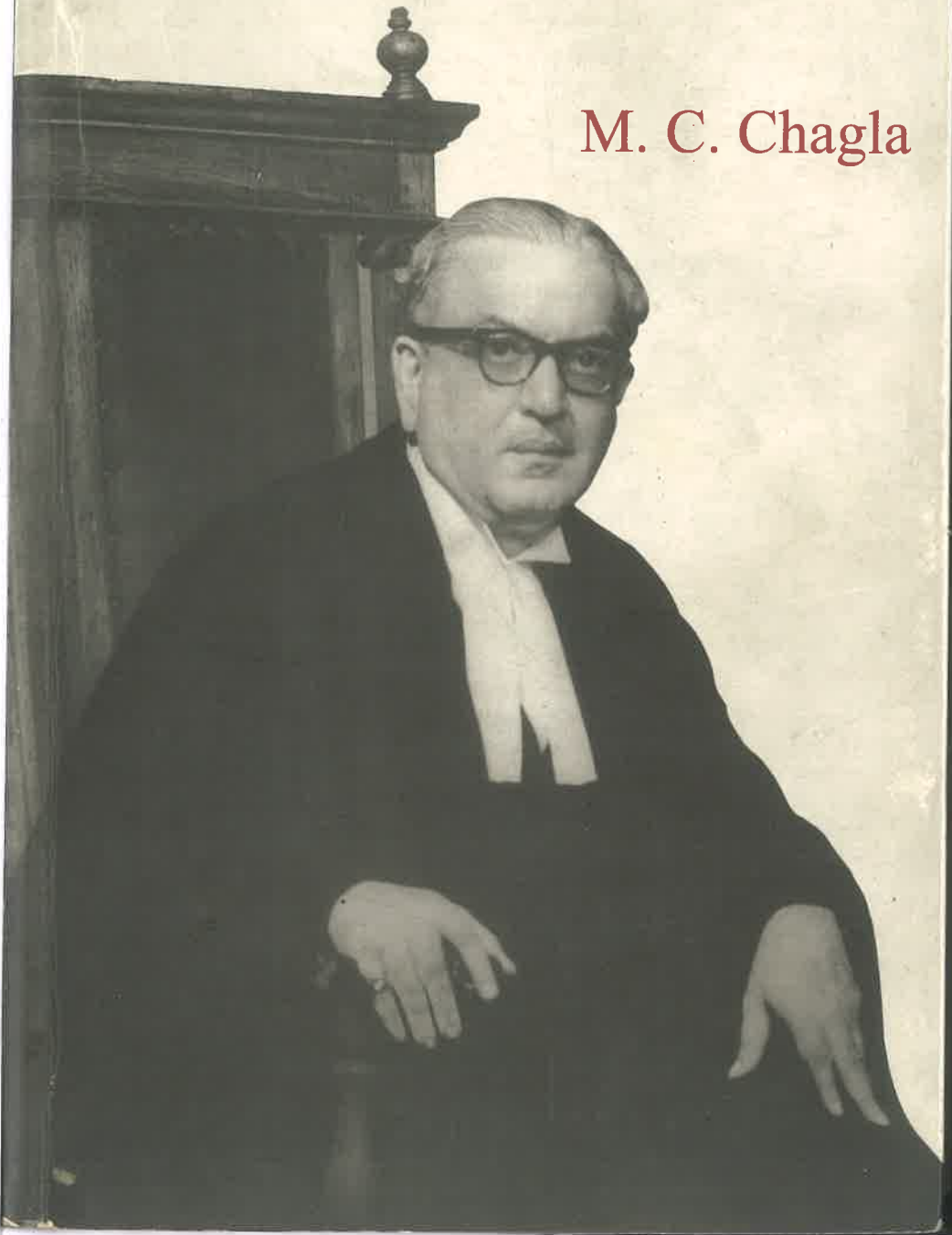


ROSES IN DECEMBER

an autobiography

M. C. Chagla



Justice Chagla's speech
for Democracy: 12-10-1975
(During Emergency)

APPENDIX XVI

Text of the speech delivered extempore by Shri M. C. Chagla while inaugurating the All India Civil Liberties Conference held in Ahmedabad (Gujarat State) on 12th October 1975 under the auspices of the "CITIZENS FOR DEMOCRACY," a non-party institution engaged in the task of propagating democratic values and defending democratic institutions. The Conference was presided over by Shri J.C. Shah, a former Chief Justice of the Supreme Court of India.

