. Subhas Bose had co-signed the letter debunking Gandhiji's claims that Independence could be obtained by Change of Heart of the British. With both these leaders convalescing in Europe, there was little that the Congress leadership could do but to gnaw its teeth in frustration. By 22nd October 1933, Vitthalbhai Patel had passed away, leaving Subhas Bose alone to face the pain of exile. In December, Bose attended a function of the Italian Oriental Institute. Mussolini took keen interest in this young foe of the British. Subhas Bose was keen to enlist as many allies as possible in fight against the British Imperialism, which to him was inherently evil for the Indian people. Three meetings took place between them. In his trip to Europe, Jawahar Lal Nehru refused to meet the Italian dictator. He refused to sully his sensibilities by meeting a man he abhorred even if he could be of some help in the cause of Independence.

Only those like Gandhiji, who were content to live in the make believe world of the utility of the British rule for India, could afford to put their personal preferences before the interests of the nation. The divergence in the ways of Jawahar Lal Nehru and Subhas Bose was to become more and more pronounced as the time went by. The erstwhile comrades in pursuing the cause of Absolute Political Independence were to drift apart irrevocably. In 1934, Bose published his book, "The Indian Struggle, 1920-1934". During the writing of his book in Germany, he got engaged and married to his secretary Emily. They were to have an only child, a daughter born on 29th November 1942, now a middle aged lady settled in Germany. She was named after the daughter of the famed Italian revolutionary Garibaldi – Anita.

This was then still in future. For the time being, a personal tragedy awaited Subhas. His father died on 2nd December 1934, before the son could reach him. He was allowed to spend a bare seven days with his grieving family in India, bound by all kinds of restrictions before being forced to go back to Europe. In 1935, he kept on meeting prominent people in Europe in his bid to garner support for the Indian cause. He is reported to have met Hitler in this period though this has not been authenticated. The reconstruction of a war torn Germany deeply impressed him but at no stage was he ever enamoured of its Racist ideology. Fascist Duke, the Nazi Fuherer, Subhas Bose would travel to the Devil himself if he could be of any use in freeing India. Before, we turn hyper critical of this, it is worth recalling that as late as 1938, the British themselves were bent on wooing the Germans.

How could it be right when the British did this and suddenly become wrong and immoral when done by Subhas Bose, is a puzzle that is best left for the Mahatma and his devoted followers to reconcile.

Ideological differences apart, Subhas Bose remained emotionally close to Nehru. He was in Badenweiler looking after the ailing Kamala Nehru, who was in her last leg of the journey on earth. He was at hand to console the distraught Nehru and his daughter Indira at the untimely death of this brave lady on 28th February 1936.

By now, Subhas had become tired of being in exile. He had been away from his beloved Motherland for long. Right through his stay, the Congress had persistently refused to give him the approval to be considered as its Official Representative. Nor did he have any reservoir of money to back up his activities. He had done what he could in Europe. Now, he announced his intentions of returning to India disregarding the medical opinion to the contrary, for he was still not too well. The announcement threw the Raj in a tizzy. It began to give out that Subhas Bose could not be allowed to return as he was closely allied with the Revolutionaries. Paying no heed to the popular outrage, Subhas was interned on the day that he returned to India – 8th April 1936. He was freed only a year later, on the 17th April 1937.

A free tiger, Subhas came to haunt not only the Raj but also the Congress. Gandhiji had renounced his membership of the Congress in 1934 itself but, remained its 'Permanent Super President'. Nothing of

note happened without his approval. Subhas had to be tamed. What could be better than to make him the President of the Congress so that the 'Permanent Super President', could keep a close watch on his activities. The man who was not considered worthy of being even a member of the Working Committee in Lahore and Karachi, a man who was denied the privilege of being considered its representative in Europe, was now suddenly became fit to be its President. On 19th February 1938, he came to be anointed as the President under the watchful eyes of the Mahatma in Haripur.

Gandhiji's hope that Subhas would mellow under the weight of the throne was soon belied. The tiger would not be caged but began to roar as few Congress Presidents had even dreamt of before. The cause of Absolute Political Independence received a big boost after a long time. The War clouds in the skies of Europe could be seen by all. This was not an opportunity to be missed. Subhas Bose was soon in touch with Italy and Germany through their diplomats in India reviving his contacts made while in Europe. The moralist Mahatma was appalled. The new Congress President moved fast to appoint a national Planning Committee for industrialization of the country. The Mahatma's dream of a self reliant village republic came to be formally abandoned by the Congress. Worse was to follow. Ras Bihari Bose, the famed revolutionary in exile in Japan since the late 1910s, was in touch with the Congress President advising him to make the Congress give up the notion of attaining Independence solely through the moral force of Non Violence.

