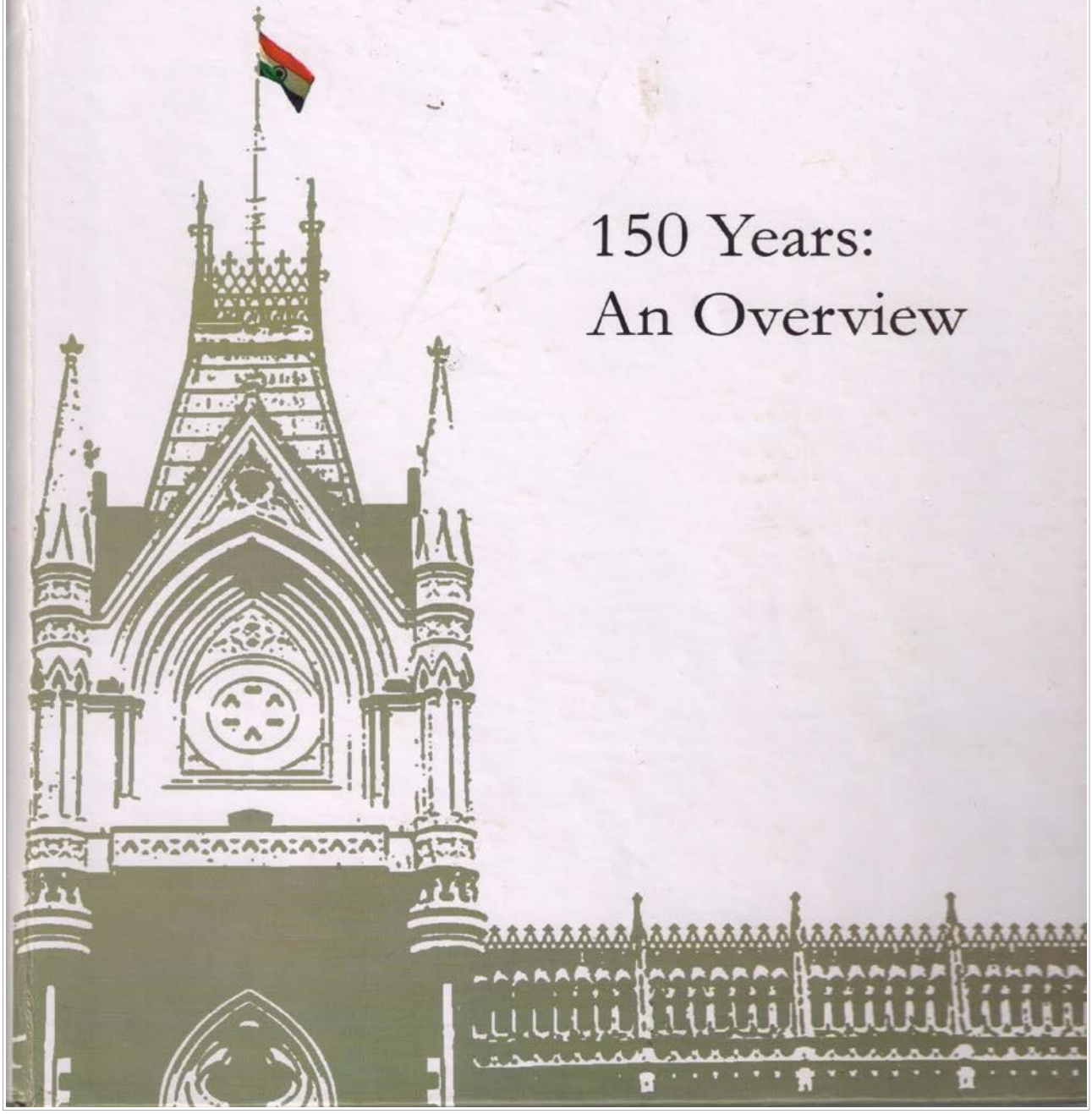
The High Court at Calcutta



150 Years:
An Overview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The High Court at Calcutta
150 Years : An Overview

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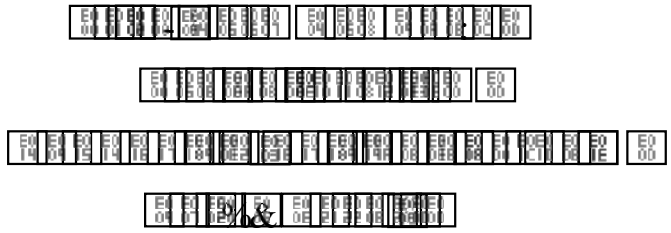
Indira Banerjee J.

Dipak Deb

Pallav Banerjee

Pradip Kumar Ghosh

The High Court at Calcutta
150 Years: An Overview



Law is the King of Kings, far more powerful
and rigid than they; nothing can be mightier than Law,
by whose aid, as by that of the highest monarch,
even the weak may prevail over the strong.
Brihadaranyakopanishad 1-4.14

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MESSAGE

Close to the eastern bank of the Hooghly river, which flows its muddy way near Fairlie Place, stands the majestic sandstone and red brick structure of the Calcutta High Court with its arched pillars designed in perfect symmetry in the neo-gothic style. Designed by one Walter B. Granville, it bears testimony to 150 years of history of the Indian judicial system. Standing next to it is the historic Town Hall, the Legislative Assembly and the Raj Bhawan. A little farther away stand two other landmarks - the Eden Gardens and the Mohun Bagan Club.

The Sepoy uprising of 1857, which is also referred to as India's first war of independence against the British, was the beginning of Crown rule over British India which took over the administration being run by the East India Company. In the process, the existing judicial system underwent considerable changes. The Indian High Courts Act was enacted by the British Parliament in 1861 with the intention of replacing the Supreme Court and the Sadar Adalats and to establish High Courts in their place. The said Act empowered the Crown to establish the High Courts of Judicature in the three Presidency towns of Calcutta, Bombay and Madras. The Calcutta High Court was the first to be established by Royal Charter and by grant of Letters Patent on 14th May, 1862. By the said Letters Patent, the High Court of Judicature at Fort William was established in Bengal on and from 1st July, 1862. Subsequently, the Letters Patent of 1862 was revoked and a fresh Letters Patent was published in 1865. With the coming into effect of the Constitution of India on 26th January, 1950, the High Court of Judicature at Fort William in Bengal was named as the High Court of Calcutta. The Calcutta High Court was thus the first of the Chartered High Courts and was followed by the establishment of the High Courts of Bombay and Madras at about the same time.

In its initial stage, the High Court exercised jurisdiction over territories stretching from the North West Frontier Province in the North-West to Assam in the North-East, encompassing within its jurisdiction Agra, Allahabad, Orissa, Bihar and Bengal. After independence and the formation of Pakistan, the territorial reach of the Calcutta High Court was lessened considerably and it now stands confined to West Bengal and the Union Territory of the Andaman and Nicobar Islands, where it has a Circuit Bench.

The first Chief Justice of the Calcutta High Court was Sir Barnes Peacock.

Justice Sumboo Nath Pandit has the distinction of being its first Indian Judge and was followed by such great personalities as Sir Romesh Chundra Mitter, Sir Chunder Madhab Ghosh, Sir Gooroodas Banerji and Sir Asutosh Mookerjee. Justice Phani Bhushan Chakravartti was the first Indian to become a permanent Chief Justice of the Calcutta High Court and Justice Bijon Kumar Mookherji was the first Judge of the Calcutta High Court to become the Chief Justice of India. Justice Sudhir Ranjan Das was the first Judge of the Calcutta High Court who was elevated as the Chief Justice of another Court, when he was made the Chief Justice of the Punjab High Court in 1949. Subsequently, he became the second Chief Justice of India from the Calcutta High Court. The last Judge from the Calcutta High Court who became the Chief Justice of India was Justice Sabyasachi Mukherjee, who unfortunately did not live to complete his term in Office.

Just as the Bench has seen some of the finest legal minds, the Calcutta Bar has also produced Advocates and Barristers of great eminence. It has seen legal giants, such as Radha Benod Pal, Rashbehary Ghose, Deshbandhu Chittaranjan Das and in more recent times, R.C. Deb, Shankar Das Banerjee, Ashok Sen, J.N. Ghosh, Siddhartha Shankar Ray, Sachin Chowdhury, P.P. Jinwala, Ranadeb Chaudhuri and others, who were second to none in the legal fraternity. Many of the great lawyers of the Calcutta High Court were great politicians and parliamentarians and their contribution to the Indian legal ethos is of no less significance.

During my stint as the Acing Chief Justice of the Calcutta High Court prior to my departure for Jharkhand, I used to sit in the Chief Justice's Chamber and look in awe at the pictures and photographs of the former Chief Justices of the Calcutta High Court beginning from Sir Barnes Peacock and contemplate on their contribution to the legal history of the Calcutta High Court, as also the development of law in the country. Two of the windows of the Chief Justice's Chamber open out to the West from where it was previously possible to get a glimpse of the Hooghly river. There used to be a stretch of land leading upto Strand Road, which was part of the Calcutta High Court, overlooking the water front. For whatever reason, the same was surrendered to the Government which made it over to the State Bank of India, which has constructed a structure of such proportions that not only has the view of river Hooghly been cut off completely, but there is almost a feeling of claustrophobia as if the gigantic State Bank building was crowding out the High Court.

Ultimately, when the High Court required land to expand, it had to shift to a land adjacent to the existing structure on which the Centenary Building has been erected. It was inaugurated on 2nd April, 1977 by the then Chief Justice, Shankar Prasad Mitra, and since it was inaugurated at the same time when the High Court was also celebrating its centenary, the building came to be popularly known as the "Centenary Building". With the passage of time, even the said accommodation became insufficient and another plot of land adjacent to the Centenary Building, in which the tram-goomti used to be situated, was allotted to the High Court by the State Government for expansion. On it now stands a ten storey building which is yet to be

inaugurated. It has fulfilled one of the most important needs of the Calcutta High Court and provides for an auditorium which can accommodate a large number of people, particularly when Workshops and Conferences are held. I had the good fortune of being associated with the project from the time the land was allotted, the laying of the foundation stone, preparation of the plans and finally commencement of construction of the building.

My acquaintance with the Calcutta High Court goes back to the year 1973 when after having been enrolled as a Member of the Bar in 1973, I took my first hesitant steps in the legal profession. I remember when I first came to the High Court, it was with a feeling of awe and trepidation that I went to sit in Bar Association Room No.8, which had been designated for the new-comers to the profession. What I found was very depressing. Advocates of even 5 to 7 years standing at the Bar told me that they were uncertain about their earnings each month, even after 5 to 7 years of practice. With the passage of time, I came to realise that it was up to me to prove myself. By then on the invitation of Mr. Sekhar Basu, I had shifted to Room No.3 of the Bar Association where there was one long table which gave birth to the Long Table Club, of which we were all members. I never got a permanent place to sit in Room No.3 and some of us stood and had our meals during lunch hours, without a place to sit. The first time that I got a place to sit down in the Calcutta High Court precincts, which was exclusively mine, was when I was elevated as a Judge of the Calcutta High Court on 6th August, 1990, and as the junior-most Judge from the Bar, I was allotted the smallest chamber. Alongside me were Justice Tarun Chatterjee and Justice Ruma Pal who were ultimately elevated as Judges of the Supreme Court.

One of the grand events which used to take place in the Calcutta High Court and has since been discontinued with the changes in jurisdiction, was the commencement of Sessions Trials which the High Court was till then conducting. Room No. 11 was the room in which the Sessions Trials were held and it was designed particularly for holding such trials with its Jury Box, the Prisoners' Enclosure and the Witness Box. The trial commenced with a procession led by the Sheriff of Calcutta with his staff of authority, followed by the Judge in Scarlet Robes and in turn followed by the Commissioner of Police, Calcutta, the Deputy Sheriff, the Registrar General and other officials of the Court bearing the Silver Mace for commencement of proceedings, which began with an exhortation from the back of the court room. If my memory serves me right, the last Sessions Trial which was conducted in the Calcutta High Court was that of Haridas Mundra in which at some stage I too had participated as the presiding Judge. I remember that the scarlet robe was comprised of a large number of segments which took almost half an hour to assemble on the body of the concerned Judge, not to speak of the wig.

The Calcutta High Court conducts various events during the year which help to bring some change in the otherwise mundane activities of the High Court. One of them is the Annual Flower Show, which is held every year in the month of February. The long rows of beautiful seasonal flowers and ornamental plants, foliage and ferns,

with a special section for succulents, is sufficient to lift everyone's mood. The rows of phlox, petunias, geraniums, pansies, asters, marigold, together with the different varieties of dahlias, succulents and even chrysanthemums light up the quadrangle and the little lawn that is so much a part of the Calcutta High Court witnesses frenetic activity never witnessed otherwise. The High Court has always had very devoted gardeners and even the circle in front of the Tower, in which the statue of Surya Sen (Master da), is located, is looked after by the Calcutta High Court. Surya Sen stands surrounded by beautiful flowers and foliage which I have had privilege of looking after as the "Head Mali" of the Calcutta High Court gardens.

August 15th is another such occasion when Independence day is celebrated jointly by the Bar, the staff and the Judges. Beautiful musical programmes and dance programmes are held in which the members of the Bar and the staff and their children participate. One cannot but admire the versatility of the participants. One of the participants in particular was Aditi, the daughter of Sekhar Babu, who was the music director and choreographer of the programmes presented by the staff of the High Court, played the Synthesiser fluently.

I have spent a large part of my life in the precincts of the Calcutta High Court, both as a lawyer and as a Judge. My association began in 1973 as an advocate and I was there as a Judge from August, 1990, till February, 2005, when I was sent to Jharkhand. It is in the Calcutta High Court that I had the opportunity of seeing both sides of the legal fence and have profited from my experience greatly. In the Jharkhand High Court and in the Supreme Court, I have spoken and keep speaking about the high traditions of the Calcutta High Court and its three wing of the Bar comprising the Bar Association, the Bar Library Club and the Incorporated Law Society. The legal fraternity of West Bengal and the recipients of its beneficence, must always strive to uphold the greatness of this institution and to ensure that it continues to be a succour to all those who approach this Temple of Justice.

(Altamas Kabir)

Jainarayan Patel
Chief Justice
Calcutta High Court

सत्यमेव जयते

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January 25, 2012

FOREWORD

"This is my prayer to thee My Lord-
Strike, strike at the root of penury in my heart,

Give me the strength lightly to bear my joys and sorrows,

Give me the strength to make my love fruitful in service,

Give me the strength never to disown the poor or bend my knees before insolent might,

Give me the strength to raise my mind high above daily trifles,

And give me the strength to surrender my strength to thy will with love."
- Gitanjali

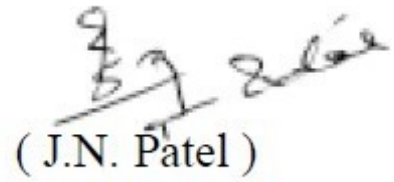
It is heartening to note that to commemorate the Sesquicentenary of the High Court at Calcutta, the first premier High Court in the country, after its Charter issued by the Crown on May 14, 1862 was published on July 1, 1862 and this High Court started functioning from July 2, 1862 the members of the bar, High Court at Calcutta, under the auspices of the Indian Law Institute (West Bengal State Unit) is going to bring out a Book, titled The High Court at Calcutta 150 Years : An Overview.

