

Parsiānā

BPP: Communicating with the Community

"In fulfilment of our intentions to have a better rapport with the community," the trustees of the Bombay Parsi Punchayet, after a gap of six years, held a press conference to discuss the problems facing the community.

"The Bombay Parsi Punchayat is at present actively engaged in implementing or adopting a number of activities and programmes," noted the press release distributed at the October 15 meeting at the BPP office on Dadabhoy Naoroji Road. An ambitious housing scheme, new norms for allotment of flats, streamlining of the Punchayet's administration and accounting systems, reinvesting funds for greater returns, and development of Punchayet properties in the Gujarat townships of Sanjan and Golvad for housing, are some of the activities under consideration and implementation.

Programmes for the immediate future include hosting a symposium in November on the "Problems facing the Parsi Community and its solutions," and a public function to honour "eminent living Parsis," to be held on December 21 at the Cricket Club of India lawns. The symposium is probably the first such public meeting to be held in Bombay with the BPP's participation since the Third World Zoroas-

trian Congress in January 1978. The felicitation function is to coincide with the noted conductor, Zubin Mehta's visit to Bombay in connection with Cyrus Bharucha's film on Zoroaster, noted BPP Chairman, Aspi Golwalla.

On the two pressing issues confront-

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ing the BPP, rejoining the Federation of Parsi Zoroastrian Anjumans of India and electoral reforms, no decision had been taken. Golwalla said a meeting of the major anjumans not in the Federation would be held on November 27. The Delhi Parsi Anjuman, as it was in the present Federation, had not been invited, noted the chairman. As for electoral reform, a trustees meeting had been scheduled for November 2, where the report of the electoral reform com-

mittee constituted by the Punchayet and the note of dissent prepared by BPP Trustee Jamsheed Kanga and noted lawyer, Dadi Engineer would be discussed.

The trustees agreed to hold press conferences regularly, possibly once every three months and whenever there were issues of public interest. The last conference to discuss community problems was in May 1976 under the late Lady Hirabai Jehangir's chairpersonship. Subsequently press conferences were held in regard to the hosting of the Third World Congress and the BPP's tercentenary celebrations.

But with the awareness aroused in the last BPP Anjuman Committee elections and the willingness of the new chairman to open a dialogue with the various institutions and individuals in the community, the Punchayet's traditional closed door policy is changing.

Six of the seven trustees were present at the meeting including Jal Vimadlal who refused to attend the trustees meeting with the Anjuman Committee earlier in the year. Dr. Nelie Noble, however, remained absent as she had at the Anjuman Committee-BPP gathering. The other trustees present were Jamshed Guzder, Eruch Desai, and Maneck Hodiwalla. The papers repres-

ented were the two Gujarati dailies, *The Bombay Samachar*, and *The Jam-e-Jamshed*, the Ilm-i-Khshnum bimonthly publication, *Dini Avaz*, the Committee for Electoral Rights backed journal, *The Zoroastrian* and *Parsiana*.

Housing

Of all the BPP programmes, housing "has the topmost priority" said Kanga. The emphasis is on expediting the implementation of the various housing schemes. "The construction programme must start immediately... (and) quick decision making will take place," Kanga said.

Though the BPP possesses land and F.S.I. for the construction of 1000 flats, there are 7480 applications for housing pending with the Punchayet which has earmarked Rs 62 lakhs for housing.

"We've decided to bring all the applications (for housing) up to date," said Guzder. Applications filed before 1979 are likely to be time-barred and, therefore, these parties will be sent fresh forms. If they still require a flat they must return the form in 30 days.

"When thousands of applications are pending and only a few can be helped concretely, many a time doubts, suspicions and loose talk arise from the source of disgruntled left-outs," notes the press release. "In order to do away with such undesirable aspersions, it has been decided to classify all the pending applications for housing in seven different categories."

The first two categories - couples waiting to be married and victims of house collapse, have been considered

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most deserving and 30 percent has been reserved for each of these categories; the remaining 40 percent will be allocated on the basis of medical grounds, persons living in slums, and to practising mobeds and Punchayet staff.

The applications so categorised will be given a merit rating on factors like marital status, present accommodation and paying capacity of the applicant. This method was described by Kanga as "an objective way to allot accommodation."