The last straw for the Mahatma must have come when Subhas Bose had no hesitation in meeting Savarkar, the arch rival of the Mahatma since the days of India House in 1905. He had been released after 27 years of confinement, on 10th May 1937 and had become the President of Hindu Maha Sabha on 30th December 1937. Fortunately, a photograph of the meeting has survived to authenticate the event.

The Mahatma well realized that Subhas Bose was made of sterner stuff than Nehru, who could be emotionally blackmailed, into doing things that he did not intellectually agree with. This was one President, who could not be tolerated. As his term came to an end, Gandhiji made it clear that he did not favour his reelection. There was nothing in the Congress constitution or history, which made a reelection bid by an incumbent Congress President immoral. A bid that was not supported by the Mahatma was, however, unheard of since the dawn of The Gandhi era in 1920. Subhas Bose would not be deterred by the open opposition of the Mahatma. In the election that was held on 29th January 1939, he trounced the Mahatma's candidate, Pattabhi Sitaramayya by 95 votes. Nehru remained neutral in the contest. Gandhiji proved to be a very poor loser. The naked Quest for Power came to the fore. An atmosphere of intrigue, deception and Machiavellian cunning came to envelop the Congress for the noble aim of hobbling its own democratically elected President. The battle for unseating of Subhas Bose was fought with a ferociousness worthy of nobler causes such as throwing the British out of India.

Gandhiji fired the first salvo and drafted a resignation letter for the Congress Working Committee members to sign. 12 out of 15 toed the line. A reluctant Nehru was compelled to fall in line. In an attempt to defuse the atmosphere, Subhas Bose went to meet Gandhiji on 15th February 1939. The insulted Mahatma refused to yield. Subhas had the audacity to challenge his might. He had to be taught a lesson.

The first trial of strength took place in Tripuri session of the Congress held between 10th – 12th March. A distraught Subhas Bose was severely ill. His illness was mocked at as an attempt to garner sympathy. The Mahatma shrewdly kept away. He had laid the battle plan. His trusted followers could be counted on to turn the knife in. There was no need for him to dirty his hands. Govind Vallabh Pant moved a resolution expressing confidence in the old Working Committee, the majority of which had resigned at the instance of Gandhiji. The resolution also called for the new Working Committee to be appointed as per the wishes of the Mahatma. This rendered the position of the President of the Congress completely redundant. He was to do the bidding of a man who was not even prepared to be its ordinary member. Subhas camp naturally opposed the move. Subhas Bose was himself so ill that he could not even move from his sick bed that was within meters of the Convention hall, where his capacity to act as the rightful President of the Congress was being undermined. Tempers were frayed and Nehru, who had not yet taken a firm stand one way or the other, found himself heckled as he rose to speak.

An irate Nehru lost his cool and threw his weight against his old comrade. His weight tilted the balance against the absent Subhas and the resolution was carried. The Congress President now found his hands tied by the victorious Mahatma, who was to be satisfied with nothing, less than the resignation of this defiant rebel. He demanded and obtained the scalp of Subhas on 29th April 1939. Within three months, a mortal challenge to the authority of the Mahatma was ruthlessly crushed. So what if the cause of Independence suffered. That was a small matter of no consequence.

Nehru made a vain bid to make amends, when he refused to become member of the new Working Committee appointed by the new President, Rajendra Prasad on 1st May 1939. It was too late. Subhas refused to cow down. His dissent was snuffed out by debarring him from being a member of any elective Congress Committee for three years as from August 1939. It was widely believed that the decision was inspired, not by a sense of justice or discipline but by a personal bias against Subhas Bose, who had shown the impertinence to defy the Mahatma himself. The conduct of Gandhiji in the entire sorry episode is reminiscent of the machinations of a power hungry politician that abound in India today rather than that of a Mahatma guiding the destiny of a nation through moral principle of Non Violence. It is this shameful behaviour that contributed in no small measure to the sorry state that the Mahatma found himself towards the end of his life. As Ambedkar said on 24th June 1945:

“ As a matter of fact the Hindus should cogitate over the question and ask: why no community trusts Mr. Gandhi although he has been saying he is a friend of the Muslims, Sikhs, and the Scheduled Castes and what is the reason for this distrust? In my judgement, there can not be a greater tragedy for a leader to be distrusted by everybody as Mr. Gandhi is today.”