The rule of the law is the foundation of democratic society and judiciary is the guardian of the rule of law. Lawyers are an integral part of the judicial system. It is, indeed, a matter of great pride that this High Court has contributed to the country innumerable eminent Judges and jurists who have built up the great traditions of this High Court. To name only a few of them, I may remember the names of Hon'ble Sir Barnes Peacock, the first Chief Justice of this High Court (01/07/1862 - 26/04/1870), Hon'ble Mr. Justice Sumboo Nath Pandit, the first Indian Judge (02/02/1863 - 06/06/1867), Hon'ble Sir Richard Couch (26/04/1870 - 05/04/1875), Hon'ble Mr. Justice Ameer Ali (02/01/1890 - 14/04/1904), Hon'ble Sir Lawrence Hugh Jenkins (19/04/1909 - 13/11/1915), Hon'ble Mr. Justice Asutosh Mookerjee (06/06/1904 -

01/01/1924), Hon'ble Mr. Justice Z.R. Suhrawardy (25/02/1921 - 27/11/1931) and Mr. Justice Bijan Kumar Mukherjee (09/11/1936 - 14/10/1948), amongst many others, who were outstanding members of the judiciary of this High Court. I may also remember the names of some of the mighty talented and eminent jurists who practised in this High Court like, Lord S.P. Sinha, Sir Rashbehary Ghose, Sir Benod Mitter, Sir Tarak Nath Palit, Mr. W.C. Bonnerjee, Deshbandhu Chittaranjan Das, Mr. Sarat Chandra Bose, Mr. Atul Chandra Gupta and Mr. Subrata Roychowdhury (who was also a member of jurists in the International Court of Justice). It is a matter of pride that in this High Court the first President of Independent India, Dr. Rajendra Prasad, had started his career as a Vakil and remained associated with it for a number of years. I am delighted to know that Michael Madhusudan Dutt during his career as a Barrister was a member of the Bar and practised in this High Court.

I find that the Book contains many valuable and useful informations about the High Court at Calcutta, viz., its Gothic architecture, some reminiscences and old memories, its historical traditions and various jurisdictions, some celebrated cases, its cultural and philanthropic sides, photographs of all the Chief Justices who have adorned the chair of the Chief Justice of this High Court during these 150 years of its establishment, some eminent Judges and jurists, and last but not the least, some valuable articles contributed by many individual talents. Therefore, this Book will be of immense practical utility to all those who are interested to know about this great Institution.

This Book will serve as coffee-table book for coming generations. I wish the publication of the Book great success.



(J.N. Patel)

INTRODUCTION

The High Court at Calcutta, which was formally opened in July 1862, is the oldest in the country. The High Court at Calcutta 150 Years: An Overview acquaints the reader with the Court's Neo-Gothic architecture, traces the history of this premier seat of justice, dwells on its tradition and its various jurisdictions, reflects on some of the landmark decisions that were delivered by the Learned Judges here, draws pen-pictures of the remarkable individual talents who walked its corridors, and recounts amusing anecdotes. The list of eminent judges and celebrated lawyers named here is representative, but certainly not exhaustive. The articles reprinted from earlier High Court publications will surely enhance the merit of this compilation.

ACKNOWLEDGEMENTS

The book is truly a collective effort, and the editors are indebted not just to the contributors but to all those who have offered help, support, encouragement and guidance, especially Mr. Fali S. Nariman, Senior Advocate, Supreme Court of India, who had first suggested such a book, Prof. Dhriti Kanta Lahiri Choudhury, an enthusiast in architecture and an internationally acclaimed authority on wild life, particularly Indian elephants, and Mr Ravindra Kumar, Editor, The Statesman.

We especially thank the Hon'ble Mr. J. N. Patel, Chief Justice, and His Companion Justices, the Registrar General, Appellate Side and the Registrar, Original Side, as also Ms. Indrani Ganguli, who is presently looking after the Research Centre, and the staff of the High Court archives.

We are grateful to the institutions which supplied illustrations, and which include the Victoria Memorial and the Town Hall. Dr. C. R. Panda, Secretary and Curator (Retd.), and Mr. Gholam Nabi, Head, Documentation & Photo Unit, of the Victoria Memorial showed great interest and gave valuable assistance with several photographs and documents, assisted by members of the staff. Incidentally, some of the pictures are courtesy oldindiaphotos.nic while several others are taken off the net.

We also thank Ms. Rupa Paul who gave valuable assistance with desk-editing and Mr. Subhas Moitra for proof-reading.

Thanks are also due to Messrs Sumit Bhattacharya and Pradip Naskar and the staff of Ashutosh Lithographic Co.

The High Court at Calcutta 150 Years: An Overview can be read in ebook format free of charge by anyone in any part of the world. For making this ebook version possible we thank Mrs. Sumita Basu of Indic House Inc. and her team and Mr. S. Bagchi for his insightful advice.

OUR CONTRIBUTORS

(as they would like themselves to be introduced)

CHANDREYI ALAM: Practising in Calcutta High Court since 1984; committed to the cause of elimination of all kinds of discrimination against women. As Resource person, participated in gender sensitivity legal awareness programme for all, including social workers, police, judicial officers, etc. Authored several articles on laws relating to human rights and gender justice, as also a comparative study of the Shariat Law in Bangladesh, India and Pakistan, which has been published by Paschimbanga Pustak Parishad.

JOYMALYA BAGCHI: Studied in Calcutta Boys' School; passed LLB from Calcutta University in 1991; enrolled as an Advocate in the Calcutta High Court in1991; appeared in a number of important cases relating to Criminal and Constitutional Law, including the one relating to the ban on Taslima Nasreen's Dwikhondito; also appeared in various Public Interest Litigations on behalf of Human Rights Organizations. For a while took classes in law at Calcutta University and Jogesh Chandra Choudhury College of Law, and was a guest lecturer to the W.B. National University of Juridical Science, Kolkata; written various articles on legal topics which have been published in reputed journals. Appointed as a Judge of the Calcutta High Court on 27 June 2011.

PROTIK PROKASH BANERJI: Presently the Junior Standing Counsel, Government of West Bengal, High Court at Calcutta; claims that he "has done nothing original in life. He reads a lot, and passes on what he has read. To earn his livelihood, he practises law in the Hon'ble High Court at Calcutta." However, the Wikipedia entry on Protik notes, inter alia, that "he was a guest faculty/honorary lecturer at The West Bengal National University of Juridical Sciences. . . He also did a stint as a compere of Western Music at All India Radio, Kolkata between 1986 and 1994, and he has been a regular contributor to The Economic Times . . . between 1989 and 1994 on various subjects unconnected with law. . ."

VIKRAMJIT BANERJEE: An advocate of the Supreme Court; has a keen interest in the study of law and religion, and law and development; likes to read; also works with social and cultural organisations and think-tanks in areas of policy structuring; would have loved to be a legal academic and has taught at some of the premier legal and management institutions in India, but that would have meant taking him away from his first love, litigation.

BIMAL KUMAR CHATTERJEE: Senior Advocate; an alumnus of Presidency College, Calcutta and a Ford Foundation scholar; obtained his M.A. in

Economics from the University of Calcutta; called to the Bar from Lincoln's Inn in 1971; served the Council of Legal education, England as a Faculty Member of the Council as a tutor; has been associated with a number of single faculty law universities of India as a visiting Faculty Member; also served Rajiv Gandhi School of Intellectual Property Law, Indian Institute of Technology, Kharagpur, as one of its Adjunct Professors; was a Member of the Advisory Committee, Bankruptcy Laws, and of the National Advisory Committee on Economic Law Reforms; the Vice President of Legal Aid and Advice Society (WB); member of the Calcutta High Court Legal Services Committee and a trustee of the Calcutta High Court Cultural and Philanthropic Society Trust; was the Chairman, Bar Council of West Bengal. Author of a book, Law is not an Ass, and a good number of essays which have been published in national and international legal journals.

SOMNATH CHATTERJEE: Educated at Presidency College, Calcutta, Jesus College Cambridge and at the Middle Temple. After qualifying at the Bar Examination, got himself enrolled as a member of the Calcutta Bar on 4 January 1954; joined the Chamber of Mr R.C. Deb; soon picked up considerable practice in civil and Constitutional matters, both in the High Court and in the Supreme Court. Long tenure as a Member of the Lok Sabha; adorned several parliamentary committees; conferred the Outstanding Parliamentarian Award; later Speaker of the Lok Sabha. Special interests: social work and gardening.

SABYASACHI CHAUDHURY: A practising advocate of Calcutta High Court; an alumnus of Don Bosco School, Park Circus and Department of Law, University of Calcutta; ranked "first in aggregate" in the 5-year LLB course of the University; was associated with the Bengali band "Chandrabindoo" as a singer before joining the profession. An avid debater, also active in the public speaking circuit of Kolkata.

AHIN CHOUDHURI, LLB (Cal), M.A., BCL (Oxon): Went to Hindu School, Presidency College, University College of Law, Calcutta, and Oxford University where he studied Modern History and Jurisprudence; called to the Bar by the Inner Temple in 1964; became a Senior Advocate in 1988.

AMLAN DASGUPTA: Professor of English and Director, School of Cultural Texts and Records, Jadavpur University, Kolkata. Educated at the universities of Calcutta, Jadavpur and Oxford, his current research interests are Classical and Renaissance European literature, the history of Christianity and North Indian Classical Music.

SUNRIT DEB: Graduated from Scottish Church College, Calcutta in 1955; called to the Bar by Lincoln's Inn in 1965; former lecturer in law at Surendra Nath College. A fond lover of classical music of the West.

O. C. GANGOLY: Attorney by profession who was widely respected for his

encyclopaedic knowledge and devotion to various art forms. His contribution to the study of music, painting and sculpture is immense. Apart from his books, illuminating articles, for example "Humour of the Law Courts", and "Leonardo da Vinci: A Critical Essay" where he examined the variety of Leonardo's achievements within the context of the intellectual and spiritual movement of the Italian Renaissance, were published.

ARUNABHA GHOSH: Alumnus of Presidency College, Calcutta with M.A. in English; has been working as an Interpreting Officer of Calcutta High Court since 1984. An occasional writer and translator, his articles have been published in The Telegraph, Economic and Political Weekly (EPW) and Sahitya Akademi journal; contributed to and co-edited Culture, Society and Development in India (Orient Blackswan, 2009) and edited Withered Leaves, a fiction by Jayanta Ray (Frog Books, 2011).

ASOK KUMAR GANGULY: Completed both M.A. in English in 1968 and LLB in 1970 from Calcutta University; started practice in Calcutta High Court in 1972. Appointed permanent Judge of the Calcutta High Court in 1994, and on transfer joined Patna High Court; came back to Calcutta High Court in August 2000; became Chief Justice of Orissa High Court in March 2007 and later of Madras High Court in May 2008. Elevated to the Supreme Court of India as one of its judges in December 2008.

DHRUBA GHOSH: Studied intermittently in Mount Hermon (Darjeeling), St. Xavier's School and Presidency College (Calcutta), read law at UCL (London) and was called to the Bar from Lincoln's Inn. As will appear from his article, Dhruba finds practising in the original side an appealing prospect and hopes that the traditions of the Bar will attract and inspire more young lawyers back into its fold away from the lure of lucre, lustre and labour of the corporate law offices.

PRADIP KUMAR GHOSE: Did his schooling at St Xavier's School; then studied in Presidency College; graduated with honours in Geography. Proceeded to England to study law and was called to the Bar by the Inner Temple. On his return, started practising in Calcutta High Court.

BHASKAR P. GUPTA: Senior Advocate; after graduating from St Xavier's College, Calcutta with first class honours in Mathematics, obtained LLB degree from University College, London and was called to the Bar by the Hon'ble Society of Lincoln's Inn. Practised in Calcutta High Court for more than 30 years; then shifted base to the Supreme Court of India; has been practising there for the last thirteen years. Had been a member of the governing body of St Xavier's College, Calcutta for more than ten years; had also been a member of the Indian Advisory Board of ANZ Grindlay's Bank for about ten years, until the Bank ceased operations in India a few years back; attended international conferences and participated in debates and seminars as a member of several Law Associations, both Indian and International, the

last being in June 2011 at the University of Southern California, Los Angeles on Euthanasia. Former President of Calcutta Club; currently board member of East India Pharmaceutical Works Ltd and governing body member of Ramakrishna Mission Swami Vivekananda's Ancestral House and Cultural Centre, Kolkata.

SURENDRA KUMAR KAPUR: Educated at St Joseph's Collegiate School, Calcutta; and then graduated in English Literature from St Xavier's College, Calcutta; still later a Law graduate of London University; after which called to the Bar at Lincoln's Inn. Professor of Commercial laws at his old College for nearly 10 years. Sometime Additional Solicitor General of India, High Court, Calcutta. Despite all censorious glares, comfortably over 70 and still happily in active professional practice almost at the half-century mark at the Bar Library Club, High Court, Calcutta. Special interests – cricket, chess, reading, and the law.

KASHI KANTA MAITRA: Senior Advocate; still in active practice at the age of 86. Been witness to the freedom struggle, the birth of independent India, the framing of the Constitution and the formation of the Republic of India. Former State cabinet minister.

ANINDYA KUMAR MITRA: Graduated from Presidency College, Calcutta in 1955; called to the Bar by the Hon'ble Society of Lincoln's Inn in June 1959; became the Additional Solicitor General of India in 1997, but resigned in 1999; has been the Advocate General for West Bengal since May 2011. President of the Sutanati Parishad, President of the Presidency College Alumni Association, and Vice President of Ramakrishna Mission Institute of Culture. Special interests – music, particularly the classical variety, and travelling to various parts of India and the world; been to such far-flung places as the Arctic, the Antarctic and Mongolia.

HIRAK KUMAR MITRA: Graduated from St Xavier's College, Calcutta and passed LLB from University College, London; called to the Bar by the Hon'ble Society of Lincoln's Inn in June 1964; was the last pupil to be in the chamber of Mr Platts-Mills, Q. C., who took silk soon thereafter. Back in Calcutta, joined the chamber of Mr Somnath Chatterjee; Senior Advocate in 1987. President of Calcutta Club Ltd (2011-2012). Interests include gardening and travelling.

JAYANTA KUMAR MITRA: Obtained Honours in Economics from Presidency College, Calcutta; went to the London School of Economics; got a degree in Law from London University; called to the Bar by the Hon'ble Society of Middle Temple in 1963. Joined the Calcutta Bar and soon picked up an extensive practice in Constitutional, Arbitration, Corporate and Commercial laws; Senior Advocate in 1987; has appeared frequently in the Supreme Court and in various High Courts of India. Involved in social activities; member of the Rotary Club of Calcutta and President of Calcutta Club (1998-1999).

