

Chapter VI

THE LOCUS STANDI AND SIGNIFICANCE OF THE PROVISIONAL GOVERNMENT OF AZAD HIND

The I.N.A. Government established by Netaji was a separate independent Government of a separate and independent state – the Provisional Government of Free India.

According to A.C.Chatterjee¹ there were some positive considerations for which Netaji formed the Provisional Government of Free India. They are as follows :

- (a) Attainment of Statehood and waging of the I.N.A. war as the war of a state against a State and not of an individual or a group against a state, or of a colonial dependency against an empire.
- (b) Provisional Government of Azad Hind would be a member of the international comity of Nations and would thus acquire an international status.
- (c) As a true national war it would evoke greater public spirit and confidence, support and enthusiasm which was not expected in the case of an insurgency.
- (d) Territorial expansion in course of military operations and opening of new fronts accordingly. Expansion here did not mean annexation of territories of other countries. It meant to bring the emancipated Indian territories under the I.N.A. Government.
- (e) A Provisional Government was an absolute necessity as an organ through which the revolutionary organisation could secure manpower, money and material and also create a feeling of solidarity among the revolutionary forces.

- (f) It also provided one central authority for coordinating the forces of the revolutionaries. This was one thing which was lacking in India's First War of Independence in 1857.
- (g) Besides, through alliance with other Governments it could secure special assistance from friendly countries.
- (h) Again, it was only a Provisional Government which could help its armed forces and their leaders to withdraw into friendly countries in case of reverses on the battlefield. Hence for all these considerations Netaji formed the Provisional Government. ~~But~~

~~But~~, for the attainment of statehood under international law, there are three basic pre-requisites – recognition of this Provisional Government by other states or Governments, habitual obedience of the people to the state and possession of territories. All these conditions were fulfilled by the Azad Hind Government. It was recognised by Japan, Germany, Croatia, China (Nanking), Manchukuo, Phillippines, Burma, Italy and Siam. This factor of recognition became an important point for the Defence Counsel in the I.N.A. trial who argued that the I.N.A. was the military force of a properly constituted and widely recognised Government."²

Regarding the second test, the entire resident Indian community in East Asia of about three millions, hailed the Azad Hind Government and spontaneously rendered their obedience to it. The stand of the British Government that the Azad Hind Government was not a legitimate Government because it did not constitute a large portion of the people, can not, therefore, be accepted. Netaji was specific in his claims in this regard, "The Provisional Government is entitled to and hereby claims the allegiance of every Indian."³ He also claimed to have "full jurisdiction over you." It was confirmed by an Oath of Allegiance by the Indian community (of Malaya) to the Provisional Government and Netaji. "I, a member of the Azad Hind Sangh do hereby solemnly promise in the name of God and take this holy oath that I will be absolutely loyal and faithful to the Provisional Government of Azad Hind."

Regarding the third test Andaman and Nicobar Islands which were captured by Japan from the British were handed over by Japan to the Azad Hind Government and were renamed by Netaji as Sahid and Swaraj. Besides, Ziwadia Sugar Estate was handed over to Netaji's I.N.A. Government by its owner. This vast estate of 50 lakh square miles was included within the I.N.A. state. The economic profits of this estate were also fixed as the source of revenue of the I.N.A. Government. Again, during the battle of Kohima, Manipur and Bishnupur were placed under the authority of the I.N.A. Government for six months. All these territories now constituted the territorial possessions of the new I.N.A. state and Government and A.D. Loganadhan was appointed the Chief Commissioner to assume administrative charge of the islands.

Besides these three essential conditions to form an independent state and Government – which were fulfilled by the I.N.A. – three other indispensable prerequisites for this purpose should also be considered.

Thus the fourth condition for formation of a new state or Government is that there should be enough resources under this state or Government without which they can not function. This condition was also fulfilled by the Azad Hind State or Government. Bhulabhai Desai, during the Red Fort trial conclusively proved with the help of documents that the Azad Hind Government had enough resources and revenues of its own. There was a huge amount of twenty crores of rupees in the Government treasury contributed by the resident Indians in East Asia at that time. Besides there was the vast revenue of the Ziawadia, mentioned above. The Azad Hind Government as a Free Government concluded a financial agreement with the Japanese Government by which the I.N.A. State obtained a substantial financial loan. Even after the necessary military and civil expenditures a large amount of money was left as balance in the treasury. Thus about 90% of the Japanese loan of 1 crore yen was left unspent and deposited to the Azad Hind Bank. The manager of the Bank, Dina Nath, submitted this deposition during the Red Fort trial. However, according to Tatsuo Hayashida, a Japanese military officer who escorted the treasure box mentioned

below it was the intention of Netaji Subhas Chandra Bose to depend as little as possible on his Japanese allies, and to finance the Indian National Army from resources collected from Indian residents in South-east Asia.⁴ For this purpose, regular collection drives were made by Netaji and his lieutenants, and large funds were collected. A special committee called "Netaji Fund Committee" was established under the Minister of Revenue. Gold and other valuables were generously donated by the Indians in Southeast Asia. On the occasion of his birthday in January 1945, Netaji was weighed against gold. Not only cash and valuables but immovable properties also used to be donated. Habib Sahib of Rangoon gave away, at a time, all his estate in landed property and cash jewellery valued at rupees one crore and three lakhs. The funds of the Azad Hind Government were handled by the Azad Hind Bank. How much of the liquid assets were carried by Netaji at the time of his retreat from Rangoon onwards, is not precisely known.