Friends,

The Conference has met to consider civil liberties in the context of the present situation. When I look at the present situation, I wonder whether I am dreaming or, to use perhaps a better expression, I am going through a nightmare. I rub my eyes to make sure whether I am awake or asleep and I find it is not a dream or a nightmare, but, it is a stark, grim, ghastly reality. Friends, we live in a country which is called Gandhi's land. Gandhiji worked for our freedom and obtained freedom for us. Not merely freedom from the British Government, but also freedom from tyranny, oppression, injustice of every kind. In a message which he wrote in *Young India* as far back as 1921, he said, "in a democracy people are not like sheep. In democracy we must jealously guard freedom of expression and thought and action". Note the words "freedom of expression and thought and action". That is what he said in 1921.

Then we had our Constitution. Now, friends, wherever a revolution starts, there is always a proud proclamation as to the

objects for which the revolution is being fought. In U.S. Jefferson gave the battle cry, "all men are born equal and they are endowed with the inalienable rights of life and liberty and pursuit of happiness." When the French revolution broke out, the French soldiers marched not only to the strains of the "Marseilles" but also to the battle cry, "liberty, equality and fraternity". And then we ushered in our own Constitution and started working our own State. We also had the proud proclamation and that was in the preamble of our Constitution. Some jurists have said that there is hardly a Constitution which has a preamble of this character, and the two aspects of that preamble which I want to emphasize are that the State we were setting up is a sovereign, democratic republic. I emphasize the word "democratic." And, the preamble emphasizes that, that State will have liberty of thought, expression and liberty in other respects, so that we started a State which was going to be democratic and which would have liberty as a prevailing aspect of its activities. This was the land in which we were living and this was the land which had to be governed by the precepts of Gandhiji.

What is the position today? Is anything left of civil liberties in the country? A man today can be detained without any reason being given to him, without his being told why he is detained, without his being able to give an explanation for his conduct or appeal to an independent body like an Advisory Council. Anybody like you and I, may be shut behind the bars (I do not know whether I will go back to Bombay, because they may shut me up and they need not tell me why they shut me up and might give the reason that I have delivered this speech today.) Most people today in the jails do not know why they are there and they cannot defend themselves, because where there is no charge, there cannot be any defence. They cannot go to any other tribunal because all that has stopped.

Now friends, why has all this come about? To my mind, the original sin, the fountain source and the origin of what has happened is the Emergency that has been declared in the country. In order to understand the Emergency, we must look into the background. You see, Emergency has been made non-justiciable legally. But it has not been made non-justiciable politically. And the speech I am going to deliver is a political speech, not a

legal speech. I do not think I can be hauled up for contempt of Court or be proceeded against for trying to make justiciable that which is non-justiciable.

Now let us look at the history, the drama, the first scene when the curtain goes up on the 12th June 1975. If you understand what happened on the 12th of June, two historic events took place on 12th June. To my mind, these two events, when the historian of the future writes the history of our country will say marked the turning point in our history. The first event was the decision of Mr. Justice Sinha, holding that the Prime Minister was guilty of corrupt practice. The second historic event was, which took place in this State when the results of election were declared and the Janata Party was found to be in a working majority in the Legislature. These two events had serious reaction on the Prime Minister. She felt her own position shaky. She did not feel assured of continuing to occupy the seat that she is now occupying as a result of these two events. Therefore, it is from the 12th of June that the idea started maturing in her mind that she should do something to make sure of her position as the Prime Minister. Now friends, the next event to which I want to draw your attention is what happened on 25th of June, when a public meeting was held of all the Opposition leaders, saying that the Prime Minister should not continue as Prime Minister, that political decorum required that she should quit the chair and that satyagraha will start from the 29th of that month.

Let me say one thing to you: *satyagraha* is not violation of the law. The very word *satyagraha* connotes truth and non-violence. It is Gandhiji who has introduced this word in the political vocabulary of the world. But, why go to Gandhiji, only the other day the Supreme Court gave the judgment that *satyagraha* is perfectly legal. The leaders wanted the Prime Minister to quit office. That was the main demand. Just analyse that: is it a sin in democracy to ask the Prime Minister to quit office? Is Mrs. Thatcher's asking every day Mr. Wilson to vacate office of the Prime Minister a sin? Did not Wilson go on asking Mr. Heath to quit office as the Prime Minister? After all, with great respect to the Prime Minister of the country, she is not a deity to be worshipped, she is not a deity who cannot be removed from