Gandhiji had won the battle to unseat Subhas Bose. In the process, he lost the War to win the minds of people. The Gandhi era truly ended, the day Subhas Bose was made to resign. The tide of events in the affairs of human beings were not going to wait for the machinations of a Mahatma to end. On 3rd September 1939, the World War II began. India found itself battling against Germany for a cause that had nothing to do with its own interests. It is in this War that she was to be bled white. It is in this War, that Bharat was to lose another 5 million of its people to pangs of hunger. It is this War that was to make the British bankrupt. It is this War that finally left the British with no other alternative but to quit the country. The torch of the Freedom Struggle lit by Tilak and carried through the thick and thin by Savarkar, Subhas Bose and innumerable other patriots had already sapped the vitality of the Raj. The Jackboots of the Gestapo delivered the final kick.

The manner in which the British quit the Empire, taking care of all their vital interests deserves a detailed study. Not merely to marvel at the way they turned a necessity into a virtue and earned undeserved kudos. More importantly, it is this study that can perhaps throw up an antidote to the poison that has seeped into our body polity. A poison that is holding us back from attaining our rightful place in the League of Nations. A place worthy of our great ancestors. When I say We, I mean all the inhabitants of the erstwhile Undivided Bharat.

However, before we can discover the Antidote, we must painfully come to terms at the manner in which the Great Dream of Independence was betrayed between 1939-47. Permit me to say that this we will cover in another book – Abhimanyu Betrayed”

One final comment – faced with this mountain of evidence it is clear that for all his Greatness, there is little doubt that Gandhiji also committed many blunders which has cost the nation dearly. Contribution to the cause of Independence has come from many sources – that were either indifferent to the casue of Absolute Non Violence preached by Gandhiji or even hostile to the ideology. Yet no one can deny that they sacrificed their all for the Nation.

Should the photographs of such leaders like Lokmanya Tilak, Savarkar, Bhagat Singh, Subhas Chandra Bose, Babasaheb Amedkar, amongst others, then not also grace the currency note along with that of Gandhiji? If their portraits are good enough for the Walls of the Parliament then why not also on the Currency Notes

The Government of India is under an order of the Division Bench of the High Court at Mumbai to dispose off a representation demanding this, by a reasoned order within six weeks, which ended in February 2005. The Court repeated its order on April 20, 2005. For more than two years, the Government refuses to utter a word in this regard preferring to commit Contempt of the Court rather than abide by its order? And even the Highest Court in the Country has refused to take cognizance of the defiance by the Government of the orders of the Court??

The case now rests in the Court of the People.

Murder Most Foul

On August 18, 1945, Netaji Subhas Chandra Bose was on his way to Tokyo to negotiate laying down of arms by the I.N.A to the Americans on honourable terms. His choices were then limited. Giving in to the British was out of question. As a friend of Japan, he could face only unending hostility in either Russia or China. America offered a much better choice. It had replaced the British as the World's leading superpower. More importantly, Netaji headed Government of Free India, which had been felicitated on its formation by the President of Ireland. The strong Irish lobby in America could therefore be counted on ensuring an honourable treatment to the INA.

The Americans, for whom Netaji was a prized catch, offered a safe passage to the Japanese bomber carrying him as it undertook an **eight hour flight in a No Flight Zone** from Tourane to Formosa. The prospect of Netaji in America was nothing short of an unmitigated disaster to the British. Formosa was the last place where they could hope to harm him. As the flight landed at Taihoku (Formosa) at about 13.00 hrs on August 18, they were ready to strike. At 14.00, the plane being refueled was rocked by an explosion.

Habibur Rehman (Agent B 1269) who accompanied Netaji and his boss in INA (Agent B 1189) must be held to be responsible for the explosion. What rankles is the unfortunate fact that a road named after the British Agent B 1189 stands **in the heart of Mumbai**.

Furious Americans hit back by removing an injured Netaji to Taihoku Camp No 5 and within few hours made arrangements to keep up the charade of Netaji's death in the blast. An injured Japanese Gunner of the ill fated bomber, who could speak English was admitted to hospital and passed off as Netaji. The Hospital was a mere ten minutes away from the airport but "Netaji (?)" was admitted only at 17.00 hours – a full three hours after the blast. Shadowy agents of death took over. The Gunner, who was practically normal for four hours after admission passed way at 23.00 hours. The two pilots of the bomber, were treated in the hospital - discharged as fit on September 5, 1945 and died three weeks later of the wounds they had recovered from!!!. Habibur Rehman was taken in custody by the Americans, tutored to give the version of the blast that his British Masters would have liked to believe. By September 1945, the Secretary of State for India was happy to note "by all accounts, this (death of Netaji) must be true".