This solvent condition of the Azad Hind Government was further proved by the fact that two leather suitcases fully packed and containing large amount of gold and other valuables – a part of the Azad Hind Government's property – were being carried by Netaji in the plane which is supposed to have crashed at Taipeh on 18 August 1945. They were meant to be the reserve fund for the next phase of India's liberation movement under Netaji's leadership somewhere abroad – the 'unknown destination-most probably Russia.

After the plane crash an amount of gold jewelleryes and precious stones were salvaged from the debris weighing about eleven kilograms. They were collected under the supervision of Japanese officers and handed over by the Japanese Government in a sealed box to Col. Habibur Rahaman who is said to have accompanied Netaji in the same plane. Rahaman left the box in charge of Mr. Murti, the President of the Indian Independence League. It was taken over by the Indian Mission in Japan in September 1951. In addition to this treasure box Mr. S.A.Ayer, Finance Minister of the Azad Hind Government left 300 grains of gold and 20,000 Yens as the property of the Azad Hind Government in charge of Mr. Murti who handed it over to the Indian Mission. All these valuables amounting to about

one lakh of rupees was brought to India and is now kept in the National Museum at Rastrapati Bhavan, New Delhi.

This surplus position of the Azad Hind Government funds clearly proves its financial potentiality to form an organised, valid and legal Government, and a sovereign national independent state.

In this context we refer to a report published in the Statesman. It is as follows :

The Statesman 5.9.93.

NO AZAD HIND ASSETS DUE FROM ABROAD

“The Government said today that there was no evidence to show that assets and cash amounting to Rs.114 crores belonging to the Azad Hind Government set up by Netaji Subhas Chandra Bose, were due from the Government of Japan and other foreign countries, reports PTI.

In a written reply to Mr. Chitta Basu, the Minister of State for External Affairs, Mr. Eduardo Faleiro, said that after World War II some assets consisting of various types of currencies, some gold bullion and miscellaneous valuables, including ornaments belonging to Indian National Army and the India Independence League were confiscated by the custodian of property in Singapore.

It was agreed by the Government that these assets would be divided between India and Pakistan in the ratio of 2:1 with the Indian share working out to roughly Rs.1,52,681. With the consent of the then Prime Minister, India's share of money, derived from the I.N.A. and I.I.L., assets, was deposited in the Indian Scholarship Fund credited in Malaya and was meant for students of Indian origin there.

According to Mr. Faleiro, a box said to contain articles that were retrieved from the aircraft in which Netaji Subhas Chandra Bose was reported to have met his death, was

brought to Delhi from Tokyo by an official of the Government of India under instructions from the then Prime Minister in November 1952. He said the box was entrusted to the National Museum, New Delhi for safe custody on September 30, 1953 and has since remained with the museum.

The box contained medals, rings, chains, wrist watches, earrings, pendants, ear studs, brooches, bangles, fragments of stones, shirt buttons, signet rings, nose-ring stones, iron nails and other miscellaneous trinkets, almost all of which were in damaged and charred condition. The net weight of the box, without wrappers, was found to be 1,3491.25 gm, he said.”

There is another – the fifth – essential condition that the new Government should be an organised Government so that it can properly function, Bhulabhai Desai again proved with the help of documents during the Red Fort trial that the Azad Hind Government was absolutely organised. At the end of the war, when the British occupied Burma and Malaya, it was found that every State paper was intact and secure. This clearly proves the organised nature of the I.N.A. Government. The foundation of this organised Government was also strong and fullproof. It fulfilled all the administrative formalities and responsibilities. There was a Cabinet form of Government which was organised and integrated, divided into different departments with their respective functions and jurisdictions. Netaji as the Head of the Provisional Government was the Head of the State. He was the Prime Minister with the Cabinet as the Centre of power of this Government. He had thus a title and an office. The state had an army and a police force both well organised and governed by well defined laws. There were civil and military gazettes. There were schools, banks and post office. The administrative procedure was absolutely secular, democratic and nationalistic. Side by side this domestic policy there was also a well defined and well organised foreign policy. It was the policy of the I.N.A. Government to maintain friendly relations with the other countries – except the enemy countries. It was also a motto of the I.N.A. foreign policy that enemy’s enemies were friends, in accordance with which Netaji’s Government formed an alliance

with Japan, Britain's enemy. There was full diplomatic relationship between the I.N.A. Government and Japan who accredited an ambassador to the Azad Hind Government. It is on the basis of a national, sovereign and independent state that the I.N.A. Government declared war against the Allied Powers, concluded the Indo-Japanese loan agreement, and even itself gave a huge donation to the Thai Government in repayment for the accommodation of the I.N.A. troops which passed through Thailand during the military operations. It is as the head of an independent sovereign Government that, as Joyce Lebra points out, Netaji was successful in persuading Japan to accept most of his proposals.⁵ Netaji, in fact, perfectly observed the diplomatic niceties of a sovereign state or Government, and in all these matters he discharged the responsibilities of the Head of an independent Government, and looked well after all its citizens.