CHITTATOSH MOOKERJEE: Read in Presidency College and the

University College of Law, Calcutta; practised in the Calcutta High Court before being elevated to the Bench. Became Chief Justice of the Calcutta High Court and later of the Bombay High Court, and was on two occasions the Acting Governor of Maharashtra and for some time the Acting Governor of Goa, Daman, Diu and also of the Union territories of Dadra and Nager Haveli.

SUMITA MOOKERJEE: Studied for LLM in London School of Economics. Barrister from Lincoln's Inn; has been practising in the Calcutta High Court since 1987. She feels that the legal profession is much action-packed and is a challenge for lady lawyers.

SATYABRATA MOOKHERJEE: After graduating from Presidency College, Calcutta, proceeded to London for studying law and journalism; obtained Diploma in Journalism, Regent Street Polytechnic, London; called to the Bar by the Hon'ble Society of Lincoln's Inn on November 22, 1955 and enrolled as an Advocate in the Calcutta High Court on March 12, 1957. Appointed Junior Standing Counsel and Senior Standing Counsel in 1974 and 1976 respectively, and designated as a Senior Advocate in 1976. Appointed Addl. Solicitor General for India, Kolkata in 1998; tendered resignation in August 1999 on being elected as Member of Parliament; was a Minister of State holding several portfolios in the Central Government from 2000 to mid-2004. Special interest – horticulture; President, Bengal Rose Society.

SOUMENDRA NATH MOOKHERJEE: Studied at St Xavier's Collegiate School, Calcutta and at Doon School; graduated with first class Honours in Economics from Presidency College, Calcutta; then proceeded to Churchill College, Cambridge for Law Tripos. Called to the Bar by the Hon'ble Society of Lincoln's Inn in July 1985; has extensive practice in all branches of law throughout India; designated as a Senior Advocate in 2004. Special interest – wild life.

I. P. MUKERJI (INDRA PRASANNA): Educated throughout at St Xavier's School and College, Calcutta; obtained LLB degree of the University of Calcutta and LLB Degree of the University of London through external examination; enrolled as an Advocate on 2 July 1990; practised in the Calcutta High Court in revenue, arbitration and other civil matters. Taught for some time at NUJS, Kolkata. Elevated to the bench of Calcutta High Court on 18 May 2009.

BIDYUT KIRAN MUKHERJEE: A Senior Advocate practising in Calcutta High Court, had an impressive academic background. Of a genial temper; a loved and respected figure; has been President of the Bar Association and Chairman, Bar Council of West Bengal.

SONDWIP MUKHERJEE: Studied at St Xavier's Collegiate School, Calcutta; did his graduation and post graduation in English from Presidency College, Calcutta, and law from Calcutta University. Started practising in the High Court in 1981; joined the chamber of Mr Sunrit Deb and later that of Mr Hirak Kumar Mitra.

Has authored books of stories, and poems (in translation); enjoys limericks and scribbles a few now and then.

BALAI LAL PAL: An Advocate of Calcutta High Court; was a gentleman to his finger tips. Specialized in Income Tax law; good draftsman; wielded a facile pen. A son-in-law of Dr Radhabinod Pal.

DEBI PROSAD PAL: Did his bachelor's in Presidency College and got his M.A. and D.Litt. from Calcutta University, standing first throughout his academic career; started practising in Calcutta High Court in 1959. Specialization in Constitutional and taxation matters; practising as a Senior Advocate in the Supreme Court of India and different High Courts of India; former Judge of Calcutta High Court, former Union Finance Minister, and three-time former Member of Parliament. A son-in-law of Dr Radhabinod Pal.

RUMA PAL: Was a judge of the Supreme Court of India until her retirement on June 3, 2006. Read for her B.C.L degree at St Anne's College, Oxford; started practice in 1968 in Civil, Revenue, Labour and Constitutional matters in the Calcutta High Court. Appointed Judge of the Calcutta High Court on August 6, 1990; elevated to the Supreme Court of India on January 28, 2000, the day of the Golden Jubilee of the Court; delivered many critical judgements in well-known cases. Written on a number of human rights issues; a member of the International Forum of Women Judges.

SAMARADITYA PAL: Graduated with History (Hons.) from Presidency College, Calcutta; did his Masters in History and LLB degree from Calcutta University. Called to the Bar from the Inner Temple, London in late 1966. Has authored two books on law, viz. The Law of Contempt and the Law Relating To Public Service.

NADIRA PATHERYA: Passed B.A. and LLB from the University of Calcutta; enrolled as an Advocate on 6 June 1983 and practised in Civil, Company, Arbitration and Constitutional matters mainly in the High Court at Calcutta and also in the Supreme Court of India. Elevated to the Bench of the High Court at Calcutta on 22 June 2006.

AMIT ROY: Received his Master's degree in Modern History and LLB from Calcutta University. Enrolled as an Advocate in 1968; practising in the Appellate Side of Calcutta High Court. Has to his credit several published articles relating to 19th century Calcutta and has edited Old Calcutta by Rev. W. H. Hart (1895) in 1990. Special interest – collecting rare books, prints and ephemerae. Life member of Asiatic Society and Calcutta Historical Society.

INDRAJIT ROY: Graduated in Medicine from Calcutta Medical College with scholarships, Government prize in Clinical Surgery, and Gold Medal in Surgery: did

his MS (General Surgery) and MCh (Neurosurgery) from Calcutta University; received higher training in Microneurosurgery at the University Hospital, Zurich, Switzerland. Is a Professor of Neurosurgery; has published scientific papers and contributed chapters in text books, and is a regular speaker at seminars and symposia. Is an amateur actor and director, and a Rotarian, with deep interest in philosophy, history and literature. Was the Sheriff of Calcutta in 2011.

SUBRATA ROY CHOWDHURY: Barrister-at-Law and Senior Advocate, had distinguished himself as a practitioner both in the Supreme Court of India and Calcutta High Court; was an activist in the area of the International Human Rights Law; awarded Honorary Doctorate by the Institute of Social Studies of Erasmus University, Rotterdam in 1992. Had written books and articles on human rights public international law, international refugee laws and outer space law.

MAHUA SARKAR: Professor of History at Jadavpur University. Did her M.A and Ph.D from Jadavpur University. Her doctoral thesis, Justice in a Gothic Edifice: A History of the Calcutta High Court, was later published as a book. A reputed scholar in Environmental Studies; has several research papers on Environmental History to her credit.

AMAL KUMAR SEN: Solicitor, Advocate and Company Secretary; comes from a well-known family of lawyers. Passed final Law Examination in 1957; received the Bel Chamber's Gold Medal having stood first in the final Solicitor's examination; presently, partner of the Solicitor firm, M/s B.N. Basu & Co.; actively connected with several social, cultural and sports organizations; only Solicitor till date to have been President of Calcutta Club Ltd.

SAMRAT SEN: Graduated with Physics Hons.; completed LLB from the University of Delhi. Enrolled as an Advocate in 1992; devilled in the Chambers of Mr. Pratap Chatterjee, Barrister and Senior Advocate; was awarded the British Chevening Scholarship in 1998 by the British Foreign and Commonwealth Office; participated in a Certificate Course in English and European Economic Community Commercial Law and Practice at the College of Law, York, United Kingdom. Worked in SIMMONS & SIMMONS, a leading Law firm in London as part of the scholarship programme. Has been a guest faculty at the Jogesh Chandra Chaudhuri Law College, Kolkata during the period 2005-2009. Special interests – debating and acting on the amateur stage; awarded a Special Prize on the occasion of the 125th Birth Anniversary of Swami Vivekananda and the Golden Jubilee of the Ramakrishna Mission Institute of Culture for his performance at the 'Swami Vivekananda Centenary Endowment All India Annual Elocution Competition on Swami Vivekananda' by the Ramkrishna Mission Institute of Culture in 1988.

DILIP KUMAR SENGUPTA: Born and educated in Barisal (now in Bangladesh); was employed with an MNC in Calcutta in a senior managerial post; did his LLB from Calcutta University and started practising after retirement. An avid,

national award-winning photographer; other interests – rifle shooting and rowing.

DEEP NARAYAN SINHA: Practised as a Barrister before being elevated. Later, became Chief Justice of Calcutta High Court from 1966 to 1970.

KHWAJA MOHAMMAD YUSUF: Practised in Calcutta High Court before being elevated. After retirement, was appointed Chairman, West Bengal Minorities Commission.

3 ESPLANADE ROW (WEST)

Sondwip Mukherjee

Premises no. 3, Esplanade Row (West)[1]. This was the site of a two-storied stucco building with an open colonnade along its south façade, that once housed the Supreme Court of Bengal, and its three adjoining apartments where Sir Elijah Impey[2] resided with his family[3], as did Sir Robert Chambers who succeeded him as Chief Justice. The Supreme Court[4], which had supplanted the Mayor's Court[5], was abolished on 14th May 1862 by a Charter along with the Sudder Diwani and Nizamat Adalats, and the High Court of Judicature at Fort William in Bengal was established and later formally opened on 1st July 1862.

The Supreme Court building was simultaneously demolished in 1862, and in its place was built the Main Building of the present High Court. Here, at this seat of justice, Sir Barnes Peacock sat as the first Chief Justice in 1872. In the ten year period between 1862 and 1872, while the Main Building was being constructed, the High Court proceedings were conducted in the Town Hall next door.

Around the time the High Court was built, there was the Imperial Bank to its west. To the east was the Town Hall at no. 4 Esplanade Row (West) built in 1813 by Col. John Garstin in the neo-classical or Roman-Grecian style with a Doric-Hellenic portico. Further east was the Treasury building, and across Council House Street was the Government House (now known as Raj Bhavan) which had come up in 1803. This three-storied Georgian style structure was built on a blueprint prepared by Captain Charles Wyatt of the Bengal Engineers based on the Keddleston Hall, Derbyshire, the ancestral house of Marquess Curzon.

To the north, by the Lal Dighi (later Dalhousie Square, now B.B.D. Bag), was the General Post Office[6], a magnificent neo-classical edifice, with a high-domed roof and tall Corinthian pillars, designed by Walter L.B. Granville who acted as consulting architect to the Government of India. The construction of the GPO, on the site of the south-east bastion of the old Fort[7], was completed in 1868. A little beyond the GPO, to the north of the Lal Dighi, was erected the grandiose Gothic structure of the Writers' Building in 1877.

To the south of the High Court was the Eden Gardens with its Burmese pagoda, and beyond it lay the vast green expanse of the Maidan, with the Esplanade on one side.

The same Walter Granville[8] designed the Calcutta High Court in florid Gothic style taking the medieval Staad-Haus[9] or Cloth Hall of Ypres in Belgium for inspiration. Like the impressively tall belfry of the Staad-Haus, the High Court has a 180-foot tower capped by four turrets and a spire.

In the front of the red brick and stucco building, facing the Maidan, is a stately row of pillars running along the lower storey. The beautiful foliated capitals of the colonnade are of original Caen stone exquisitely sculptured, each one having different allegorical figures among the branches so that Justice, Truth, Benevolence, Charity ("or are they Biblical characters?"[10] – as Desmond Doig asked) appear to be hiding in trees. For instance, there is a cherubic figure holding a pair of scales in one hand and a double-edged sword in the other. Another holds a monarch's crown. Yet another holds a book, while there are others playing different musical instruments like the flute or the harp or the drum. Different animal heads, be they of a lion or a capricorn, also figure. It is best left to the curious visitor to scrutinize these motifs and interpret as he likes.

Professor Dhriti Kanta Lahiri Choudhuri's observation is worth quoting: "One laudable feature of the High Court is the extensive use of stone, particularly in the richly carved capitals, which preserves more of the spirit of the Gothic Revival than any of the churches in Calcutta in the same style. Despite its stumpy tower, this is perhaps the only Neo-Gothic building in Calcutta worth serious notice at all."[11]

The design of the building is rather complex – a rectangle on four sides of a quadrangle. "The main entrance is through the handsome central tower on the south side which leads into the magnificent quadrangle."[12] Entering beneath the tower one finds a grand staircase that leads up to the first floor. The first floor contains twelve court rooms, including one where criminal sessions trials used to be held. The prisoner's dock in the sessions court room is made of heavy teak-wood and has a raised platform with a trap door. The convicts used to be led up a spiral staircase, from the prisoner's rooms downstairs, into the dock through that trap door to face the Judge, the jury, the prosecuting and the defence counsel[13]. There are also some Judges chambers, the Judges library, the Bar Libraries, several Bar Association rooms, the Attorneys library and sundry offices on the same floor. On the upper floor are eleven court rooms, the offices of the Advocate General and the Legal Remembrancer, a Bar Library room and a number of Bar Association rooms, while Court rooms no. 24 to 27 are located on the ground floor. The high-pitched iron-plated roof, according to Mr Rathin Mitra[14] "was erected as a furnace sucking up the hot air from below through orifices in the ceilings."[15]

As Desmond Doig lyrically put it: "Splendid from without, the High Court is far more impressive within. There's a Judges corridor like an avenue of symmetrical trees; acres of extravagant wood paneling; high vaulted ceilings; and many valuable paintings, one by Zoffany of Sir Elijah Impey in wig and scarlet robes. There is just the right degree of gloom and gothic massiveness about the building to emphasize the

ancient, inescapable majesty of the law, and a sense of judicious levity, particularly in the Bar Library, to suggest that the law has a sense of humour and a heart. Surprisingly, there is a modern bar styled Cherchen[16], after an oasis in the Takla Makan desert, in one of the corridors where thirsts may be quenched between verbal marathons."

With the passage of time the need for more space than what the Main Building could provide was felt. Thus the Centenary Building was built as an extension, retaining somewhat the architectural symmetry of the Main Building. It has eight court rooms, besides a Research and Preservation Centre and other office rooms. A multi-storied building has been constructed as yet another annexe in the 150th year.

3 Esplanade Row (West) is a landmark because of the stately structure of the Main Building. However, it goes without saying that it is the large number of distinguished judges and celebrated lawyers who have, over these one hundred and fifty years, made the High Court at Calcutta a pre-eminent seat of justice.

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1 This street is so named as it ends near the west gate of the Governor's House. Before the Governor's House was built, Esplanade Row was a straight road from Chand Paul Ghat to Dharamtollah Street.

2 The portrait of Impey by Zoffany hangs in Court room no.1.

3 We learn from J. P. Losty (Calcutta, City of Palaces) and also from H. E. A Cotton (Bengal: Past and Present) that Impey by then had given up his residence at the site of the present day Loreto House.