The Americans had there own agenda to fulfill. Soon stories of Netaji being alive in USSR started circulating. It was not long before MI5 of the British Secret Services discovered the truth. Netaji had not died in the air crash as they had been led to believe. He had survived their murderous attack.

By May 1946, despite the efforts of the Cabinet Mission, the British hold over India hung by a thread. Preparations to evacuate the British civilians from India were underway. Should Netaji were to return to India, all was lost for the British.

In desperation, MI5 now approached the American Consulate in Mumbai for help in May 1946, through Lt. Col Hennessey Chief of British Military Intelligence, Bombay.. According to Hennessey “ the hold which Bose had over Indian imagination was tremendous and that if he **should** return to this country **trouble** would result which in his judgment would be **extremely difficult to quell**”.

The request was forwarded to the Secretary of State, Washington DC by Airgram A-175 of May 23, 1946. On June 20, 1946, the Chief of Division of Foreign Activity Correlation, Department of State, was cryptically informed that “ A search of the files in the Intelligence Division reveals that **there is no direct evidence** that SUBHAS CHANDRA BOSE was killed in the airplane crash at Taihoko. Formosa **despite** the public statement of the Japanese to that effect.” He was also informed that “nor is there any evidence available to Intelligence Division which would indicate that the subject **is** still alive.”

It is clear that Netaji who was alive upto May - was killed in June 1946 to protect the British Imperial Interests, which at this time coincided with those of the Americans. **Do we need to say who committed this murder most foul ??.**

What followed is even more shocking. On September 9 1946, the US Intelligence intercepted a message that Forward Block was going to recommend Netaji to be the President of Indian National Congress on September 23, 1946. The information, considered so sensitive was meant only for those Military and Civilian Officials specifically authorized to receive the same; was communicated to the British. The information came to be filed in Case No 810002. Curiously, immediately thereafter, Nehru announced the death of Netaji in a great hurry. A red faced Sardar Patel was - on October 3, 1946 forced to admit that the Government had not conducted any inquiry into the alleged death of Netaji and had no view on the subject.**So what was the source of Nehru's statement that Netaji had died?**

There may be some of us who will no doubt say that the account given above is merely the product of my overactive imagination. They may want to obtain the one file in Record Group 319, Department of Army, Investigative Records Depository, Personal File on Subhas Chandra Bose that I the National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland 20740-60001 Unites States of America were kind enough to send me. Enough material exists in this file to lend credence to the account of the last days of Netaji as described above. Yes! There is no conclusive evidence that would corroborate my account. Nonetheless, Mr. Steven L.Hamilton, who was kind enough to send the file to me, was most helpful in stating that “of note for your further research efforts, the first few pages of this file contains a listing of other documents in the US Federal records relating to Subhas Chnadra Bose”.

These other documents are:

1. Memo dated 16th September 1945 on Subhas Chandra Bose from A3 to the Japanese Government.
2. Memo dated 20th September 1945 from AG to Japanese Government on Habibulllah Rahaman Aide de camp
3. Memo dated 22nd September 1945 to CCIO on Chandra Bose
4. Memo dated 3rd October 1945 from A.S.G for Files
5. Memo dated 9th October 1945 from 442 CIC to G-2 “Rptd death of Chandra Bose” copy ltr to ALF dtd 20 Aug 45. **Case No 810002.**
6. Memo dated 9th October 1945 from CLO Tokyo to the Imperial Japanese Government on Subhas Chandra Bose
7. Memo dated 23rd October 1945 from Liaison Committee Tokyo for the Imperial Japanese Army and Navy to Col F.P. Juneon, G.S.C., G -2 “ **Submittal of photographs in regard to Subhas Chandra Bose**
8. From SACSEA of 1st November 1945 to CINC on Radio report on 6 persons desired
9. Memo for record dated 5th November 1945 from Chief CI to SACSFA on Radio report on 6 persons desired.
10. Memo dated 15th November 1945 from Chief CI to British Staff Secretary ‘Subhas Chandra Bose **with 5 photographs re death of subj** in pocket of this file”

Much as I tried, I have not been able to access these documents. Case No 810002 seems to be the key to the solution. It is in this file that the memo of 9th October 1945 as also information of **September 9, 1946** about Subhas Bose contesting elections for the post of Congress President was filed.

Will the Government of an Independent Sovereign Republic of India, that is Bharat, ever demand the relevant documents from the Government of USA??