the temple! Democratically every person has a right to say, we want a change of the Government, we want a new Prime Minister, we want a different Prime Minister, the present Prime Minister should not continue! What was her answer and what was the answer of these wonderful people who surround her? What was the answer? That in the present situation she was indispensable! Now, for anyone to say that a person is indispensable in a democracy is to sin against the light of democracy, is to be disloyal to the faith of democracy. Indispensability and democracy cannot go hand in hand. No one is indispensable to us. That is the foundation of democracy. There is equality — anyone has a right to aspire to the High Office. In America, as they say, you can go to the White House from a log cabin. Therefore, I personally do not see that a very great crime was committed by the Opposition leaders in asking her to quit office. She then said that there was a conspiracy to bring about a complete deadlock in the country, to ask the army to revolt and to bring about a situation whereby there would be chaos in India. Now let me say one thing, and I say it with confidence, not an iota of evidence has been produced by her that there was any such conspiracy. Not an iota of evidence. Of course, when a Prime Minister speaks, one must respect what she says; but still I am entitled to say, as an ordinary citizen that she has not produced an iota of evidence for saying that there was a conspiracy.

You study the resolution passed in the public meeting on 25th June, you study the earlier resolutions passed by the leaders. They have emphasized non-violence, all that they said was gheraos, satyagraha and marches which is perfectly legitimate. There was not a single statement in any of the resolutions, suggesting that either they wanted to resort to violence or that they wanted to take to illegal action. And the only piece of evidence on which the Prime Minister has been harping day in and day out is that J.P. said that soldiers and policemen should not obey illegal orders. *This statement is legally sound.* International organizations have approved that it is not incumbent upon a police officer or an army officer to carry out an order which is illegal. You know what happened in Vietnam when an American officer shot down 50/60 innocent villagers and was tried in America. What J.P. said therefore is legally sound. But he never called upon the army or police to revolt or to take up arms against the

State. He was merely enunciating a legal proposition and he was moved to do so, because he found in Bihar policemen and soldiers shooting down innocent people and students. Therefore, what he said was a result of his own observation. Therefore, the only conclusion, that I would come to, and I want you to endorse that conclusion, is that there was no conspiracy on the part of the Opposition leaders. *The conspiracy was by the Prime Minister*, I repeat, the conspiracy was by the Prime Minister to put the leaders in jail, to have a press censorship and to deprive the people of India of their civil liberties. Now, the Prime Minister goes on to say and says almost every day that India is a democracy, all this is democratic. I am reminded of a story, "Alice in wonderland." Humpty Dumpty told Alice, "If I say that a word has a certain meaning, that word has that meaning, you cannot change it."

So, when the Prime Minister says that dictatorship is democracy, you must accept her word. She is Humpty Dumpty and she thinks all the nations are Alice in the wonderland. But, at least some of us are not fooled. Those of us who are here know what is democracy and what is dictatorship, and the mere fact that the Prime Minister calls the situation today which, to my mind, is nothing short of dictatorship, a democracy, does not make this country a democracy.

And why does she get so angry with the Western Press? They are right in saying that they are sorry that we, the greatest democracy in the world (I use the word 'greatest' in the sense of 'largest' and though we may not be the most powerful or affluent but we were certainly the largest democracy in the world. We were proud that we were living in a country which was recognised as the largest democracy, have lost or democratic values and we have resorted to things which are certainly undemocratic. To my mind, one of the most serious losses to our civil liberties is the freedom of the press. Now democracy cannot function without a free press. I was reading only two days back a speech made by the Chief Justice of U.S. — Burger. Now note this Burger is a noted conservative and was appointed as a Chief Justice so that the Supreme Court should be stable. He says, "that the ordered liberty which prevails in America is due to the combination of a free press and an independent judiciary." He

says, "these two concomitants are essential if the American system of ordered liberty is to subsist and to continue." We have also a system of ordered liberty. Our liberty is not a licence. Look at Article 19, look at the exceptions where liberty can be curtailed. Therefore, in America, liberty is much wider than ours. There are no exceptions there. Freedom of the Press has no exception. But here we have exceptions and wisely the founding fathers provided the exceptions. So ours is a system of ordered liberty and not a licence, not liberty without any restraint or without any control.