4 The Supreme Court is from a painting by Daniell. Since 1774, when the Supreme Court of Judicature was constituted, till the end of 1781, the Supreme Court functioned from a rented building, referred to as the Old Court House, which stood at the site of the present St Andrew's Kirk and was demolished in 1792. The Judges of the Supreme Court sat for the first time (as John Hyde, J. records) on 2 January 1782 "at the New Court House, which has been taken by the Company at the monthly rent of Rs 2,500" and "is near Chandpaul Ghaut and is near the road which bounds the Esplanade on one side" i.e. at 3 Esplanade Row (West). It was, according to William Hickey, "a noble pile of buildings" though, as H. E. A. Cotton in Bengal: Past and Present puts it, "it was more imposing inside than out, and there were some who did not scruple to say that 'there was not in the whole town a meaner building externally'. On the upper floor was the Grand Jury Room and downstairs was the Court Room where their Lordships sat."

The picture of the Old Court House is from a drawing by Col. Francis Swain Ward, and downloaded from the internet.

5 The Mayor's Court (with the old Writers' Buildings, and the original Black Hole obelisk in the distance) is also from a painting by Daniell.

6 Calcutta's first post office functioned from 1774, in the pre-postage stamp era, and was situated near the northern end of Old Post Office Street which was named after it. Old Post Office Street stretches from Esplanade Row (West) to Hastings Street. Interestingly enough, Hastings Street (now Kiran Shankar Roy Road) was built in 1800 or thereabout by filling up a creek that branched off the river Hooghly and meandered its way eastward past Wellington Square and along what is now Creek Row before meeting the river Vidyadhari, beyond the eastern fringes of the city.

7 The Old Fort was destroyed by Siraj-ud-Daulah's forces in 1756.

8 Besides the High Court and the GPO, Granville had also designed the Indian Museum and Calcutta University's erstwhile Senate Hall. These and other grand edifices of that era earned for Calcutta the sobriquet 'City of Palaces'.

9 It was one of the largest commercial buildings of the Middle Ages and served as the main market and warehouse for the city's flourishing cloth industry. The original structure was ruined inWorldWar I. It was rebuilt between 1933 and 1967 relying largely on the plans of the Calcutta High Court.

10 Desmond Doig, Calcutta: An Artist's Impression (Calcutta: The Statesman) 13.

11 Dhriti Kanta Lahiri Choudhuri, 'Trends in Calcutta Architecture, 1690 – 1903', Calcutta: The Living City, Vol I, ed. Sukanta Chaudhuri (New Delhi: Oxford University Press, 2010) 172.

12 Dhrubajyoti Banerjea, European Calcutta: Images and Recollections of a Bygone Era (New Delhi: UBSPD, 2005) 140.

13 Does the stentorian cry of the Marshal "Oyez! Oyez! Oyez!" still resonate in Court Room no. 11 after nightfall when the room is empty and bolted and locked from without? Some old-timers vouch it does. Some even mumble that on the odd, eerie night, the plaintive cry of some condemned soul can also be heard.

14 Rathin Mitra, Calcutta: Then and Now (Calcutta: Ananda Publishers, 1997) 41.

15 Now the Court rooms, the Judges chambers and some of the other rooms have been air-conditioned.

16 Cherchen now exists virtually in name only, the old charm is gone.

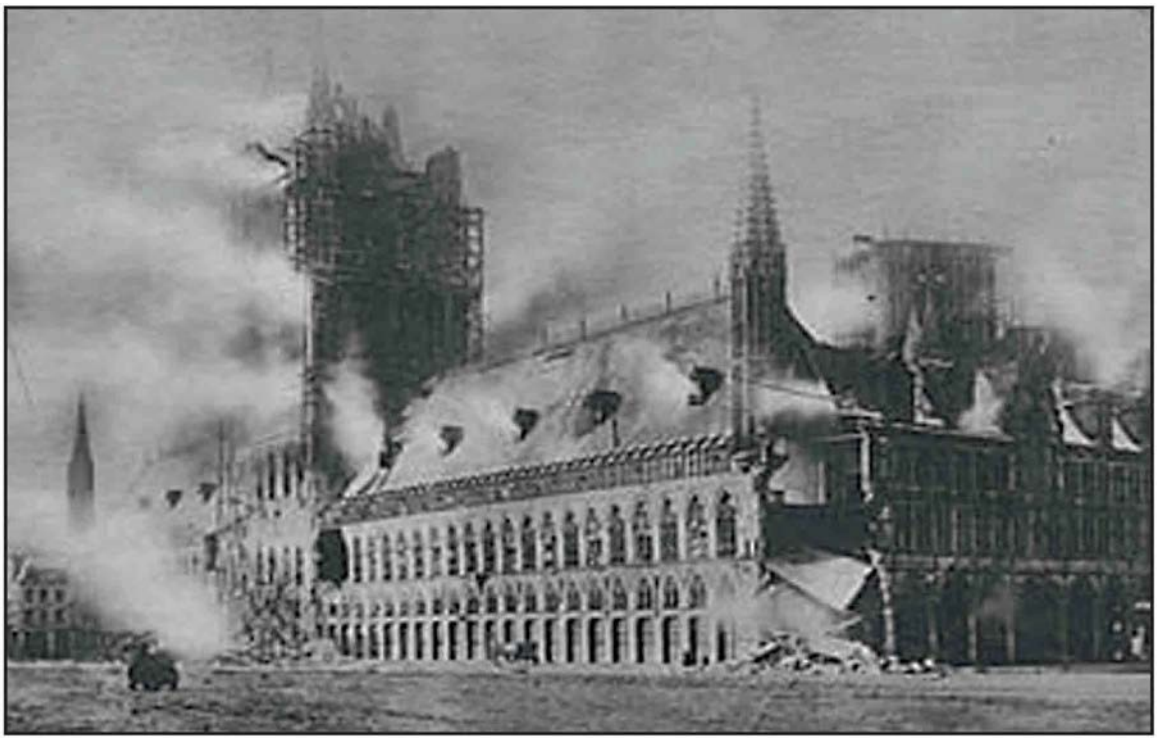
Sir Elijah Impey

The Old Court House (demolished in 1792) – sketch by Col. Francis Swain Ward

P1

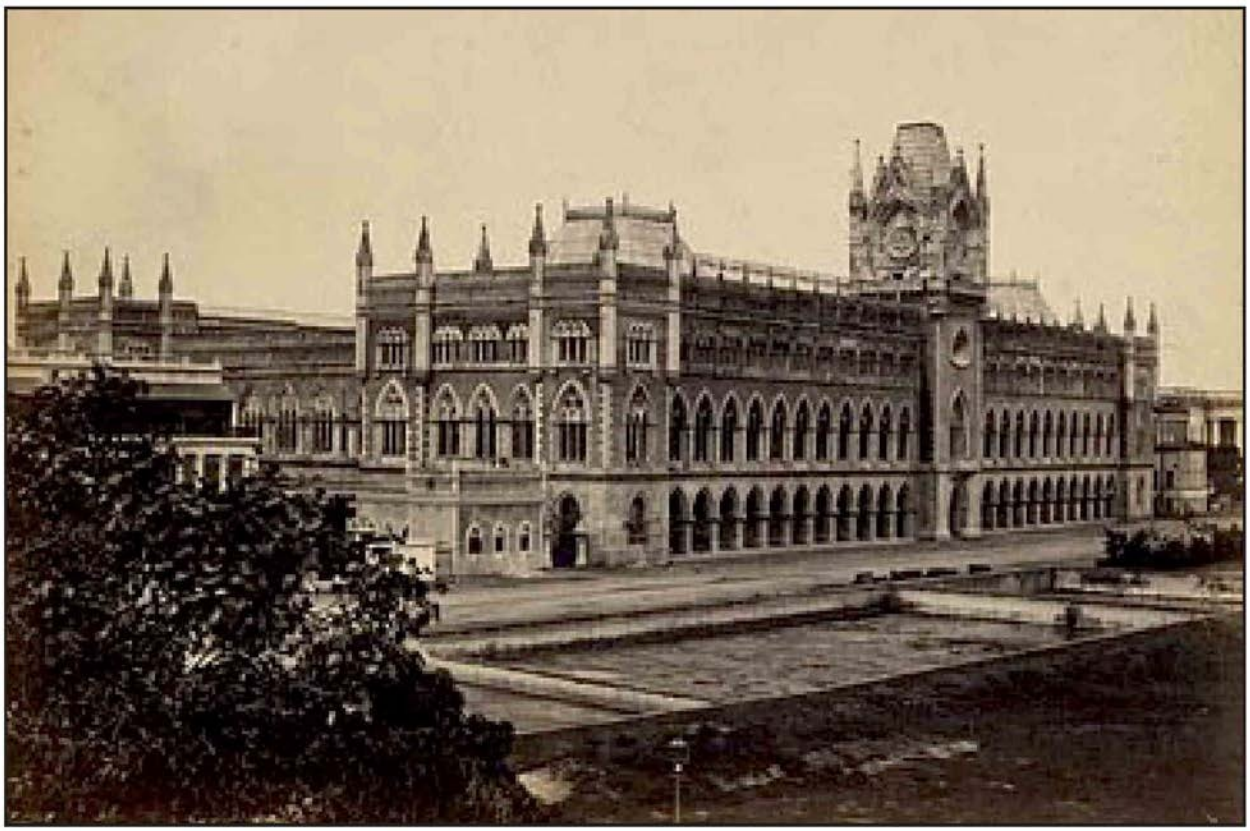
The Mayor's Court Circa 1786

The Supreme Court of Judicature at Fort William in Bengal Circa 1787



The original Cloth Hall at Ypres damaged by German artillery shells in 1914

The High Court at Calcutta nearing completion



P3

The Main Building of the High Court at Calcutta

P4

The stately rows of columns running along the ground floor on the side facing the Maidan

The Quadrangle and Garden

P5

The Judges' Corridor

P6

The Lawyers' Corridor

P7

The Centenary Building

The Sesquicentenary Building

P8

COLUMNS AND CAPITALS:

A note on the architectural decoration of the High Court

Amlan Das Gupta

(Photography and research: Sujaan Mukherjee)

The architecture of the Calcutta High Court's main building is justly admired. Commissioned in 1872, it was the handiwork of Walter Granville, then consulting architect to the Government of India. We are informed that he was employed from 1863 to 1868 for "the express purpose of designing public buildings in Calcutta" (cited, Jayewardene-Pillai, 2007: p. 179). At least two other notable Calcutta structures are attributed to Granville: the General Post Office (1868) and the University Senate House (c.1872). Granville also worked on the Indian Museum and designed, while in the employ of the East Bengal Railway, notable buildings in Kanpur.

The Calcutta High Court, as is well known, was built on the model of the Lakenhalle or Cloth House, a 13th century market building in the Belgian town of Ypres. As the original building of the Lakenhalle was destroyed in the First World War, it is difficult to know exactly how closely Granville adhered to his model. He reduced, on structural grounds, the height of the clock tower: in spite of the legend that Granville's plan was consulted during the rebuilding of the Lakenhalle, it is likely that there were other alterations as well, large and small.

This note looks at the intricately designed capitals, a specific, but distinctive, feature of the architecture of the High Court: one that has survived almost intact from the original design. The main building is now rather hemmed in and a clear view of the frontage is impeded, but the careful observer cannot miss the magnificence of the row of columns on the side facing the Maidan. There are twelve groups of columns on each side of the main gate, with the pillars themselves arranged in groups of four. The columns near the gate and at the far ends are in groups of two. The capitals themselves were carved out of Caen stone, a cream coloured limestone quarried in Normandy and much favoured by sculptors and architects. The capitals are both square and octagonal, harmoniously bearing the heavy weight of the arches. The capitals are the most distinctive decorative feature of the existing design.

The capitals of the High Court building are intricately carved, and also sharply individuated, with swathes of heavy foliage arching upward from the bases and

culminating in extruding bunches of leaves and flowers. Inset in the foliage are figures and faces, both of human beings and animals. In the octagonal capitals the figures are in two tiers with raised "primary" faces having elaborate carved representations, and a "secondary" face, with more decorative motifs. The intricacy and technical finish of the carving is truly impressive, but what most commands attention is the content of representation: the figures themselves.

The practice of using human figures and animal forms (and also fantastic imaginary forms, such as grotesques) as architectural decoration is a very old one in Western art. Its most elaborate and systematic use is in Gothic architecture of the 13th century, most significantly perhaps in France: as historians of this style have shown, the medieval cathedral was designed as one vast allegorical system, where the smallest part was meaningful and in harmony with the grand design of the whole. The celebrated historian of the Gothic style, Emile Male, writes:

To the Middle Ages art was didactic. All that it was necessary that men should know – the history of the world from the creation, the dogmas of religion, the examples of the saints, the hierarchy of the virtues, the range of the sciences, arts and crafts – all these were taught them by the windows of the church or by the statues in the porch. (Male, 1973: p. vii)

Inasmuch as allegory is a matter of form rather than content, the context of production and reception of signs, rather than a fixed and immutable system of significations, the art of the period constituted an allegorical system which all beholders were trained to recognize, not so much from scholarly knowledge as the habits and practices of everyday life. Long after this allegorical system decayed and was replaced by other forms of artistic signification, many of the individual figures and motifs survived in architectural practice, by now largely denuded of their original significance. Renaissance iconography – for which we have the witness of both painting and literary texts – inherits the allegorical order in a more piecemeal manner, but invests individual images with a host of new significances drawn from a variety of sources, both pagan and Christian.

The "Gothic revival" of the 19th century gave new currency to these designs and motifs and this is the immediate stylistic context of many of the major colonial architectural experiments. Yet, as we know, Granville was working on the design of a thirteenth century building, and even if at this distance of time and destruction, it is difficult to say to what extent Granville was seeking to reproduce the decorative ornamentation of the earlier building, it would obviously be unwise to look for allegorical correspondences for complex iconographic significance in the High Court capitals. Even as these figures tantalize us with possible cultural references, the double separation – of time and space – dissociates them from their origins, and makes them literal rather than metaphoric in nature.

The images exist as it were as empty signifiers, awaiting replenishment of

meaning in the beholder's gaze. They may stand, as the entire building would do, as a celebration of colonial law and order. Equally, undoubtedly there would be some who would be able to read into them other layers of meaning. It might be argued that the appropriateness of the representations of these figures resides in a symbolic reconfiguration, where these figures become meaningful in the context of sovereign claims of the High Court in Calcutta, its inclusive jurisdiction over all classes and manner of people, as well as powerfully imaging the ideology of the pax Britannica.

What is so striking about the figures so eloquently represented on the columns of the High Court is their exuberant variety. There are musicians, soldiers, farmers and agriculturists, scribes; there are representations of justice, learning and peace; there are stylized animals and heads inset in heavy foliage. Some of the figures may remind us of specific themes in Gothic decorative art, such as the occupations of the seasons: Male reproduces figures of agricultural activities appropriate to various months of the year: from Notre Dame in Paris of a man sharpening a scythe, noting that it represents the month of July, the preparation for the harvesting (Male, pp. 73-74). One of the capitals of the High Court is of a man carrying a plough (Fig. 1); another, a sickle and a sheaf of wheat.