Accident or murder, death or as the folklore goes imprisonment in Russia, what ever was the truth; the fact remains a Voice that was full of unadulterated Patriotism, A Voice that was most inconvenient to the Gandhi Congress was heard no more after 18th August 1945. This was a tragedy of the highest order – of this there can be no doubt.

Sindhutva

Now that we have come to an end of our journey, it is time to take a re-look at what we want to achieve by this great odyssey.

First thing first. I hope, by now it is abundantly clear that since the purpose of our journey has been to discover the path to a better future; bitterness has no place in our scheme of things. I have been extremely critical of Gandhiji's policies but the fact remains that he was a Mahatma. We can be critical of his policies but we have no right to show any disrespect to his memory. Like all men, he had his share of follies – for after all he too was a mortal man like any of us; not a God. I have focussed on his follies; not so much on his achievements. Not out of any sense of disrespect to him but to fight those who have turned him into a God for their own selfish vested interests. His achievements are all too well known to merit a recount. Now that we know his follies; we can come to terms with Gandhi, the Human being – one of the Greatest who ever lived. I would like to lay my claim on him as any other citizen of the nation, as my own grandfather – one with whom I have many disagreements but for whom I also have deep and abiding respect.

The machinations of Patel and Nehru in the summer of 1947, fill me with great sorrow, no longer with bitterness. Such Great men but in the end turned to have feet of clay. Nehru's actions, in particular are difficult to comprehend even now. For he was the one, who was endowed with intelligence and the vision to know better. He was the one, who could spend lifetime in the service of the nation, unburdened by the need of providing for his day to day needs, which were taken care of by his father. He was the Prince charming riding on the white horse leading the nation to a better future. In the end, he turned out to be little better than a man of straw. Let me just stop here by saying that the Nehru clan has taken far more from the nation than they have given back to it.

Now that we have come to terms with the past, we need to move ahead and not get locked in history. Let us focus on the path to future. **The path is surely the one that would lead to Sindhutva.** Since, I have used this term for the first time and that too towards the very end of the book, let me briefly dwell upon this. I would not go into details since this would call for an independent book by itself on the subject.

The term Hindutva is well known in India today though not really understood by even many of those who claim to speak in its name. The term was originally coined by none other than Savarkar in a thesis written by him, in 1923 while undergoing rigorous imprisonment at Ratnagiri. In this thesis, he was forthright about his views. These views need to be understood in the context of the place

where this thesis was written. By 1923, Savarkar had been denied a normal life for over a decade – made to work like an animal; compelled to live amongst hard core criminals, many of whom were no better than animals. Quite a few of them rabidly communal Muslims. Indeed, some of them had even tried to kill Savarkar in an engineered prison riot in Ratnagiri. It is amazing that by this time, Savarkar was alive and astounding that he retained his razor sharp Intellect.

In his thesis, Hindutva, Savarkar defined Hindus as those who loved the land of SaptSindhu – as their own Fatherland. Those, who claimed the history and culture of this land as their own. The SaptSindhu being the seven rivers, Sindhu (Indus), Ganga, Yamuna, Saraswati, Narmada, Kaveri and Godavari. Brahmaputra is not separately mentioned as it is considered as the eastward flow of Sindhu itself. The final test of being a Hindu in the opinion of Savarkar was that the person should also recognise this land as his Holy land. Based on this final qualification, he was categorical that Muslims, Christians, Parsees, Jews and all others, whose religion required them to worship lands other than the land of SaptSindhu – were therefore not eligible to be called Hindus. By itself, this is not an assertion that would be contested by anyone. One doubts if any Christian or a Muslim would be particularly keen to be called a Hindu. Each one of us has every right to be proud of our religion. Different religions may share some common values but some of the values are unique and dear.

Any assertion that Indian Muslims and Christians are somehow Hindus can not but be therefore deeply offending to them. Savarkar was therefore quite correct in defining who is a Hindu and who is not.

In the context of the place, he wrote this thesis – a place infested with hard core criminals; the time – 1923, when India was racked by communal disturbances in the aftermath of the infamous Khilafat movement; it is easy to understand his other views. He held forth that Hindus alone could provide the real foundation for the Indian nation.