What is the position today? Freedom of the Press has two aspects. First, to get information and the second to purvey that information. Today, both these channels are completely blocked. No paper or no news from outside can come into this country which contains any reference to India hostile to the Prime Minister or to the Government. No article, letter or statement can be published in any newspaper, which, in any way, criticizes the Prime Minister or the Government. See to what straits we have been reduced. My friend Mr. Mohan Dharia made a speech in the Parliament which, (I do not want to flatter him) I feel, was one of the finest parliamentary performances I have read. And my friend Mohan Dharia will bear me out that as a member of the Cabinet I have listened to a few speeches, both in the Rajya Sabha and Lok Sabha. It was a first-class speech, not a word of that speech was reported in any newspaper, not a word. But take another case. My friend Kuldip Nayar, a leading journalist, was arrested and detained. His trial took place in the Delhi High Court. He was released and let me say to the credit of the judges he was released even before the judgment came and the Government realized that it would lose the case. But the judges said, "No! we are going to deliver the judgment notwithstanding your releasing the detenu." I do not know about Gujarat, but as far as Bombay is concerned, nobody knows that Kuldip Nayar was ever arrested, nobody knows the trial took place, nobody knows that he was released and nobody knows what judgment was delivered. If you want to read the judgment you will have to go to "London Times" which published extracts from Kuldip Nayar's case. Therefore, even with regard to the parliamentary proceedings which are privileged under the Constitution, even with regard to Court proceedings, after

all it is a public trial, and the public has a right to know what happens in a Court of Law, the censorship will not permit a trial to be reported, arguments to be reported or the speeches in parliament reported. This is the censorship.

But, you see, censorship I can understand if it is related to a particular subject for a particular time under particular circumstances. Suppose there is a war on, Government may well say that no paper shall report the movements of troops or what is happening on our frontiers or how has enemy fared or how have we fared. But then that applies to all. But this is a unilateral censorship. You can sing hymns of glory to the Prime Minister, and they are being sung every day. You can shout 'Hosannas' in her favour, as they are being shouted every day. And they will be reported in full. I am sickened to read today's newspapers. What do I see? Speeches by Prime Minister, speeches by Ministers and opening ceremonies by some Deputy Ministers, Secretaries and Deputy Secretaries.

As far as the newspapers are concerned, that is all that is happening. Do you think that today's proceedings will be reported? Do you think that my speech will be reported? I won't attach any importance to myself but I say is it going to be reported? It is running a serious risk of censorship. The *Times of India* has of course shown us the courtesy by reporting that today I will inaugurate the Conference. The Government has a great deal to lose by this censorship, for what does freedom of thought or freedom of speech mean? That you have a right to criticize, a right to comment, a right to point out mistakes. Government does not know whether it is making mistakes, because there is nobody to point out. The voice of dissent is muted, more than muted. It is completely repressed, the voice of criticism is also repressed; with the result that the Government thinks, today, that it is omniscient. Of course it is omnipotent. But, I thought that human beings are not omniscient and the Government thinks itself to be omniscient. It does not want any criticism, does not want any comment and whatever it does is right and you and I must say it is right; else you and I run the risk of being put behind the bars.

Therefore, friends, this is one aspect of civil liberties — the freedom of the Press — to which I attach greatest importance. But, the curious thing is this: we are accused of being fascists, of being right revisionists (a phrase borrowed from the Soviet vocabulary). They are the democrats. I do not think that there can be greater limit to this linguistic perversity than to call us fascists and call themselves democrats. What do we stand for? We are not standing for overthrow of Government. We know that Government should be thrown out by constitutional or democratic methods. We are not standing for rebellion or revolt, because we are not violent, temperamentally and constitutionally. All that we are saying is: restore to this country the liberties which were guaranteed under the Constitution. Liberty is inalienable, that is what Jefferson said. I will not go into the question of fundamental rights. I say it rises above the fundamental rights, for liberty is the basis of democracy and no democracy can exist without liberty. It is a contradiction in terms. Therefore, we say that grant us our inalienable right to liberty, give us freedom of the Press and revoke this Emergency for which there is no justification.

Going back to Emergency for a minute, as I said, politically it is still justiciable. What is the justification for Emergency? All of you know the Article or at least you have read about it or know the gist of it. There must be a grave emergency which threatens the security of the State, by reason of war, foreign aggression, internal disturbance. Now, do you find any war in the country or threat of aggression? There was the first Emergency which is still continuing. The only country we had to fear from was Pakistan. But, today, we have entered into a pact with her, have entered into trade relations with her, there are better communications and nobody says that Pakistan is threatening aggression against India. So that goes out. And yet, they have kept the Emergency in force ever since 1971. Now take the case of the present Emergency. What was the occasion for it? They say, "internal disturbance". Who threatened internal disturbance? Was there any internal disturbance? As a matter of fact, the Prime Minister goes on saying day in and day out that the situation is perfectly normal. The other day the Home Minister said (I know it because the statement was on affidavit in Bangalore, where I was arguing a writ petition), two days after the Emergency, that there was not a single act of violence

in any part of the country. Then what is the justification of this Emergency? There is neither threat nor internal disturbance. The only reasons which Prime Minister gives for continuance of Emergency is, it has taught people discipline; see how disciplined we have become. My knowledge of constitutional law is not as good as my friend, Mr. Shah's, but I did not know that in order to enforce discipline you can declare Emergency! If that was so, we must have Emergency in perpetuity because I believe in discipline. I think no nation can be a great nation without being a disciplined nation. But, as I said, if Emergency can be justified on grounds of discipline, then keep this Emergency for all time, though it would be against the Constitution (well, after all, who cares for the Constitution now).