Again, there are several figures representing musicians (Fig. 2): Male studies them in the context of the representation of the arts and sciences of the medieval quadrivium. The order or arrangement of the figures does not obviously suggest a fixed pattern. There are a whole series of musicians: figures beating drums, cymbals and tympani, playing lutes, harps, trumpets and flutes. Some figures are apparently singular and isolated: a man holding an anchor and his hand held up in a gesture of reassurance (Fig. 3) may suggest trade and commerce, the naval profession – or indeed, a more learned mind could see it a figuration of Hope, as the use of the anchor in this context dates back to the earliest Christian times. There are a number of martial figures bearing weapons, including what appears to be a female warrior.

The figure holding a compass (Fig. 4) is flanked on both sides by heraldic birds, similar to gryphons. The representation obviously seems to be of mathematics, specifically geometry: in the present context it might operate merely as a symbol of learning. There are other representations of figures bearing books, scrolls and writing implements. Others more directly reflect on the specific nature of the building project: there is a figure holding a sword and scales, easily recognizable as Justice (Fig. 5), and others bearing or displaying wreaths and crowns.

A final word might be added on a particular device used several times on the columns of the High Court. As indicated earlier, the figures are in two tiers or rows. Both rows have figures of animals, both natural and mythical, grotesques, as well as of human heads. If these can be understood in the light of a standard vocabulary of decorative architectural ornamentation, one figure recurs a few times of a human face thickly encrusted with heavy foliage (Fig. 6). These foliate heads are realistic rather than stylized, are in repose, and inspire awe and fear. They are thus quite different

from the popular ornament of the “foliate grotesque” much used as ecclesiastical architectural ornaments. The motif of the “green man” is much discussed, and while these figures clearly establish a relation between the head and the surrounding vegetation, they avoid any trace of the grotesque – which is of course in evidence in other ornaments.

These magnificently carved architectural figures are a little known artistic treasure of the city, and are, for the most part, in a surprisingly good state of preservation. One hopes that they will be equally well cared for in coming years.

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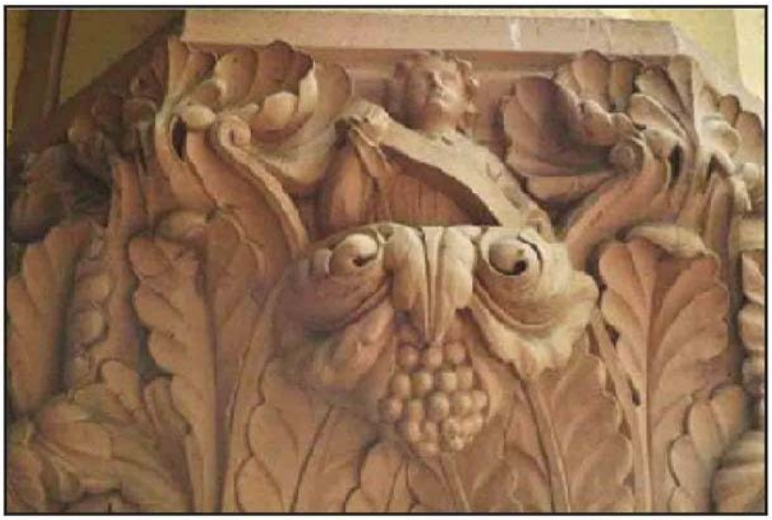

Fig. - 1 Man with plough

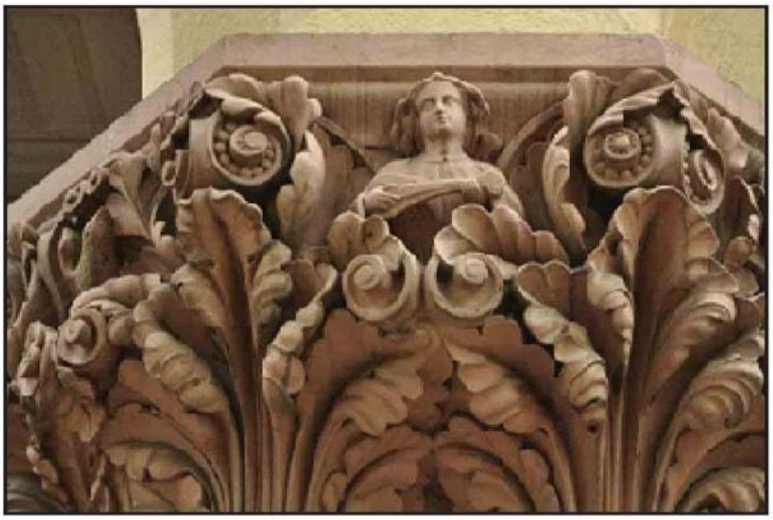

Fig. - 2 Musician

Fig. - 3 Man with anchor

P9

Fig. - 4 Man with compass and tablet

Fig. - 5 Justice

Fig. - 6 'Green Man'

P10

A RICH HERITAGE

Pradip Kumar Ghose

We are celebrating 150 years of the Calcutta High Court. At this juncture, it may well be worth remembering the well-organized judiciary that prevailed for over a century prior to the establishment of the High Court.

The East India Company initially set up their trading centres in Bombay and Madras and gradually expanded their trading by establishing factory in Bengal. The Company's trade in Bengal expanded rapidly, and by 1681 Bengal was made a separate presidency.

To resolve civil disputes, the Company established Mayor's Court in 1726 which was a court of record. Against decisions of this Court appeal lay to the Governor or President-in-Council, and in important cases further appeal to the King-in-Council. English criminal law was also introduced at this time when the Governor and five senior members of the Council held quarter sessions four times a year. So, from the early part of the 18th century a well-defined judicial system was taking shape where the civil jurisdiction was administered by Mayor's Court and the criminal jurisdiction was administered by the Justice of Peace.

After the grant of dewani in 1765 to the East India Company, the Committee appointed by the Court of Directors drew up a plan for effective administration of justice in Bengal and for establishment of Court. The Civil Court was styled as 'Dewani Court' and the Criminal Court as 'Foujdari Court'. At the chief seat of the Government, the Company established 'Sadar Dewani Adalat' and 'Sadar Nizamat Adalat'.

By the Regulating Act of 1773 a Governor General, with four Councillors, was to be appointed and Warren Hastings was appointed the first Governor General. The Governor General-in-Council was given the superintending power over the Government of the Presidencies of Madras and Bombay, and also Bencoolen which was a British settlement in Sumatra. The supremacy of the Bengal Presidency was definitely declared. By the 1773 Act, the Supreme Court of Judicature at Fort William in Bengal was established by a Royal Charter and it consisted of a Chief Justice and three other Judges. This was the first Supreme Court of Judicature in India. The Supreme Court of Madras was established in 1800 and that of Bombay in 1823. The Supreme Courts were empowered to exercise Civil, Criminal, Admiralty and Ecclesiastical jurisdictions.

The jurisdiction of the Supreme Court of Bengal extended over Bengal, Bihar and Orissa. By the East India Act of 1793, the Supreme Court of Bengal, which was situated at Calcutta, was given the power and authority to try offences committed on the high seas. These trials were conducted according to the laws and customs of the admiralty of England. The Supreme Court of Bengal was also empowered to determine all types of action in respect of the inhabitants of Calcutta with regard to their inheritance and succession to land, rent, goods and all matters of contract, etc.

In case of Mohammedans, they were to be determined by the laws and usage of the Mohammedans, and in case of Hindus by laws and usage of the Hindus. If one party was a Mohammedan and the other party a Hindu, then the dispute would be sought to be resolved by the laws and usage of the defendant. The Mohammedans and the Hindus were thus governed by their respective personal laws which were derived through divine authority and enforced by religious and civil sanction in all the States.

In case of Mohammedans the laws of the Koran, and in respect of Hindus the Shastras were adhered to. Moulavis or Brahmins were called to attend Court for the purpose of expounding the law and giving assistance in framing the decrees. There were important branches of law, such as the law of contract, where there was no sufficient guidance, and the judges in such cases applied the principles of English law in the name of justice, equity and good conscience.

In cases where one of the parties to an action was not a Hindu or a Mohammedan, the Courts were guided by the principles of justice, equity and good conscience so as not to deprive any party of any property. Likewise, in cases where there was no authority in Hindu or Mohammedan texts or enactments, the judges applied the principles of justice, equity and good conscience as per English laws and practice. In this way, gradually local laws and usages were modified and superseded by English laws. Incidentally, appeals against the judgments of the Supreme Court were preferred to the Judicial Committee of the Privy Council.

Decisions of the Supreme Court of Bengal were well-compiled and reported by Barristers T. C. Morton, William A. Montrieu, John Williamson Fulton and Charles Boulnois, as also Morley who prepared a digest of cases decided by Sir Edward Hyde East. The Sadar Dewani Adalat cases were also reported, and it was W. H. Macnaghton, the Registrar of that Court, who did the reporting and compilation. Decisions of the Privy Council were reported in Moore's India Appeals and Sutherland's Privy Council Judgments.

The earliest judgment of the Supreme Court judicature which aroused great deal of controversy was the trial of Nanda Kumar in 1775. The legality of Nanda Kumar's conviction for forgery was questioned.

Before the Supreme Court was abolished, the trial of Reverend James Long for publication of Nil Darpan evoked a great deal of sympathy from the native inhabitants of Calcutta. The trial before Justice N. L. Wells lasted from 19th to 24th July 1861. Notwithstanding Reverend Long's eloquent and stirring address to judge and jury, he was convicted and fined Rs. 1000, which was paid by Kali Prasanna Singhi."

During the time of Lord Cornwallis, provincial Courts were directed to be bound by all regulations framed by the Governor General-in-Council at Fort William affecting the rights, persons or properties of the natives.

In criminal cases the Courts continued to apply, as before, Mohammedan criminal law as administered by the Moghuls. However, when any principle was found unsuitable or repugnant, enactments based on English principles were made to modify, amend or repeal the same. In due course, Mohammedan law was superseded by the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1861. The first edition of the Code of Civil Procedure was passed in 1859. All these happened before the establishment on 1st July 1862 of the High Court of Judicature at Fort William in Bengal.

Another feature of the judiciary was the appointment of Justices of Peace. The Justices of Peace were to have jurisdiction in cases of assault or trespass committed by British subjects over natives and also in small debts owed by the British subjects to the natives.

When the Governor General-in-Council was expanded in 1853, the Chief Justice and another puisne judge of the Supreme Court of Bengal were to be members of the Council.

So, before passing of Indian High Court Act, 1861, a well-administered judicial system was prevailing and was ever expanding through enactments of the British Parliament and through legislation made by the Governor General-in-Council in India.

The Indian Supreme Court Act abolished the Supreme Courts of Bengal, Bombay and Madras and also the Sadar Adalats. The jurisdiction of the Chartered High Courts was regulated by the Charter, and the tenure of the Chartered High Court judges was according to the pleasure of the King / Queen, while the salary and pension were determined by the Secretary of State-in-Council.

In 1907, the salary received by the Chief Justices and the puisne judges of the three Presidencies was:

a)	Chief Justice, Calcutta High Court	:	72,000/- p.a.
b)	Chief Justice, Madras High Court	:	60,000/- p.a.
c)	Chief Justice, Bombay High Court	:	60,000/- p.a.
d)	Puisne judges, Calcutta, Madras and Bombay	:	40,000/- p.a.

Each of the Presidencies was to have an Advocate General appointed by the King / Queen under a Royal signed manual. Interestingly enough, the Advocate General of Bengal alone was given the status of law officer of the Government of India.

At its birth, the High Court of Judicature at Fort William in Bengal (now known as the High Court at Calcutta) had inherited a well-augmented and administered judicial system which made it the country's premier judicial institution, and over the years its Bench and Bar have endeavoured to live up to such elevated status.

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JUSTICE, POLITICS AND THE CONTEMPORARY TIME : THE COURTS AS A SITE OF COLONIALITY IN BENGAL 1862–1915

Dr Mahua Sarkar

In this paper, I have treated the evolution of the Calcutta High Court as the official site for the production of the various discourses on justice and politics in contemporary Bengal. It covers a period when the High Court was still bearing the connotation of 'The High Court of Judicature at Fort William in Bengal.' The name is important, as it reflects a time space, attached to the earlier era of colonialism. The Fort William in Bengal was a symbol of the initial captures. The early experience of the administration of justice, as evident from the trial of Nanda Kumar, could not project the image of liberty and equity in an all-pervasive way. The early conquests and rebellion, including the Great Revolt of 1857, were linked up with a sense of discomfort about the nature of the colonial rule. This phase was followed by the phase of consolidation manifested in the Universities Act and The High Courts Act and of course The Queen's Proclamation of 1858.

Since 1858, there was an apparent change in the nature of the foreign rule. The foundation of the High Court in 1862 represented a complete unification and disciplination of the system of judiciary in India. Notwithstanding the existence of an indigenous tradition, the colonial rulers tried to justify their rule with a distinctive western judicial model. A sound and efficient judicial system, according to their criterion helped them to make the command of the gun ethically sanctioned. The mind set generated in the High Court resembles what Jean-Paul Sartre describes as the 'relentless reciprocity' of the coloniser–colonised relationship.[1]

The British rulers scrupulously controlled each phase in the development of the High Court. The culture of the lawyers grew out of an unequal contestation between the traditional and the colonial ideologies. The psychological imposition of an external order and technical legitimacy of an ideal yet alien rule have largely restricted their originality. The self-ideal of the Indian lawyers became subservient to their professional interests. In fact, all the important functionaries were linked, in some ways or other, with this process of hegemonisation of British justice through the working of the Calcutta High Court.

Historians, specially scholars (somehow belonging to the Third World) have written critically about this colonial system of law and justice.[2] Presently, a serious emphasis is being given to know the attitude of the so-called illiterate masses towards this system. It is very difficult to trace this attitude through any direct empirical evidence. But the tensions and disquiet within the society and the stray remarks of the

European as well as the Indian elite show that the European jurisprudential practice, with its expenses, delay and complications, was unintelligible, alien and beyond the reach of the common man in India.

I think that there is a lacuna of historical research on the working of the High Court. Historians have mostly concentrated on the earlier part of the colonial administration. Also, there is a general ignorance of the different phases and transitions in the evolution of the British judicial system. Comments on the judicial system are made in a holistic way in general.

At the initial stage, the East India Company was cautious enough to appropriate the indigenous system of personal laws of the Hindus and the Muslims. The orientalist phase of the early 18th century saw the translation of the indigenous legal texts. The East India Company, at its initial stage, was not eager to directly intervene in the personal matters of the colonized. It was cautious and hesitant at this early time. The exercises involving the codification and translation of the Hindu and Islamic laws by the Company's government specially the rules relating to property, marriage, caste and inheritance were framed to give the subjects their own laws. The Pundits and the Maulavis, associated with the British judges, would sign the report and help in passing the decree.[3]

In this context, scholars like Nandini Bhattacharyya Panda have considered the Saidian premises from the perspective of Indian legal history. She argues in her recent book that the 'Hindu Law' as administered by the British to be the civil and personal laws of the Hindus did not represent any authentic indigenous tradition. It was, on the contrary, a colonial construction designed to accommodate the economic interests and imperial designs of the new rulers in Bengal.[4] The argument says that the original tradition was appropriated and reinvented by pundits, projected as jurists or legal theorists.[5] She cites from the translation of the two codes – Vivadarnavasetu (published as The Code of Gentoo Laws in 1772) and Vivadabhangarnava (A Digest of Hindoo Laws published in 1801) and states that in the process of translation the ancient textual tradition deviated significantly from the tradition itself.[6]

Nandini's work reveals the discursive traps that Orientalist writing had laid and sought to establish the conditions within which many other forms of representation might become possible. Yet it successfully cancels the illusion of neutrality or disinterestedness on the part of the colonisers' attempt to know the indigenous laws.