Another way of reducing the pressure on housing in Bombay is to encourage Parsis to settle outside Bombay. The trustees are in touch with the local committees of Sanjan and Golvad where the BPP holds property, to promote housing schemes. This scheme is for the older generation who need not continue to live in Bombay, and for younger people for whom there are growing employment opportunities in industrial regions like Vapi and Umbergaon.

Desai and Vimadlal voiced caution in advising Parsis to settle out of Bombay unless there was going to be a substantial Parsi community in the place of settlement. Otherwise the chances of finding suitable spouses would be slim.

Accounts

"We have a rather archaic system of keeping accounts," admitted Guzder. The BPP has 1,500 accounts, he noted. "The Trustees had felt that there is a need of modernising the Accounts system and also improving the resources of the Bombay Parsi Punchayet through a better Investments policy," noted the release.

"A study of the Accounts System and related matters was therefore taken in hand, and in consultation with Minoo Shroff, financial consultant of the J.K. Industries as well as statutory auditor, H. Damania, and our tax consultant, F.P. Sarkari of Messrs Kalyaniwalla & Mistry, the Trustees have decided to adopt the following measures: To invest Rs 2 to 2½ crores in Unit Trusts, to invest Rs 2 to 2½ crores in Public Sector Companies and to invest the balance amounts in Nationalised Banks."

This should give a return of 12½ percent to 13 percent on the amount invested, said Guzder. The enhanced return would help meet the rising costs, especially of staff. The monthly BPP wage bill is close to a lakh and a half. This does not include the Wadia Baug staff salaries that amount to around eight lakhs annually.

The BPP intends to upgrade the staff and attract new recruits. One of the attractions would be the possibility of receiving accommodation, a scarce commodity in Bombay, noted Kanga.

"The average age of Punchayet employees is 60," he commented, and "this is one of the handicaps under which we work." We must streamline the organisation, but at the same time, we must not "forget the culture of the organization," he said.

According to the press release, "The

Trustees decided in the month of March 1982 to have such a study carried out with the help of Dr S.K. Parukh, director, Beam Services... such an Organization & Method Study has now been carried out by Freddie Mehta assisted by a Ms Bapsy Guzder. (Their) report is under study at present, and decisions

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will be shortly arrived at in regard to the implementation of its recommendations."

Education

The Committee for Economic Uplift, which according to the release devised the comprehensive housing scheme, also intends to tackle the problem of employment and education. One proposal, still in the "idea stage" according to Kanga, is to select talented youngsters and assist them in realizing their potential.

"We're trying to find out the needs of the Parsi industrialists," and then train the boys to fulfil these needs, he said.

Noting the concerted efforts made by the present trustees, Desai pointed out that many schemes had been started and implemented in the past as well. "The trustees (in the past) were not idle or indolent," he said. "It's just that today we are working on a crash programme."

This was a clear indication that the gap between the community's aspirations and the Punchayet's recognition of them, are narrowing.

Due to exigencies of space, we are unable to carry the serial - Aek Atmakatha: The Life of Dastur Dhalla, in this issue.

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The Parsi Punchayet Case

Petit vs Jeejeebhoy XII

The Zoroastrian Tribe?

THE JUDGEMENT SO FAR

In 1903 R. D. Tata married according to Parsi rites, a French lady, after having her navjote performed. Tata claimed his wife "had become a Parsi professing the Zoroastrian faith and consequently she was entitled to participate in all the charitable and religious Funds and Institutions of the Parsis" including the right to enter fire temples and have her body consigned to the Towers of Silence.

Thus the scene was set for the historic court case of Petit vs Jeejeebhoy, also known as "The Parsi Punchayet Case."

The question before the two judges of the Bombay High Court, Justice Frank C. O. Beaman and Justice Dinshaw Dhanjibhoy Daver, was whether a person born in another faith but converted to Zoroastrianism was entitled to the benefits of certain community trusts.

The plaintiffs (Sir Dinshaw Maneckji Petit; Tata and others) contended Zoroastrianism enjoins and practises conversion and that converts are entitled to all the benefits provided. The defendants (Sir Jamsetji Jeejeebhoy and others) while admitting that Zoroastrianism permits conversion state that "ever since their (Parsis) advent into India (they) have not admitted a Juddin (Person belonging to another religion) into their fold. They admit, however, that children born of a Zoroastrian father by an alien mother have been admitted into their fold by the performance of the Navjote ceremony."