In the context of the time, we live in – at the very dawn of a new millennium, we should define the term Sindhu. They are those who love the land of SaptSindhu as their own, those who claim the rich and diverse history and culture as their own. These are the people – who should be called Sindhus. They may or may not necessarily consider this land as their Holy land – that being the criterion for being called Hindus - not Sindhus. It is the Sindhus, who alone can provide the real foundation for building a nation worthy of the potential of the land of SaptSindhus. The honour thus belongs equally to Muslims, Christians, Jews, Parsees, Hindus and others. It can-not be the monopoly of the Hindus. **This to me is what Sindhutva all about.** Sindhutva is then an expression that takes into account the ancient history of this land that lies between Sindhu in the West and Brahmaputra in the East ignoring the artificial political division brought about in 1947. It is a value system that is based on the famous dictum of Savarkar:

**“ If you come – with you; if you do not – without you; if you
oppose –despite you”**

Thus participation of all is welcomed and even sought in the grand task of national reconstruction. At the same time; no one is given a veto – the bane of Indian polity since the advent of Gandhian politics. So long as Jinnah sought to work with Congress, he had been ignored. Once he sought and obtained the support of his co-religionists; he was handed the power of Veto – leading to the division of the Country.

The term Hindutva was coined by Savarkar in a prison cell. I have the proud privilege to use the term Sindhutva, something he himself would have used; if his life was not disrupted by the years of hard rigerous prison term – sitting in the very room, which he used in the later part of his life; at Savarkar Sadan in Mumbai. I am sure Savarkar, had he been alive today would have blessed this term. For, it is interesting to note that even as he wrote his controversial views; he also affirmed his intention of working for a United India. Indeed, to quote him from his thesis Hindutva:

“We are trying our best, as we ought to do, to develop the consiousness of and a sense of attachment to the greater whole, whereby Hindus, Mohammedans, Christians and Jews would feel Indians first and everything afterwards.”

This was not all. In Hindutva, he also hoped that:

“It may be that at some future time, the word Hindu may come to indicate a citizen of Hindustan and nothing else; that day can rise when all cultural and religious bigotry has disbanded its forces pledged to aggressive egoism; and religions cease to be ‘isms’ and become merely the common fund of eternal principles that lie at the root of all that are common foundation on which the Human State majestically and firmly rests.”

The future time that Savarkar hoped for in 1923 is something we can now seriously work towards and achieve some of it – if not all; within our lifetime. Sindhutva is today a dream that can be realised.

Let us now look at some of the things that can be done in order to bring in Sindhutva in this ancient land.

- We need to legally declare that Bahadur Shah Zafar, the national sovereign of Hindustan was illegally deposed by the British in 1857. Thus the entire British rule in India thereafter was completely illegal. The present day governments of India, Pakistan and Bangladesh are therefore heirs to their last common sovereign – Bahadur Shah Zafar, not to the illegal British rule. This will pave the path for all the three governments to get together and lodge a claim for damages incurred by the British occupation of

this ancient land. For if, Kuwait can claim damages from Iraq for forceful occupation of its land, so can India, Pakistan and Bangladesh; from the United Kingdom. Potential damage that can be claimed exceeds the annual GNP of the richest three countries of the world taken together.

- The very act of the three governments to get together and prepare a damage claim on the British, it is hoped, will serve two objectives, namely
 - Act as an antidote to the poisonous state of relations that exist today between India and Pakistan.
 - Demolish the myth of white man's generosity and superiority that bedevils the national elite, paving the path for a resurgent nation.
- In the new millennium, we should finally acknowledge that 15th August is not the Independence Day of the country. The claim of treating 15th August as the Independence Day is demonstrably false. There are only two days that can lay claim to being the Independence day. The first is 11th May 1857, when Bahadur Shah Zafar dismissed the British as the Diwan of Bengal, Bihar and Orissa. The other is 26th January 1950, when the nation regained its sovereignty, it had lost with forceful deposition of Bahadur Shah Zafar. We should start celebrating 15th August as Gandhiji himself did. By being engrossed in the service of the nation, without any pomp or show.

- It is also time that Gandhiji should be treated as a Mahatma that he was, not as a God that he himself never claimed to be. It is without doubt that his services to the nation were great. So were those of others. The most prominent amongst them being Lokmanya Tilak; who lit the revolutionary fire that devoured the British Imperial Power. The best way of acknowledging the contribution of both these stalwarts is to print the photographs of both of them on the currency notes.
- The elite of the nation have to get involved in the task of building the nation. For years, we have talked of providing compulsory primary education and basic health facilities to all our citizens and then bemoaned the lack of resources. This is so much hogwash. We have enough and more resources. When we have the best of human talent, what is the reason to worry about financial resources? The task can be left to those who seek to have or had university education in the country. They need not pay market-oriented fees for their education but be required to spend at least two year of their life spreading the cause of literacy and health care. The cause of female literacy must have top most priority.
- All managers in the industry, owe it to the nation to make sure that their companies create Economic Value Addition (and not destroy it), so that the nation can move on the path of economic prosperity.