The personal laws of the Hindus and the Muslims naturally received the flair of the European modern. Apart from that, the appropriation of law from the Sanskritic or Quaranic texts ignored the multiple legal systems which were in vogue among the hundreds of tribals and marginal groups of Bengal. Law was homogenised in the name of modernisation, it created a block of power which exploited the masses in the name of law.

Still, the process was not done hastily. Queen Elizabeth I's Charter of 1600 had granted some limited legislative and judicial powers to the East India Company. These powers "Contain the germ out of which the Anglo-Indian codes were ultimately developed".[7] Later charters of 1622, 1669 etc. began to give gradual power to the East India Company to make laws and administer justice.[8] In 1772, Alexander Dow, an officer in the army of the East India Company, wrote that to leave the natives to their own laws would be to consign them to anarchy and confusion. It was, therefore, necessary for the peace and prosperity of the country that the laws of England in so far as they did not oppose the prejudices and usages of the Indian should prevail.[9]

Accordingly, the dual systems of Diwani (revenue matters) and Faujdari (criminal matters) existing in the indigenous judicial system were retained, though the plan of Hastings to establish two superior courts of justice, the Sadar Diwani and the Sadar Nizamat Adalats, was actually the first British Indian Code. From the beginning of the colonial rule, the judicial structure was gradually formalised through the interaction of two parallel discourses – the colonial vis-a-vis the company rule and the other, the imperial, i.e. the rule of the crown. While the discourse of the company was represented by governance and order, the imperial was constituted by a supranational deterritorialized discourse of justice based on natural law.[9a]

Recently, Mithi Mukherjee has argued in her book in the same way that colonial imperialism was not homogeneous, but rather a complex one, internally divided between two parallel discourses, namely colonial and imperial.[10]

This natural law of India according to Mukherjee was typically western in its essence, it was rooted neither in the common law or natural law tradition of England, nor had it any connection with the common law heritage of India.[11] The system of justice, which represented the 'imperial', was another kind of colonial imposition coloured by western modernity. The Montesqueian theory of separation of powers was indeed a mockery in the colonial situation. According to historians, this tradition of judicial heritage was continued in post-colonial India. Mukherjee argues that the Gandhian system of justice offered an alternative to the colonial paradigm, but it was not developed into a distinctive formal system. The Gandhian philosophy of justice was ultimately merged into the bourgeois system of Nehruvian administration. The Indian judicial system could not develop its own character on the basis of its own diverse common law traditions.[12]

Taking from Mukherjee's arguments, I argue in this paper that the Gandhian alternative was not an exception. Right from the early days of colonial rule, the people were not unanimous about the implementation of justice. Like nationalism, justice or bichar in colonial India was never acknowledged in the 'homogeneous empty time' but rather in the 'heterogeneous time' of modernity. The common people, i.e. the peasants and the organised or unorganised working class did not internalize the ethos of justice, even when they participated in the judicial procedures of the

courts. They had very different understandings of justice derived from their dissimilar life experiences. Justice did not mean the same thing to all people. In this country, the vast majority of the population were so unevenly touched by modernity, that there developed different paradigms of justice according to it. Bichar was also a notion traditionally bound with dharma or religious ethics. It was spiritually experienced in the inner space, inspite of the external subjugation to a foreign race.

Moreover, the common law traditions, on which a judicial system can reconstitute its formal structure of law, is generally based on customs and heritage of the land. The history of judicial proceedings in colonial Bengal shows that the co-existence of the dual frameworks of custom and formal law was not peaceful, but fraught with tensions and contradictions, with adverse impacts for the society in general. The definition of the marginal groups, the tribals, for instance, in colonial legal system was basically of three kinds, as 'predators', as 'rebels', or as 'people' to be anglicized.[13]

The idea of nativity, inferiority and backwardness was intrinsically related to these words. For example, during the later half of the 18th century, the Saura Pahariyas of the Rajmahal hills of Bengal featured constantly in the judicial, legislative and revenue Consultations of the East India company at Fort William.[14] The epithets 'wild', 'savage', 'bandits' occurred repeatedly in the official papers. Mountstart Elphinstone commented on the Bhills like this – ''Smarting under the broken pledges of the former native government and rendered savage by the wholesale slaughter of their families and relations, the Bhills were more than usually suspicious of a new government of foreigners, and less than over inclined to submit to the bonds of order and restraint … They are a wild and predatory tribe and though they live quietly in the open country, they resume their character, whenever they are settled in a part that is strong, either from hills or jungles."[15]

Later, in 1871, the Criminal Tribes Act clubbed various tribes as 'criminals', 'encroachers,' 'dacoits', 'thieves' and many such connotations, keeping these people, beyond the paradigm of civilization itself. The reports of several cases, like the trial of Birjoo Santal vs. Government, 1856,[16] the trial of Beerul vs. Government and Daroo, 1859,[17] the trial of Mata, Sarda, Rando and Topary vs. Government and Mussamut Rangree, 1859[18] show that the trajectory of the judical verdict was two fold, replacement of 'disorder' by 'order', and secondly 'narration', without analysis, as a part of the civilising mission. In all these cases, the notion of othering the alien, tribal world, in terms of 'progress' and 'backwardness' had hindered the advancement of the judicial system itself.

The earlier cases which I have referred to were all related with the problem of witchcraft in Bengal, and as a contrary picture to the court cases, I would refer to Khullana's trial by ordeals, even by so-called divine evidence, as has been cited in Mukundaram's poem, Chandimangal, written in the 16th century.[19] I would not say that the latter, i.e. Khullana's trial (where suicide was also a sign of honour) was an

ideal case establishing gender equality, but I would refer to the poem's assumption of multiple, ranked and overlapping gender roles and the marginal criticism of patriarchy. It was absolutely different from the ideological framework of binaries, within which, the colonial judicial administration resolved the women's issues: material / spiritual, outer / inner world / home and Western / Indian.[20]

Hence I emphasize on the main argument of the paper that the evolution of the judicial system in the colonial period could not bring justice to the people, particularly men and women of the peripheries. The trajectory of the colonisers themselves was not unilinear on this issue. Mithi Mukherjee refers to the arguments of Edmund Burke against Warren Hastings in the famous impeachment trial.[21] Burke spoke about a deterritorialised imperial justice, which would assert judicial sovereignty over the Company's government.[22] Mukherjee argues that the historic conflict between the Supreme Court and the Governor General's Council has been wrongly interpreted by contemporary writers as a "clash of powerful personalities in an environment of insecurity and anarchy in the early days of the Company's rule."[23] She gives the only example of this dominant historical interpretation from Busteed's 'Echoes of Old Calcutta'.[24] Contrary to that, I find that the comments of many contemporary scholars and officers, and interested persons did highlight the essence of this conflict, apart from personal hunger for power and jealousies of the personalities involved. Right from the foundation of the Mayor's Court in 1726, the European jurists were confused about the territorial jurisdiction of the Court. The Charter of 1724 did not define anything and the problem of undefined jurisdiction was tended to be solved by the Charter of 1753. It expressly stated that unless both the parties assented, the Mayor's Court should not try the cases arising between Indians. The conflict of opinion existed from the beginning of colonisation in Bengal and was later intensified. Herbert Cowell, the eminent legal theorist in India commented in 1872 that the establishment of The Supreme Court in 1773, signalled the triumph of the party in England, which desired a greater intervention by the English Government and Parliament in Indian affairs and a greater control of the Crown over the Company's proceedings.[25] H. E. A. Cotton in his 'Calcutta Old and New' remarked that the main purpose of the Supreme Court was "to protect the natives from oppression and to give India the benefits of English law."[26]

The tussle between the Court and the Government projected the inner tension of the implication of imposing a foreign system in the name of justice and was continued in the later period. P. C. Ilbert, another law member of the Legislative Council criticized the Regulation Act thus – "the provisions of the Act of 1773 are obscure and defective as to the nature and extent of the authority exercisable by the Governor General and his Council, as to the Jurisdiction of the Supreme Court, and as to the relation between the Bengal Government and the Court."[27] P. C. Stanhope, in his 'Genuine Memoirs of Asiaticus' commented on the feelings of the Calcutta people in 1784 – "The inhabitants of Calcutta seem to be not a little displeased at the new form of Government, which the Judges, or, as they call themselves, the Supreme Court of Judicature in Bengal have already begun to introduce. The Mayor's Court is

abolished and the same legal process which is used at Westminster now prevails."[28]

Two things are worth mentioning here. The people who are remarked upon were not the people of the country, they were the European community in Calcutta. The original people were silenced in the discourses. Herbert Cowell commented that the natives regarded the Supreme Court with utmost abhorrence. The case of Nanda Kumar and the famous Cossijurah case exposed the implications of the Court on the people, but no reaction was cited. The second thing to be noted is that there was no question of the prevalence of the same legal process which was used at Westminster. The British legal heritage was rooted in its own common law tradition, which could never be inculcated into the Indian soil. The Indian experiment saw a peculiar amalgam of customary laws of some of the Sanskritic and Quranic traditions with what the British began to term as 'equity'.

Severe criticisms were also found as empirical evidences, on the confusion regarding Indian laws. In 1822, Charles Grey, Chief Justice of Bengal, had pointed out the "utter want of connection between the Supreme Court and the provincial courts and the two sorts of legal process which were employed in them."[29] Erskine Perry, Chief Justice of Bombay, also referred to 'the strange anomaly' in the judicial condition of British India.[30] The crux of the problem was never sorted out in the best possible way, for that would go against the idea of coloniality itself.

Gradually, therefore, the idea of justice was made into an inseparable part of the discourse of governance.[31] That discourse was grounded in the ontology of India as a country of total disorder, violence and chaos. To all Europeans, either of the Crown or of the Company, India was a permanent Hobbesian 'state of nature' ruled by the metaphor of a nasty, brutish and solitary life, and the only solution was to be found in the British rule.[32] In 1898, J. F. Stephen, the British legal historian, wrote a letter to The Times about his perception of British rule in India "The British Power in India is like a vast bridge over which an enormous multitude of human beings are passing … and will for ages to come continue to pass from a dreary land, in which brute violence in its roughest form had worked its will for centuries – a land of cruel wars, ghastly superstitions, wasting plague and famine – on their way to a country … which is at least orderly, peaceful and industrious, . . . One of its piers is military power, the other is justice, by which I mean a firm and constant determination of the part of the English to promote impartiality and by all lawful means, what they regard as the lasting good of the natives of India. Neither force, nor justice, will suffice by itself. Force without justice is the old scourge of India, wielded by a stronger hand than of old justice without force is a weak aspiration after an unattainable end."[33]

Naturally, after 1857, a much greater emphasis was given on justice as an ideal of governance. The monarch or the Queen became the personification of justice. From being a defendant, the colonial government in India was repositioned as the mental and impartial judge, which would distribute justice between the warring communities it ruled.[34] To bring equity among subjects, the High Court was

established at the head of the administration of justice in Bengal. It inherited all the functions of the Supreme Court and Sadar Diwani and Sadar Nizamat Adalats which it replaced. Within the country, the High Court became the highest court of appeal and the Privy Council in England was the final court of appeal for the people of India after 1861.

Since then, many anomalies were retained, and the kind of equity the High Court decided to shower upon was always hampered by the complexities of colonial rule. Inspite of many alterations, the territorial pattern of the High Court's jurisdiction remained the same. Though the city had vastly expanded between 1726 and 1861, the Original Side of the Calcutta High Court succeeded the territory of the Mayor's court and the Supreme Court, while the mofussil and subordinate courts throughout the province and the appellate side of the Calcutta High Court were successors of the Company's Courts. Mr. E. C. Ormond, an advocate of the Calcutta High Court, was once bold enough to comment sarcastically, 'There would be a storm of protest if it were to be suggested today in England that the Original Civil Jurisdiction of the Supreme Court of London should be confined to the territorial limits of the City of London.'[34]

Mention is to be made of a leading case of 1870, which went against the concept of liberty, altogether, not to speak of equity, Ameer Khan, a merchant, was arrested on 18th July, 1869, at his house in Calcutta and taken to Gaya, where he was confined to prison. On August 25, 1870, he was removed to the Alipore Jail. There he was detained till the time of his trial. On 1st August 1870, an application was made to Justice Norman, for a writ of habeas corpus, to bring the prisoner before the court. The Judge decided that as the charge was of a permanent character, the principles which justified the temporary suspension of the Habeas Corpus Act in England also justified the Indian legislature suspending the writ by Regulation III of 1818 and Act III of 1858.[35] Therefore, no such writ was issued in the case of Ameer Khan. This decision of the Calcutta High Court seemed to be quite unconvincing to many members of the Bar. They felt that in the claims involving the liberty of the subject people, the judges showed themselves to be more executive-minded than the executive itself.[36]

The Privy Council seemed to be far more alien to the people. Even the lawyers of the provincial courts were not acquainted with the mode of procedure in appeals to England and the great distance from India, or the huge expenses involved, in making an appeal to England made the Privy Council inaccessible to the poor litigants in India.

Throughout the early years of the working of the High Court, the conflict between the Government of Bengal and the Calcutta High Court became so intense that the matter had to be referred to the Secretary of State and was never resolved.

The problem lay elsewhere. The working of the High Court completed the

process of hegemonisation of British justice in Bengal. Equity could never be the synonym of niti or ethics in the Indian system of justice. The diverse, intimate and orally transmitted indigenous laws were excluded in the name of professionalism, order and modernisation. The moral and social effects of such a judicial system could never penetrate the inner domain of the society.

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32. Mithi Mukherjee, op.cit.

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THE LAST HUNDRED YEARS*
(1862-1962)

D. N. Sinha

A hundred years may be long or very short, it depends on how you choose to look at it. The macrocosm and the microcosm are only two faces of eternity, and as Justice Holmes said,— "all mathematical distinctions vanish in the presence of the Infinite." Compared to geological time, a hundred years is a mere flash of lightning, a drop in the ocean, a particle of sand on the littorals of Time. On the other hand, a lot of things can happen in a hundred years, and this particular hundred years with which we are concerned, has been a remarkable one. Two devastating World Wars ravaged the earth, and an Empire over which the sun did not set, disintegrated. After being confined for centuries in the dark dungeons of bondage, we stepped out into the sunshine of freedom and liberty. So, if the last hundred years has not been long, it has been momentous.