Beaman, in the first instalment, while noting conversion was known to Zoroastrianism, stressed the importance of determining whether the founders of the trusts "contemplated and intended that Converts should be admitted to participate" in the trusts.

Here I will take up another point which occupied days and days, seemingly turning on the connotation of the words Parsi and Zoroastrian, but really going deeper, and touching the root of the whole matter. Put shortly, Plaintiffs say that Parsi is a term of primarily religious connotation, the Defendants that it is a term of primarily racial or tribal connotation. We were referred to dozens of books, not a passage in one of which helped or could have helped to an intelligent solution of the difficulty. Everyone speaking loosely knows the facts, as well as everybody else. When on those facts a peculiarly subtle question arises, which was certainly never present to the minds of any of these amiable savants and travellers, their casual and unconsidered use of this term or of that is in itself worthless, while such observations as some of them made upon scraps of custom, never rise above the level of the ordinary traveller's tale. The case had been much better, not to say shorter, without that mass of pedantic rubbish.

The Indian Parsis, as everyone admits, come to India from Persia. They were soon locally designated Parsis, because they came from Fars, or Pars, or Persia. Applied to them by the peoples of India, this term simply denoted place of origin. They would not have called themselves Parsis, any more than at first their fellow Persians who had not come to India with them would have called them Parsis. And in this connection it is interesting to note that, in the twenty to thirty passages referring to these properties which have been discussed at great length—early dedications by the Indian Zoroastrians themselves—the word Parsi does not once occur. In all probability, Parsi was a name which no Parsi would have recognised or thought of applying to himself or his people in any special tribal or national sense, when first their exiles landed in India.

Then the question arises whether, at that time, it could have had any meaning for the community, whether it signified any national as opposed to religious bond? I should say probably not. And it is just here that the significance of the contention dives below the surface verbal definition to the root of the matter, namely, had this body of exiles any common distinguishing bond, marking them off from others and constituting them a peculiar people, except the bond of religion? When they landed in India they were the only people in all that vast and teeming Continent who professed the Holy Mazdiasnian faith. Was it not the profession of, and adhesion to, that faith which consolidated them and made of them a separate people? Or were they a separate people because, in the loose geographical notions of those who were not of their faith, they had come from Pars?

In the 20 to 30 passages referring to these properties, the word Parsi does not once occur.

Looked at from either point of view, they were foreigners. The outsider might have chosen to label them, for purposes of identification, by a term denoting their place of origin. But what did they themselves regard as their bond of union? Was it the religion for which they had fought, and been exiled, to preserve which they had sought refuge in a strange land, just as the Pilgrim Fathers carried their religion to the free air of America; or was it some national or tribal sentiment, originating in and inseparable from the place of their birth?

The answer to this, in those remote times, is I think clear and certain. What

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feeling of patriotism could have survived? There are still, and there then were, of course, numerous Zoroastrians in Persia. But amongst themselves, Indian Zoroastrians do not call them Parsis, but Iranis. The fact that the Indian Zoroastrian immigrants were, rightly or wrongly, supposed to have come exclusively from the Province of Fars, amply accounts for the fact that the people among whom they settled labelled them Parsis. But we are concerned now rather with the way in which they regarded themselves. They owed no allegiance to any Persian King: they had no special civil or religious rights as Persians: they had no special political characteristics as Persians—less still, of course, merely as men from Fars. What they did have was a very special, elevated, and ennobling religion—their own exclusive religion as far as India was concerned, in the practice and profession of which they stood apart from all the alien races by whom they were surrounded.

They were in much the same case as the Jews—a peculiar people, with no country of their own, no separate national life of their own, owing allegiance to no Parsi or Zoroastrian temporal sovereign, guests on sufferance of races, of peoples, who had nothing whatever in common with their religious organization. They did not know themselves, I have no doubt, as Parsis, in any national sense, if in any sense at all, but as members of the Zoroastrian community in India. And if that is correct, does it not follow that the original bond of union between these settlers was the bond of religion, not of nation? Here we must not forget that while there may be a plain absence of anything like what we understand by National or Patriotic feeling, its place is not infrequently taken by a tribal feeling.