The list of things to do is long but we need to make a start. Getting rid of the inferiority complex, spreading the cause of literacy and health care, creating sporting infrastructure and working towards national economic prosperity would make an excellent start. It would help if Supreme Court of India, the one institution in the country that is capable of dispassionately scrutinising the arguments presented so far; takes suo motu notice of these conclusions and issue suitable directions to the Government of India.

On my part, I wish to play a small role in shaping the future of the nation. The profits from the distribution of this book will form the corpus of a registered charitable trust, 'Abhinav Bharat'. The Trust will be run on the lines of a modern, professional efficient corporation. It will undertake such activities on a "Not For Profit" basis as are necessary for promoting the following objectives :

- To spread awareness about the need to reexamine history and re focus on future with renewed hope so as to promote national interest.
- To provide literacy in the field of Information & Technology.
- To help poor people who need financial help for medical treatment, or any other genuine and acceptable reason which deserves sympathetic action or to creating basic health facilities, where required.
- To Promote Team games like Hockey and Football.

My wife – Manjiri has agreed to be the Managing Trustee. Giving her valuable assistance is our close family friend – Meena Prabhu as the Advisory Trustee and Secretary of the Trust. Hopefully, you dear readers would allow us to raise an adequate corpus to start our activities in a meaningful manner. If more and more of us make start here and now in however a small manner, we would all be working towards realization of the dreams of Rabindra Nath Tagore, so eloquently expressed in his poem:

Where the mind is without fear and the head is held high

Where knowledge is free

Where the world has not broken up into fragments

By narrow domestic walls

Where the words come out from the depth of truth;

Where tireless striving stretches its arms towards perfection;

Where the clear stream of reasoning has not lost its way

Into dreary desert sand of dead habit;

*Where the mind is led forward by thee into ever-widening thought and
action*

Into that heaven of freedom my father

Let my country awake

A more eloquent description of Sindhutva is scarcely possible.

Project “Light”

Abhinav Bharat is a Charitable Trust registered under BPT Act 1950 and donations to which are exempt under Section 80 G of the IT Act 1961. It is named after the secret revolutionary society founded by Veer Savarkar in 1905 that fought for a Politically Independent India. Abhinav Bharat – the Trust, seeks to work for an Economically and Socially Independent India

The Trust has been set up by Manjiri Phadnis, Pankaj Phadnis and their close family friend – Meena Prabhu. The management of the Trust has been entrusted to “The Maharashtra Executor and Trustee Company” of the Bank of Maharashtra (a Public Sector Bank) as its Joint Managing Trustee.

During last five years, the major activities have been:

- Publication of a book “Freedom Struggle – The Unfinished Story” that was hailed by Mr. M.V.Kamath, Senior Journalist as “the most provocative commentary on Indian history”
- A partial update of this book is planned in the form of a Trilogy.
- Fought a Public Interest Litigation in High Court at Bombay and in the Supreme Court, as a Petitioner in Person to make “Satyameva Jayate” a living reality as also to make universal primary education compulsory.

- As a matter of record, the Union of India continues to be in non compliance of an order dated April 20, 2005 by a Division Bench of the High Court at Bombay in WP (PIL) 682 of 2005
- Sponsored a Doctoral Study in University of Mumbai on Universal Primary Education.

Abhinav Bharat has now identified its thrust areas as :

- Provision of basic Medical Facilities
- Bridging the Digital Divide
- Popularizing team games like Hockey and Football

The Managing Committee has approved Project “Light” to give a practical shape to the thrust areas of the Trust. The Project envisages creation of world class infrastructure facilities in these areas at Igatpuri about 100 kms from Mumbai. These facilities will be serve the needy sections of the society and be based on a financially self sustaining model.

Mr. Pankaj Phadnis, Settlor and Advisory Trustee of Abhinav Bharat has been appointed by the Managing Committee as the Chief Executive Officer of the Project.

Some highly qualified public spirited professional colleagues have joined Pankaj Phadnis to be the Core Group responsible for executing Project “Light”. They have between them over 100 years of work experience and will spend 30 days per year exclusively on Project “Light” on an Honorary basis. Several other professionals have shown their willingness to join the cause.

The headquarters of Project “Light” is targeted to be the 2,500 sq ft of space in Savarkar Sadan at Shivaji Park, Dadar (W) Mumbai, where Veer Savarkar lived for the last thirty years of his life.