Finally, the last essential condition for formation of an independent sovereign state and Government is that the Government must have a code of laws or a set of rules and regulations for the proper functioning of the State machinery. This condition was also fulfilled by the I.N.A. Government as it has formulated a code of laws, rules and regulations to run the Government and maintain law and order. This I.N.A. Act has been discussed in the context of the powers, functions and duties of the military officers and commanders of the I.N.A. in Chapter III Section III.

As a mark of a sovereign national state, the I.N.A. had also a political party – the Azad Hind Dal, which played, according to Captain Dusan, an I.N.A. associate of Netaji, a very important role in the I.N.A. affairs.⁶ The existence of the Dal refutes the British stand that the I.N.A. had no political party.⁷

Thus we find that Netaji's I.N.A. absolutely fulfilled all the essential conditions and criterions of an Independent, sovereign national state and Government, and it is as the citizens and soldiers of an Independent State that the I.N.A. waged a war against the Allied Powers – war of a state against a state for its own independence. According to Oppenheim we find that in the case of independent nationhood or in the case of anticipation of independent nationhood, any legally constituted and organised State has the right to declare

and prosecute war against the alien enemies.⁸ Hence the war of the I.N.A. against Britain can not be, in this light called a war of aggression, it was a war of national independence. It did not want to annex any territory of British India, it only wanted to bring the territories freed from British rule under the Provisional Government of Azad Hind. Hence the question of aggression does not arise.

Moreover, in this light the British allegation of waging war against the King-Emperor does not also hold water. The I.N.A. soldiers were not citizens of British India. They were citizens of the I.N.A. state which was, as we have seen, an Independent, National Sovereign State. Therefore, their allegiance was towards the I.N.A. Government and not to the British Government. If they were ordered by this legally constituted, organised and valid Government, even if provisional, to fight against a foreign country, they were bound to obey it, and in that case no question of revolt or war against their former state or against the King-Emperor of Great Britain arises at all. Under International Law it is clearly stipulated that the fact that a soldier had acted pursuant to the orders of his Government or of a superior can be considered in mitigation of his punishment. Particularly there could not be any doubt as to the legality or validity of this order in the case of the I.N.A. war, because (1)The Government was legally constituted and organised (2) The I.N.A. soldiers were regulated and governed by a code of laws – the Indian National Army Act. Hence as a legal army of a legal Government, it was bound to obey the order, and act as it did. (3) Moreover, the I.N.A. was guided by patriotic motivations to free their country from foreign rule, which as in the case of the Azad Hind State or Azad Hind Government, justified the war launched by the Azad Hind Army, and as a liberating army it was entitled to immunity. (4) Again, the I.N.A. war was conducted in accordance with the international laws of warfare. It was a regular, properly declared and properly prosecuted war.

In this light Bhulabhai Desai by quoting from Blackstone's commentaries, Oppenheim, Wheaton, Hyde, Hershey and British Year Book of International Law, proved in the I.N.A. trial that there was no compulsion of obedience to the British Raj on the part of

the I.N.A. He also cited case after case from the British Privy Council and the U.S. Federal Court of U.S.A. Supreme Court to support his plea. The Defence Counsel aptly observed that “the acts with which the accused were charged before the court were justified by law i.e. International law. Hence there could be no question of a personal or individual liability.”⁹

Thus by no means can the I.N.A. war be called just an insurgency or a war of aggression of the ruled against the ruler – it was a national war for national independence. Hence for Netaji and the I.N.A. soldiers the allegation of war crime is absolutely untenable. They cannot be called war criminals and therefore, question of any punishment does not also arise. The precedents of the Nuremberg Trial and the Mac Arther Tribunal Trial and the followup punishments on the ground of war crime, do not also apply in the case of the I.N.A., because while the latter was motivated not by aggression but by self-defence and independence. in the case of Germany and Japan, the motivation was territorial aggression on other countries. In fact, by using the term ‘War Crime’ or ‘War Criminals’ in the case of such dedicated patriots like Netaji Subhas Chandra Bose and his I.N.A. men, a great dishonour has been done to them by the British. As Bhulabhai Desai puts it nicely and aptly, “The case before the court is not a personal case of any kind or sort. The honour and the law of the Indian National Army are on trial. What is now on trial before the court is the right to wage war with impunity on the part of a subject race for their liberation.”¹⁰