And it may be contended that, while

the first immigrants of the Zoroastrian faith were united primarily by a common religion, they were also united as a tribe, which was a tribe because it remained the sole repository of the one true faith. And once the tribal sentiment comes into being, it cannot be doubted or denied that, in appropriate circumstances it will develop to a degree of exhaustiveness exceeding anything which is truly national. That is a consideration which must not be lost sight of and may be noticed later. But it is probably incorrect to describe the first Zoroastrian immigrants as a Persian or even a Zoroastrian tribe. So far from that being the case, they were the shattered remnants of a great nation. Usually what has had a complete and national organization on a grand scale does not, on disintegration, break up into tribes. We have no Greek, or Roman, or Peruvian tribes.

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But here again it may be necessary to distinguish between the integral factors of the whole national Unit, to see whether the predominant factors are temporal or religious. In the latter case, the break up of the Nation or Empire—its overthrow by infidels or barbarians—might force those who survived and still regarded their old religion as their chief national treasure to carry it off with them, and, where the environment required, constitute themselves a kind of tribal guardians of this sacred possession.

The importance of applying a searching analysis to the use of the terms Parsi and Zoroastrian from the earliest times is obvious. If, as the Plaintiffs contend, Parsi means—and never at any time meant anything more than—a person professing the holy Zoroastrian faith, then any person professing that faith, and formally admitted into it, would *ipso facto* be a Parsi and a member of the Parsi Community. Such a person would, under the express terms of the Trust Deed of 1884, be entitled to share in all the benefits of these Trust Properties. If, on the other hand, Parsi means something more than this, if it means one of the tribe of immigrants from Pars, then it follows that mere conversion to Zoroastrianism will not make—say, a Frenchman—a Parsi, or entitle him to be considered a member of the Parsi Community, or to share in the benefits of these Trusts.

In the latter case, the Plaintiffs fall back upon another, and really a much stronger, line of argument. They say that the insertion of the words “members of the Parsi Community, etc.” in the Deed of 1884 were unauthorized and at variance with the intentions of the Founders. I have already observed that those are the words of an English draftsman who could not possibly have foreseen the trouble they were to cause. I have said that they were chosen to exclude Converts from, not Converts to, Zoroastrianism. And I do not think that in view of the Plaintiffs’ second line of attack, they really need the elaborate verbal criticism which has been spent over them.

But I do think that the underlying contention is fundamental, namely, that mere conversion makes a man or woman a full member of the Parsi—or call it if you please Zoroastrian—Community, and entitles him or her to all the benefits of the Trusts instituted

Parsi was first used by outsiders to describe to each other - by reference to the place of origin - this strange new people.

for the public religious worship of that Community. I think that the words in the Deed are not very important, because when we turn back to the earlier documents, we shall find that the Founders of all these Trusts never used the word Parsi, but invariably spoke of Zoroastrians, those of the good Mazdasyanian faith, or members of the Holy Zoroastrian Community, and so forth.

And the real question is not to distinguish between the modern connotations of Parsi and Zoroastrian, but to ascertain what the Founders meant when they dedicated these properties and moneys to Zoroastrians or members of the Zoroastrian Community. Still I have thought it right to point out what I conceive to have been the true origin, connotation, and application of these terms when they first appear side by side. In my opinion, Parsi was first used by outsiders to describe to each other—by reference to the place of origin—this strange new people. Outsiders could not, of course, have known and presumably cared little, about the religious tenets of such immigrants. They were foreigners, and they came from Persia. Enough then to describe them as Parsis.

Among the Parsis themselves the case was altogether different. They had no reason to be proud of their place of origin, they had nothing to look for from Persia. But they had their religion. They were first and last Zoroastrians, irrespective of the fact that persecution had driven Zoroastrianism out of Persia. As time went on, no doubt the tribal sentiment grew and throve, and there was super-imposed upon the first simple bond of a common religion, the bond of a common tribal descent. So that, as the community prospered and acquired wealth and importance, it accepted the popular name of Parsis, as though it really were a national or tribal distinction.

And along with this secularizing process, went a corresponding weakening of the original religious tie, so that, I daresay, it is quite true to-day to say that it is more accurate to describe the Indian Zoroastrians as Parsis—thereby implying a caste, or communal, or tribal organization—than it would be to define them as men and women professing the Holy Zoroastrian faith.

And that makes it the more unfortunate that the Trust Deed of 1884, drafted by an Englishman, should be expressed as it is. For, when we come to compare it with the earlier documents, one thing is plain, that whether the Defendants have put the right construction on disputed words or not, those words ought not to have been used. It would have been much better to follow the language of the Founders at the time they dedicated these Trusts to public religious uses. Had that been done, we should have been spared a great deal of refined, and, on the whole, profitless argument, and we should also have been spared the useless labour of following Counsel through dictionary definitions, and the tales, opinions, and gossip of more or less well qualified savants and travellers.