Abhinav Bharat seeks to raise about Rs 10 crores or about US \$ 2.5 million to execute its socially relevant projects through the following seeking contributions from socially committed Individuals and Institutions in the following manner

1.0 Seeking Contributions Directly to the Trust

Public spirited Individuals / Institutions can contribute to the cause by

1.1 Donations to the Trust which are exempt under Section 80 G of the IT Act 1961

1.2 Gift / long term lease of lands

1.3 Purchasing copies of the books published by Abhinav
Bharat

2.0 Seeking Contributions Public Spirited Individuals / Institutions
for a Socially Responsible Company

The Core Group proposes to raise funds for implementation of Project “Light” by setting up a Management Services Company. The equity of the company shall be split equally three ways – Professionals, other public spirited individuals and the Trust. The company will raise resources by providing services in the areas of:

- Managing Educational Institutes offering world class professional courses
- Provide Industry relevant Certificate Courses for Engineering / CA Students in association with University of Mumbai
- Provide Management Consultancy in Execution of IT Enabled Strategy
- Develop IT Enabled Balanced Score Card for Improved Business Navigation of organizations.

The company will raise monies for Project “Light” from:

- Dividends from operations
- Public Issue within five years

We seek support to the Management Services Company being set up by the Core Group by way of:

- a. Equity Participation (upto 33%)
- b. Zero Coupon Five Year Convertible debentures
- c. Offering an opportunity of undertaking execution of socially relevant projects of other institutions, .

We look forward to participation of all public spirited individuals in this project of national importance

Best regards

Manjiri Phadnis
Managing Trustee

Madhumita Bal
Advisory Trustee and CFO –
“Project Light”

Enclosures: Details of Project “Light” approved by the Managing Committee
Details of Phase I of Project “Light”

Project “Light”

Phase I

“Supporting Malnutrition Programme of the Government in Taluka Igatpuri District Nasik”

Abhinav Bharat proposes to support the Malnutrition Programme of the Government in Taluka Igatpuri District Nasik by working to improve management of :

- Rural Health Centre in village Ghoti of Taluka Igatpuri
- Aganwadis (Crèches) in Taluka Igatpuri

Abhinav Bharat will place a team of an Administrative Head and two qualified Doctors in the Rural Health Centre in village Ghoti taluka Igatpuri, District Nasik. This On Site full time team will ensure that the expenses incurred by the Government reach the intended beneficiaries. They will be supported by professionals associated with the Trust from their present place of work (either in India or abroad) through visits as also by being in touch on email/ telephone etc.

A Tele medicine facility will be put in place with the support of the Government so that the inhabitants of Igatpuri have access to the best of the medical brains in Medical Centers of Mumbai as also other participating medical centers abroad. The annual cost of this Phase of the Project “Light” are detailed below

Financial Details of Phase I of Project “Light”

The cost of running the Rural Health Center as also the Aangwandi (Crèches) will continue to be borne by the Government. The Basic Operating Costs to be incurred by Abhinav Bharat for improving the access of the Government programmes to the intended beneficiaries are:

1. Salary of the two Doctors @ Rs 30,000/- pm	Rs 720,000/-
2. Salary of the Administrative Head @ Rs 50,000/- pm	Rs 600,000/-
3. Field Visits in the Taluka @ Rs 10,000/- pm	Rs 120,000/-
4. Other Office Expenses @ Rs 10,000/- pm	Rs 120,000/-
5. Internship Stipend of five Doctors @ Rs 5,000/- pm	Rs 60,000/-
6. Misc Expenses @ Rs 2,500/- pm	Rs 30,000/-
Total Annual Expenses	Rs 1,650,000/-
Total Basic Cost over a Three Year Period	Rs 4,950,000
Or about	Rs 5,000,000

**Plan of Abhinav Bharat for Raising Funds to Meet the
Basic Operating Expenses of Phase I of Project “Light”**

• Requirement of Funds	Rs 5,000,000
• Availability of Funds	Rs 2,000,000/-
• Balance Funds Required	Rs 3,000,000/-

Book Project for Balance Funds

Gross Revenues from Sale 10,000 copies of the set of 4 books @ 1,000/-	Rs 10,000,000
Less	
Printing Costs	Rs 2,000,000
Distribution	Rs 4,000,000
Marketing Costs	Rs 1,000,000
Total Costs	Rs 7,000,000
Net Proceeds from the Book Project	Rs 3,000,000

Thus, every reader of a purchased copy of the books published by Abhinav Bharat will play an active role in supporting the Phase I of Project “Light” of Abhinav Bharat - which is to ensure that the intended beneficiaries of the Malnutrition Project in Taluka Igatpuri of District Nasik in Maharashtra receive the benefits that they are supposed to get from Taxpayers monies.