Friends, therefore, our first demand in this Conference should be that Emergency should be immediately revoked. For all evils flow from Emergency. If Emergency goes, many other things will go with it. Then you must remember, again to quote Gandhiji, that end does not justify the means. But even Gandhiji's quotations are censored, Jawaharlal Nehru's quotations are censored and even Indira Gandhi's quotations are censored. In her earlier years, when she saw the light, or perhaps she saw the darkness, as she says now, she said things for which she is feeling sorry now. But, people quote her and the Press say: No, you cannot quote the Prime Minister; Prime Minister speaking against herself cannot be quoted. Not only you and I cannot be quoted but her own quotations are censored. Therefore, as I said, this Emergency must go. There is no justification for it and it is the source of all the evils that have taken place. And, remember what Gandhiji said, (of course we have forgotten him) "the ends do not justify the means." Throughout his life he followed the precept that, "I will not resort to evil means or illegal means, violent or bad means to achieve my object." He said, "I will not even get freedom for my country with evil means". His philosophy was that if your means are evil your ends get contaminated. In order to keep your ends pure your means must be equally pure. But, what are we being told today? Means do not matter, put people in jail, have censorship, deny people their civil liberties and the ordinary democratic rights which every citizen should have, provided that we get more production, more discipline, no strikes, more profitability in industry. But surely it is our

ends which may be justified but they do not justify the means by which they are being brought about. For, these means are destroying the democracy and democratic values, which means, really, the end of the Constitution which was conceived and framed by our founding fathers.

Friends, we have to ask ourselves this question, and seriously consider, what is going to happen to our country? The question I ask myself is: Do I want to live in a police State? Or, do I want to live in a democratic State? Because, this is a police State, when a man cannot write what he wants and have it published, when newspapers cannot publish any comments, when people can be sent behind bars without any reasons being assigned, there is not much difference between a police State as existing elsewhere and what is existing here today. So, the first question I ask myself is, am I going to live in a democratic State or a police State? The second question I want to ask myself is — do I want to live in a free society or a captive society? Do I as an Indian who looks up to Mahatma Gandhi as his leader, as his preceptor want to walk with my head up, a free man saying what I like, writing what I like, expressing my comments, my dissent, my criticism or am I going to be controlled, restricted and put down by an omnipotent Government? These are the questions that this Conference will have to answer. For, civil liberties mean those essential features of the society which make it a free society. Absence of civil liberties makes a society a captive society, a society which is governed not by laws but by men, a society which can be trampled upon by Government. And remember this, there is no worse form of dictatorship than what is known as constitutional dictatorship. If behind the facade of the Constitution, technically observing the rules that the Constitution lays down and violating the spirit you build up a dictatorship, then you have a constitutional dictatorship. I would rather have the Constitution abrogated than to pretend that she is constitutional, she is democratic and all that she has done is permitted by the Constitution. This is constitutional dictatorship.

When you come to deliberate on the resolutions placed on the table today, as I said, ask yourselves the questions which I have asked myself. I know the answers as far as I am concerned, but each one of you must give the answer.

And lastly, friends do not ignore the force of public opinion. Today our hands are shackled, our mouths are sealed, our pens cannot write anything because it cannot be published. But, public opinion can still assert itself. Here you are over a thousand people.

You have heard what I have said. By word of mouth you can carry this message outside. If public meetings are not allowed, hold the meetings of 200 or 300 called by invitation to discuss the problems. Then gradually public opinion will assert itself.

I refuse to believe that my country which has had a civilization going back to centuries, my country where the Constitution was drafted for a democratic State will always remain in the shadow of dictatorship. There is a saying in English that "when the night is darkest, the dawn is not far." I see the night very dark. I am an old man and have not got long to live. But, you younger people will see the dawn. The dawn is bound to come. This country cannot go under. For thousands of years we have survived invasions. We have survived all sorts of troubles and I think that we will survive both Indira Gandhi and her dictatorship.