If I were to find that it was the intention of the Founders of these Trusts—using the words “for the use of the Anjuman of the Zoroastrian Community” or “for all those of the pure Mazdasyanian faith,” and so on - to include in their benefactions genuine converts to Zoroastrianism, then I should not feel the slightest hesitation in saying that the Trustees had no right to substitute for such words popular language like “the members of the Parsi Community,” still less to construe those popular terms in such a way as to exclude persons whom the Founders meant to include.

To be continued

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Nationalization of Public Trusts?

Shiavax R. Vakil

In the strife and struggle of establishing a welfare state, many governments and princes have fumbled in adapting the ideas and ideology that would best serve socio-economic realities.

In assuming the responsibility, the State has gone further and further in determining what is good for the populace at a given time. It has attempted to substitute the foresight of the past by forestalling the future.

The Maharashtra Government intends to do just that by having introduced in the Assembly a Bill called "The Maharashtra Public Trusts (Management, Acquisition and Common Good Fund) Act, 1982". The purported object of the intended legislation is to provide for taking over management of a public trust temporarily for better management and governance thereof, and, *in suitable cases*, for acquiring and vesting of any such trust in the public interest in a trustee committee constituted by the State Government for that purpose and for creation of a Common Good Fund for assisting *other needy public trusts* or for utilization of the fund for *welfare activities for the general public* or for other charitable purposes.

It would be pertinent to inquire whether the new legislation would achieve the avowed object or would it achieve something more than what was intended.

Section 3 of the Bill empowers the State Government by an Order published in the Official Gazette to remove the trustees from office and appoint a Gazetted Officer of Government from time to time, as the Administrator to take charge of the trust and its funds and properties, to manage the affairs of the trust, under the direction and control of the State Government, if the State Government is satisfied upon a complaint in writing from any person, having an interest in respect of any public trust or suo motu that the trustees of the trust—

- a) have neglected to perform any of their duties, or
- b) committed any breach of trust in respect of the trust, or
- c) misappropriated the funds or properties of the trust, or

d) *have failed to provide adequate facilities or amenities to the persons entitled to visit and use the trust properties, or*

e) *are managing the trust in any manner detrimental to the interest of the trust, or*

f) *have committed any acts which are prejudicial to the interest of the trust.*

The Order can be passed notwithstanding anything contained in any law, custom or usage or instrument of trust for the time being in force, or in any judgement, decree or order or scheme of any Court, Charity Commissioner, Tribunal or any other Authority or in

The bill empowers the State government ... to remove the trustees from office and appoint a Gazetted Officer ... to take charge of the trust and its funds and properties.

any proceedings pending before any Court, Charity Commissioner, Tribunal or any other Authority.

The power which the State Government seeks to acquire is to enable it to supersede the management of a public trust is obviously far in excess of the mischief which it seeks to remedy. The six grounds enumerated above are too frivolous and flimsy to warrant the taking over of a trust.

For instance if a trustee misappropriates a small sum of money or an insignificant property, would the State be justified to take over the entire management of the trust? Common sense and prudence would answer in the negative but under the proposed enactment it would be justifiable.

Of course the taking over of a trust is only for a limited period of 3 years and the trustees are to be given the opportunity of being heard and the order of the State Government taking over the trust is appealable. These safeguards are not adequate to prevent abuse of power.

By section 5 of the Bill the State Government is empowered by Notification in the Official Gazette and in such other manner as it deems necessary to declare its intention to abolish all claims, rights and privileges enumerated below and to transfer the funds and properties of the trust and to vest all of them in a trustee committee appointed by the State Government.

The claims, rights and privileges are the following, namely:

- a) that some persons have hereditary or other rights and privileges for management of the affairs of the public trust or for performance of certain services or for receiving and appropriating the income or a share in the income from the offerings and payments made for their services; or
- b) that the devotees or other persons visiting the trust properties are being exploited or harassed or molested or are not provided with the necessary facilities or amenities; or
- c) that the trust is being grossly mismanaged; or
- d) *that the trust has a large income, funds and properties but the surplus funds are not being, or cannot, for some reason or the other, be utilised adequately to undertake welfare activities for the general public, or*
- e) that a situation has arisen in which the trustees cease or refuse to discharge their functions or for some reason or the other (*including involvement in continuous litigation*) are unable to or prevented from, discharging their functions and the work of the trust has, or is likely to, come to a standstill or there would be substantial retardation of its activities.