The task of writing the history of the High Court of Calcutta for the last one hundred years is not an easy one. The role which this proud institution has fulfilled in the history of India, during this hundred years, has yet to be assessed by historians. But in reality, Law and the Dispensation of Justice must be considered as timeless. It must be equated with human civilization itself, for without it, men are no better than wild beasts. Law is not an exact science, as Lord Halsbury reminds us. Despite the majesty and gravity with which its administration is properly invested, it is a very human affair after all. It has to do, not with scientific axioms or scientific formulae, but with the everyday concerns of ordinary citizens. The raw material of the cases that come into Court is composed of the struggles and rivalries, the desires and emotions to which human relationships give rise. This material cannot be analysed with the cold precision of the chemist in his laboratory. The material is too intractable, too psychological, to be dealt with by any such mechanical process.

The High Court of Calcutta, with its beautiful Gothic structure, its imposing towers, and its quaintly carved colonnades of Caen stone, fills us with a vision of beauty. But it would be a mistake to think of it as merely stone and mortar. The history of the High Court is the history of our joys and sorrows. It is the story of our own lives.

The city of Calcutta, in which the High Court is situated, is not an ancient city. It was founded by Job Charnock in or about the year 1690 and has arisen majestically out of a swamp. There is room for a difference of opinion on the point as to the value of our British connexion. But this much is certain, that we owe to the British a deep

debt of gratitude for the introduction of the Law-Courts and a system of dispensing justice based on the English pattern. Although our laws are moulded to our needs, they are inspired by the British system of jurisprudence, which fortunately happens to be one of the best systems that the world has ever produced. In recounting the story of the High Court, I must begin by giving a short history of the city of Calcutta, because the two stories are inseparable.

It was in the year 1600 that English merchants first came to trade in India. In that year, Queen Elizabeth I of England granted a Charter incorporating a company commonly referred to as the "East India Company", the correct name of which was "The Governor and Company of Merchants of London, trading to the East Indies". In 1698, another company was incorporated by a separate charter under authority of an Act of Parliament, under the name of "The English Company of Merchants trading to the East Indies". Eventually the two companies were amalgamated in the reign of Queen Anne, under the name of "The United Company of Merchants of England trading to the East Indies".

At first the English had their trading centre at Surat. They eventually obtained Sanads from the Moghul Emperors giving them the right of trading, and erected factories at various places in Madras, Bombay and Bengal. They had rivals in the French in Madras and the Dutch in Bengal. In or about 1650, the East India Company obtained permission from Sah Sujah, Nawab of Bengal, for trading in Bengal, and erected a factory or kuthi at Hooghly. Towards the end of the century, a serious quarrel broke out between the Company and the Faujdar of Hooghly. Job Charnock, the agent of the Company at Hooghly plundered and looted the town, whereupon the Nawabi fauj was despatched to take action against him. He removed himself from Hooghly and took refuge in the village of Sutanutty. A compromise was arrived at with the Nawab, and in 1687, Charnock came to stay at Sutanutty. With his acute perception he at once realised that it would be more advantageous to build kuthis at Sutanutty rather than at Hooghly, because it was more strategically situated for the purposes of defence.

What is now considered as Calcutta proper formerly comprised of three villages, viz., Sutanutty, Kalikata and Gobindapur. The area from Baghbazar canal up to Nimtola was known as Sutanutty. South of Nimtolla to Chandpal Ghat was known as Kalikata, and from Chandpal Ghat to the Adiganga was known as Govindapur. Before the arrival of the English, there was a big market at Sutanutty for the sale of cotton yam (Suta), where the Armenians and the Portuguese used to do business. Govindapur was named after 'Govindaji' the family deity of the Seths.

After establishing a kuthi at Sutanutty, Charnock tried to induce people to come and settle in large numbers under the protection of the English. Among the first settlers at Govindapur were the priests of the Kali temple which stood on the banks of the Adiganga, and which in all probability gave its name to the city of Calcutta. The entire area was infested by dacoits who waylaid pilgrims and attacked boats in small,

fast, river crafts. After the English established their kuthi at Sutanutty, trade expanded more and more. The Majumdars were the Zamindars of the three villages, Sutanutty, Kalikata and Govindapur. In 1698, the Company, with the permission of the Nawab, purchased the three villages from the Majumdars for a consideration of only Rs. 1300/-. At first, the building of fortifications by foreigners was prohibited by the Nawab. Eventually however, he approved of the building of fortifications by the English. The English built their first Fort in Kalikata, on the site between the present Koilaghat (formerly Killa Ghat) Street, and Fairlie Place, and the Europeans began to shift from Sutanutty to nestle under the protection of its guns. In 1699, the Bengal establishments were declared a Presidency, and the Fort was named after the reigning King William of England. Up to the middle of the 18th century, the English had not departed from the character of merchants and factors; they were the subjects of the Moghul Emperors, but they were not pre-disposed to be governed by the law of the Koran and remained subject to their own law, and were obliged to take measures for introducing and administering such law.

The British Crown granted to the Company certain legislative and judicial authority, to be exercised in their East Indian possessions although that authority was only intended to be exercised over their English servants and such Indian settlers as placed themselves under their protection. The Charter of Queen Elizabeth granted to the Company the power and authority "to make ordain and constitute such and so many reasonable laws, constitutions, orders and ordinances", as might be necessary for the good government of the said Company and for the better advancement and continuance of their trade and traffic. These powers were continued by successive Charters granted by James I, Charles II and William III. The Charter granted by Charles II in 1661 gave the Governor and Council of the several areas belonging to the Company, power "to judge all persons belonging to the Company that should live under them in all courses, whether civil or criminal, according to the laws of the kingdom and to execute justice accordingly." In 1683, Charles II granted a further Charter which provided that a Court of Judicature should be established at such places as the Company might appoint, to decide causes according to equity and good conscience or by such means as the Judges should think best.

About 17 years after the United Company was established under the Act of Queen Anne, the Directors of the Company petitioned King George I for permission to establish Mayors' Courts at Madras, Fort William and Bombay. This permission was granted by the Charter of 1726 and Mayors' Courts were established at these three places consisting of a Mayor and nine Aldermen. They were declared as Courts of Record and were empowered to try, hear and determine all Civil Suits, actions and pleas between parties. In addition to the Mayor's Court, a Court of Requests was also established in Calcutta by the Charter of 1753, for the determination of Civil Suits involving small pecuniary amounts.

For a consideration of the development to the present day of the Calcutta High Court, we must consider five separate periods. The first is before 1726, when the only

Courts were those operated by representatives of the Moghul or those established by the East India Company in its capacity as a Zemindar under the Moghul; and when there was no Court of any kind deriving authority or jurisdiction from the Crown. The second is between 1726 and 1774: after the establishment of the Mayor's Court in Calcutta which derived authority and jurisdiction directly from the Crown in England. During this time, the Company's Courts also continued to exercise jurisdiction concurrently and independently. The third period is between 1774 and 1862; after the establishment of the Supreme Court in Calcutta, which also derived its authority and jurisdiction directly from the Crown. During this period also, the Company's Courts continued to exercise concurrent and separate jurisdiction. The fourth period is from 1862 to 1950, after the establishment of the High Court in Calcutta, known as the 'High Court of Judicature at Fort William in Bengal'. Since 1862, the Company's Courts ceased to exist, with the taking over of the Company's responsibilities by the Crown, and both the High Court in Calcutta and the District and Subordinate Courts created in the mofussil, all equally derived jurisdiction and authority from the Crown only. The last period is after 1950, when the High Court of Judicature at Fort William came to be renamed as the 'High Court at Calcutta'. It has jurisdiction over the State of West Bengal and the Andaman & Nicobar Islands. The Charter establishing the Supreme Court was issued in 1774; in pursuance of the Regulating Act of 1773 (13 Geo III C 63) the Mayor's Court was abolished and the Supreme Court of Judicature at Fort William set up in its place.

Shortly after the grant of the Supreme Court Charter, unfortunate quarrels arose between the Governor General in Council and the Judges of the Supreme Court. There were established in the country two independent and rival powers – the Governor General in Council and the Supreme Court, the boundaries between whom were highly undefined, one deriving its authority from the Company and the other from the Crown. This conflict went on for 7 years. Owing to this conflict between the Supreme Court, the Council and the East India Company, the condition of civil and judicial administration in the province of Bengal became intolerable, so that ultimately it called for the intervention of Parliament. To remedy this state of affairs, the Act of Settlement was passed by Parliament in 1781. By this, the jurisdiction of the Supreme Court was clearly defined and the territorial limits were restricted in effect to the town of Calcutta. Matters touching the revenue of the Government were excluded. The Supreme Court at Calcutta continued to exist for a period of 80 years after the Act of 1781. During this period, it came to have an outstandingly excellent and honoured reputation of the highest possible character.

In August 1858 was passed an Act by Parliament in England, being an Act for the better government of India. On 1st September 1858 the Directors of the East India Company transferred all their possessions in India to the Crown, as well as the services of their civil and military officers. The transfer was announced by Royal Proclamation. Thereafter, the Act of 1858 was passed (24 and 25 Vict, c. 104) for the establishment of the High Court at Calcutta. The jurisdiction and powers of the High Court were to be defined by Letters Patent. In pursuance of the Act, Letters Patent

dated 14th May 1862 were issued. The High Court in Calcutta was formally opened on the 1st July 1862. In 1865, new Letters Patent replacing those of 1862 were issued. Roughly speaking, it may be said that the Original Side of the Calcutta High Court, even today, is noticeably the successor of the Mayor's Court and the Supreme Court, while the mofussil and subordinate courts throughout the State, and the Appellate Side of the Calcutta High Court are the successors of the Company's Courts. That is why in spite of the great expansion of the town of Calcutta in recent years, the original civil jurisdiction is absurdly confined to illogical restricted limits which do not even cover the whole town.

We must say something here about the other courts functioning in Bengal, besides the Supreme Court. In August 1765, Clive received the Dewani of the provinces of Bengal, Bihar and Orissa from the Emperor, Shah Alam, the titular sovereign of Hindusthan, on behalf of the East India Company. After the grant of the Dewani, the Company became responsible, not only for the collection of revenue, but also for the due administration of civil and criminal justice. The passing of the Regulating Act of 1773 and the setting up of the Supreme Court did not affect the existence of the Company's Courts, which continued to exercise jurisdiction concurrently and independently. In 1775, the Sudder Nizamat Adawlut, which dealt with criminal justice was removed from Calcutta to Moorshedabad. The Sudder Dewani Adawlut in Calcutta was located in a building to the south of the Race Course, now used as a Military Hospital. It was abolished sometime after the establishment of the Supreme Court in Calcutta.

THE SUPREME COURT

The Supreme Court at Calcutta at first occupied a building to the north-east of Lal Dighi (Dalhousie Square). Subsequently, the Supreme Court was shifted to a building near the junction of Esplanade West and Strand Road, a site on the western portion of the present High Court Building. An interesting account of the opening of the Supreme Court is to be found at the beginning of Smoult and Rayon's Rules and Orders of the Supreme Court (1839 edn). The first Chief Justice of the Supreme Court was the Hon'ble Sir Elijah Impey Kt., and the first Puisne Judges were the Hon'ble Mr. Justice Robert Chambers, the Hon'ble Mr. Justice Stephen Caesar Lemaistre and the Hon'ble Mr. Justice John Hyde. Several historic trials took place in the Supreme Court, including the celebrated trial of Maharaj Nuncoomar, for forgery.

Sir Elijah Impey. Sir Elijah Impey was a distinguished graduate of Cambridge (Trinity), being senior Optime and Chancellor's Gold Medallist. He was called to the Bar from Lincoln's Inn. In 1772, he acted as Counsel for the East India Company before Parliament. In 1774, he was appointed the first Chief Justice of the Supreme Court of Judicature at Fort William, which was established at Calcutta, under the Regulating Act of 1773, and remained in India for a little over nine years. In 1780, he was appointed Chief Justice of the Sadar Dewani Adawlut, in addition to his duties as Chief Justice of the Supreme Court, but without any additional remuneration.

Sir Elijah lived in Calcutta, on the site of a house (now the Loreto House Convent) behind the Roman Catholic Church in Middleton Row. The house was surrounded by an extensive deer-park, from which 'Park Street' has acquired its name. Previously it was known as Burial Ground Road. The high-light in the judicial career of Sir Elijah was the trial of Maharaj Nuncoomar, upon a charge of forgery. The facts relating to the case are as follows:

TRIAL OF MAHARAJA NAND KUMAR (Nuncoomar)

Nand Kumar, mentioned as 'Nuncoomar' in old records, was a high-class orthodox Hindu Bramhin. He acted as Governor of Hooghly under Nawab Siraj-ud-doula and was a person of great wealth and influence. In 1764, Emperor Shah Alam conferred upon him the title of Maharaja. Unfortunately, he became entangled in the web of local politics. Governor General Warren Hastings was embroiled in a bitter contest with the members of the Supreme Council. He had the support of Barwell, but the other three members – Clavering, Monson and Francis – were arraigned against him. Aspiring to gain the favour of the Supreme Council, Nuncoomar made accusations against Warren Hastings of bribery. He was promptly charged with having forged a Bond, six years ago, in the form of an acknowledgment of a debt said to be due to him from one Bolakidas, a banker. The charge was laid before Justice Lemaistre who requested the assistance of Justice Hyde and a commitment order was made. The law applied was the English Statute Law which made forgery, not a misdemeanour but a felony, punishable with death. A warrant was issued upon the Sheriff Mr. Mackrabie and on the 6th May 1775, Maharaj Nuncoomar was committed to prison.

The trial commenced on the 8th June 1775, before the Criminal Sessions of the Supreme Court, presided over by the Chief Justice Sir Elijah Impey, then sitting in the 'New Court House' near Chandpal Ghat, being the western side of the present High Court Buildings. There were twelve jurors, all Englishmen, and mostly officers of the Company. Mr. Ferrer was the counsel for Nuncoomar and Messrs. Jarrett & Foxcroft were his Attorneys. Counsel for the defence closed his evidence about midnight of 15th June, but according to the English rule of procedure, then prevailing, he was not allowed to address the Jury, as the charge was one of felony. On the early morning of 16th June, the Chief Justice began his summing up and at 4 o'clock the jury brought in an unanimous verdict of guilty. The Chief Justice, thereupon passed the sentence of death, all other Judges concurring. The Warrant of execution in those days was a copy of the cause list or calendar, signed by the Judges and handed to the Sheriff. Maharaj Nuncoomar showed exemplary courage during his trial and incarceration. Even after the sentence of death was passed, he did not lose his courage and dignity. This is what appears from a contemporary note written by Mr. Mackrabie, the Sheriff:

"On Saturday ...I came here about half an hour past seven. The howlings and lamentations of the poor wretched people who were taking their last leave are not to

be described. I have hardly recovered the first shock while I write this about three hours afterwards. As soon as he heard I was arrived he came down into the yard and joined me in the jailor's apartment. ...There was no lingering about him, no affected delay. He came cheerfully into the room. Seeing somebody look at a watch, he got up and said he was ready, and immediately turning to three Bramhins who were to attend and take care of his body, he embraced them closely, but without the least mark of melancholy or depression on his part, while they were in agonies of despair. ...He stood erect on the stage, and while I examined his countenance as steadfast as I could till the cloth covered it, to see if I could observe the smallest symptom of fear or alarm, but there was no trace of it..."