The State Government by acquiring the aforesaid powers would be at liberty to destroy the trust, extinguish its rights and remedies and appropriate funds and properties of the trust without accounting for the same.

The acquisition of the funds and property of the trust and the abolishing of its rights and remedies is to take effect free from all encumbrances and any attachment, injunction, decree or order of any court, Charity Commissioner, Tribunal or other Authority.

The persons whose claims and privileges are acquired under this section shall be entitled to receive from the State Government an amount as may be determined by taking into consideration the gross annual income or the gross annual collection or receipt derived or made, as the case may be during the last three financial years by such person.

In short, the State Government is not obliged to pay any compensation for the acquisition and transfer of the properties and funds of the trust.

Article 30 guarantees the right of the minorities to establish and administer educational institutions.

All minorities, whether based on religion or language shall have the right to

The State government by acquiring (these) powers would be at liberty to destroy the trust ... without accounting for the same.

establish and administer educational institutions of their choice.

If and when the proposed legislation

becomes law it would obviously violate the freedoms enshrined in the Constitution.

Public opinion must be brought to bear on the State Government so that the Bill is not made into law as it stands.

No one disputes the legislative competence of State Government and legislature to enact laws for the proper management of public trusts without violating the fundamental rights enshrined in the Constitution.

Extracts from article in *The Bombay Samachar*, 3 October 1982. Vakil is a former trustee of the Bombay Parsi Panchayat and legal adviser to the House of Tatas.

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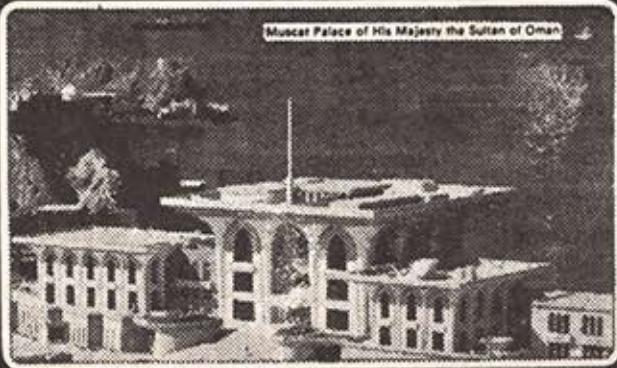
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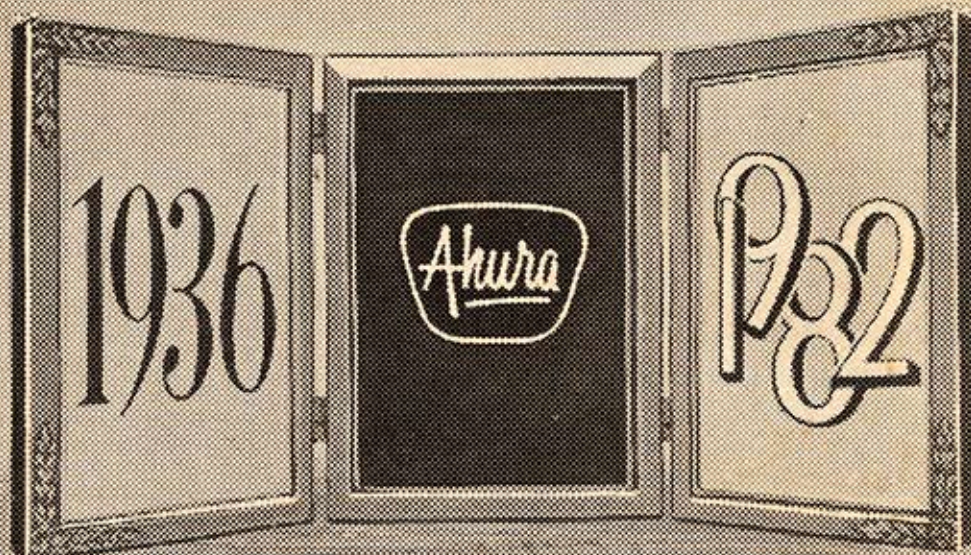
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