It is generally considered that Nuncoomar was falsely charged and unfairly tried. It is even alleged that Sir Elijah was a party to this travesty of justice, at the instance of the Governor General, Warren Hastings. There is, however, no proof of collusion between them and Sir Elijah has been pronounced by high authority to have acted with absolute fairness. In 1783, he was recalled to England to answer an impeachment. He defended himself at the Bar of the House of Commons and the impeachment was abandoned. There is a portrait of Sir Elijah Impey – painted by the celebrated painter Zoffany – hanging in Court No. 1 (Reproduced in this volume).

Mr. Justice John Hyde. Mr. Justice Hyde was called to the Bar from Lincoln's Inn and acted as a Puisne Judge of the Supreme Court from 1774 to 1796, a period of 21 years. Sir Elijah was instrumental in his appointment as a Judge, but they did not get on together very well. Impey wrote about him:

"As for Hyde ... he is absolutely under the management of Lemaistre. What you said to me about Hyde frequently occurs to me. He is an honest man but a great coxcomb. His tongue cannot be kept still, and he has more parade and pomp than I have yet seen in the East..."

Perhaps, the 'parade and pomp' is an allusion to the following, written by Mrs. Fay, a barrister's wife, from Calcutta in 1780— "On the first day of every term the professional gentlemen all met at a public breakfast at Mr. Justice Hyde's house and went thence in procession to the Court House." This practice fell into disuse and Chief Justice Sir Lancelot Sanderson introduced the practice of holding a levy in the Judges' Library on the reopening day after the long vacation. Even this practice has now been abolished. The reason why Justice Hyde is most remembered is for his notes. He used to write exhaustive notes in his own hand, regarding all cases of the Supreme Court and about other events of importance, and these notes are a mine of historical and legal information. There were 73 volumes. Justice Hyde died in harness at the age of 59, and was buried in the South Park Street Cemetery. He had intended to print his notes in England after retirement, but it never materialised. After his death, they were taken charge of by Chief Justice Sir Robert Chambers. Subsequently they came into the possession of the Bar Library Club, and are still in its possession. Unfortunately, however, several volumes are missing. Another distinguished Judge of

the Supreme Court was Sir William Jones, the great linguist and oriental scholar. He was a great friend of Warren Hastings and was a founder-president of the Royal Asiatic Society. It is said that when Sir William visited France, people marvelled to see that he not only spoke French like a Frenchman, but every dialect of it. He became well-versed in Sanskrit and translated Kalidas' Sakuntala and Hitopadesh. Truly it was said of him that he knew all languages past and present, except his own! This is an allusion to the fact that he was a Welshman and there is no evidence of his knowing that language. Sir William lived in Garden Reach and walked to Court and back everyday, no mean feat in those days, when people did not travel beyond Chowringhee Road in the evening, for fear of tigers!

As already stated, the High Court at Calcutta was formally opened on the 1st July 1862. The spot now occupied by the High Court buildings was known as the 'New Court House', a site subsequently occupied by the Supreme Court. Although the High Court was formally established in 1861, the Appellate Side was at first located in the building on Lower Circular Road, now occupied by the Military Hospital, and the Original Side in the building now known as the Town Hall. The foundation stone of the present building, on the site of the "New Court House" and three private buildings, was laid in 1864, but the construction was completed in May 1872, when the High Court was finally removed there. The High Court Building is one of the most imposing structures to be found in Calcutta. It is in the Gothic style, and is considered to be one of the best examples of this class of architecture in the East. Its surroundings are picturesque, being situated in the north-west corner of the Esplanade, facing the Maidan and the Eden Gardens. The building is from the designs made by Mr. Walter Granville, Government architect, on the model of the "Staadt-Haus" or Cloth Hall at Ypres in Belgium. It has a noble tower in the centre, with domes east and west, but these have never been carried to the height originally intended, as the building sagged somewhat in the centre during erection. Its chief facade looking south commands view of the Eden Gardens, Fort William and the maidan. The middle tower, which is over the main entrance, is 180 feet high. It is not generally known that it is higher than the Ochterlony Monument, which is only 165 feet in height. The south face is 420 feet long and the east face of the building, as originally constructed, was 300 ft. The lower storey to the South is faced with stone and has a grand colonnade. The Capitals of the pillars are made of Caen stone, beautifully sculptured, each being of a different design. In the centre is a massive tower, underneath which is the principal entrance, leading to a magnificent quadrangle with lawns and garden. There is also a fountain, the whole being surrounded by buildings which are faced by fine colonnades. The principal staircase is in the tower, and is of fine proportions. A statue of Sir Edward Hyde East (Chief Justice) by Chantrey is placed there and is unique in having its inscription at the back of the pedestal and not in the front. Sir Edward is remembered as the founder of the Hindu School. The carriage entrance for the public is to the east and the private entrance for the Judges, to the west. There are now several other entrances for use by the Judges.

In 1910, owing to dearth of accommodation a new block was added to the north with an intervening passage and the two buildings are connected by four overhead bridges. On the first floor are situated the Bar Library Club, the Bar Association and the Incorporated Law Society. On the whole, there is an acute scarcity of accommodation, of which more will be stated presently. The High Court of Judicature at Fort William in Bengal commenced functioning from 1st July 1862, with Sir Barnes Peacock as the first Chief Justice and the following Puisne Judges: Mr. Justice Charles Robert Mitchell Jackson Kt. Barrister-at-Law, Mr. Justice Mordant Lawson Wells, Kt. Barrister-at-Law, Mr. Justice Henry Thomas Raikcs C. S., Mr. Justice Charles Binny Trevor C. S., Mr. Justice George Loch C. S., Mr. Justice Henry Vincent Bayley C. S., Mr. Justice Charles Steer C. S., Mr. Justice John Paxton Norman Barrister-at-Law, Mr. Justice Walter Morgan Barrister-at-Law, Mr. Justice Francis Baring Kemp C. S., Mr. Justice Walter Scott Seton-Karr C. S. and Mr. Justice Louis Stuart Jackson C. S. C. I. E.

Sir Barnes Peacock (1862-1870). Sir Barnes Peacock was called to the Bar from Inner Temple. In 1850, he became Queen's Counsel and a Bencher of his Inn. He attained great fame in the celebrated case of Daniel O'Connel before the House of Lords in the year 1843. In 1852, he came to India as the Law Member of the Supreme Council of the Governor General. In 1859, he was appointed the Chief Justice of the Supreme Court, and became the Chief Justice of the High Court of Judicature at Fort William in Bengal in 1862. He was immensely learned in the law and had uncommon energy and perseverance. His judgments are remarkable for brevity and clearness in the exposition of legal principles. His remarkable grasp of the law was profitably utilised by entrusting him with the task of revising the draft of the Indian Penal Code submitted by the Indian Law Commissioners, of which Lord Macaulay was the President. He was reputed to be absolutely impartial and never made any distinction between English Barristers and Advocates. He was a strict disciplinarian and would sit in Court exactly at 11 A.M. and even after 4-30 P.M., would often sit up to 7 or 8 P.M. to finish a case in the day's list. He was extremely zealous of the dignity and prestige of the judiciary and will be long remembered for the famous contempt of Court case, in which he committed Mr. Tayler, a member of the Indian Civil Service and a close friend of the Chief Justice himself, for his comments published in The Englishman, regarding a judgment of Mr. Justice Dwarka Nath Mitter. The day following the publication of the libellous comment was fixed for Tayler's return voyage to England. A warrant was issued by Sir Barnes Peacock against him in the early hours of the morning and he was apprehended and produced in Court. He was convicted and sentenced to imprisonment and fine. The Editor of The Englishman was excused on his tendering apology. Tayler also apologised, but the punishment of fine was not condoned. He incurred the displeasure of the English community in Calcutta for his strong and even-handed justice in the case of Tayler, but he was undaunted. His sense of justice will be well-illustrated by this small episode. A Munsif was charged with nepotism for having appointed a relation of his to a ministerial post. He took the plea that if the Chief Justice of the Calcutta High Court could appoint his own son as the Registrar then why could not he appoint a poor

relation of his to an insignificant post. Sir Barnes not only did not take umbrage, but forthwith removed his son F. B. Peacock from his office as Registrar. Sir Barnes retired in 1870 and was appointed a member of the Judicial Committee in 1872. He was succeeded by Sir Richard Couch as the next Chief Justice.

Sir Richard Couch (1870-1875). Sir Richard Couch was called to the Bar from Middle Temple in 1841. In 1844, he assisted in editing Blackstone's Commentaries. In 1862, he became a Puisne Judge of the newly established High Court at Bombay, of which he became the Chief Justice in 1866. In 1870, he became the Chief Justice of the Calcutta High Court. He retired in 1875. Between 13th February and 4th AprIl 1876, he officiated as President of a Committee to investigate the sensational charges against the Gaekwar of Baroda of conspiring to poison Colonel Robert Phayre. Upon his return to England, he became a member of the Judicial Committee of the Privy Council, where he did valuable work for a period of twenty years.

Sir Richard Garth K.C. (1875-1886). Upon the retirement of Sir Richard Couch in April 1875, Sir Richard Garth became the Chief Justice of the High Court. He was educated at Eton and Oxford and was a great cricketer. He was called to the Bar from Lincoln's Inn in 1842, of which he later became a bencher. He came into frequent conflict with the Government as he held pronounced views on proposed legislations. He was opposed to many of the provisions in the Bengal Tenancy Act. On the other hand, he promoted the Legal Practitioners' Act of 1879. During his early years in India, Sir Richard displayed a conspicuous lack of sympathy for Indians. In 1880, as a result of the resignation of Mr. Justice Louis Jackson, he was called upon to select an acting Judge and he recommended Mr. Field, a District Judge. The Governor General desired that an Indian should be appointed, and he reluctantly sent up the name of Mr. Chandra Madhab Ghosh, but adding a note that he still favoured the appointment of Mr. Field. Thereupon, Mr. Field was appointed. Another of such instance happened in 1880, when he was proceeding to England on Furlough. Although Mr. Justice Romesh Chandra Mitter was the senior puisne. Sir Richard objected to his appointment as officiating Chief Justice on the ground of his being an Indian. Lord Ripon, the Governor General, overruled Sir Richard and Mr. Justice Mitter became the officiating Chief Justice. Strangely enough, during the later years of his stay in India, Sir Richard changed his views and became pro-Indian and was a strong supporter of the newly formed Indian National Congress. Sir Richard Garth retired in 1886 and was succeeded as Chief Justice by Sir William Coiner Petheram (1886-1896) who acted as Chief Justice until October 1896. Upon his retirement Sir Francis Maclean, K.G.S.I. became the Chief Justice.

Sir Francis Maclean (1896-1909) was untiring in his efforts to remove the congestion in the accommodation of the Courts and offices and the accumulation of business in its various departments. As a result of his untiring efforts, the Calcutta High Court succeeded in inducing the Government of India and the Secretary of State to appoint the full complement of Judges provided for in its Royal Charter. He was

instrumental in building the new wing of the High Court, which was opened with public ceremony.

Sir Francis helped in improving the pay and prospects of High Court Judges, including the raising of their salary to Rs. 4000/- a month and the reduction of the minimum period for the earning of proportionate pension from 10 years to 6 years and 9 months. Sir Francis established his reputation as an impartial judge in the Barrackpore Murder Case which arose out of a brutal assault on an Indian doctor by some drunken soldiers, resulting in his death. In the Rungpur Special Constable's case, his observations from the bench led to a withdrawal of the prosecution. Sir Francis resigned in March 1909 and was succeeded by one of the most distinguished of all the Chief Justices of the Calcutta High Court—Sir Lawrence Hugh Jenkins K.C.I.E.

Sir Lawrence Hugh Jenkins (1909-1915). Sir Lawrence Jenkins acted as a puisne Judge of this High Court from 29th April 1896 to 19th April 1899 when he became Chief Justice of the Bombay High Court and acted as such until 14th March 1909, when he went on Special duty in the Home Department of the Government of India. He became the Chief Justice of the Calcutta High Court in April 1909, at a time when the province of Bengal was torn with unrest following the partition. He displayed a remarkable sense of justice and his judgments show deep penetration and judicial insight, unwarped by passion or prejudice. In criminal cases, especially with those having a political flavour, no Judge on the Indian Bench has been known to keep his head cooler and administer justice with an amount of fairness which is worthy of the best traditions of the English Bench. Among the celebrated cases that he decided, may be mentioned Jogjiban v Emp. (13 C.W.N. 861) and Barin Ghosh v Emp. (14 C.W.N. 1114). In the Howrah Gang Case, forty six young men of the bhadralog class were charged with having entered into criminal conspiracy to commit dacoities in various parts of Bengal. All the accused were acquitted. Sir Lawrence Jenkins held that association for music, gymnastics, exercises and lathi play, amongst young men living in the same village or attending the same school, are ordinary incidents of village or school life and could hardly, with propriety, be termed as forming elements in any conspiracy to wage war against the King.

The judgment of the learned Chief Justice in the case of Mohammad AH (18 C.W.N. 1) and Amrita Bazar Patrika case (17 C.W.N. 1253) will always stand out as high water marks of judicial independence, and it is no wonder that the name of Sir Lawrence Jenkins has gone down to posterity as one of the most eminent of the Chief Justices of the Calcutta High Court. His magnificent judgments helped to restore confidence of the younger generation of Indians in the impartiality of British Justice. It should not be thought that in doing this, he escaped entirely unscathed. Questions were asked in Parliament about his pay and pension. Fortunately, however, nothing came of this sinister move to discredit him in the eyes of the British public.

Sir Lawrence resigned his office in November 1915. Upon his return to

England, he was appointed a member of the Judicial Committee of the Privy Council. He was followed as Chief Justice by Sir Lancelot Sanderson K.C.M.P. (1915-1926) who remained in office till November 1926. He and his brother Judges used to hold a reception, on the opening day after the Puja vacation, of the members of the legal profession. This pleasant function had lapsed, but was revived by Sir Lancelot. He was a person of very amiable character and endeared himself to the legal profession by the amiable qualities of his character and uniform kindness and courtesy to all. Sir Lancelot's retirement was hastened by the untimely death of Lady Sanderson and he was succeeded as Chief Justice by Sir George Claus Rankin.

Sir George Claus Rankin (1926-1934). Sir George Rankin had a brilliant academic career, both at Edinburgh University and at Cambridge (Trinity). He was called to the Bar in 1904, by Lincoln's Inn, of which he eventually became a Bencher in 1937. He entered the chambers of Mr. William Pickford (later, Lord Sterndale), where he became acquainted with (Sir) Lancelot Sanderson. During the First World War, he served in the Royal Garrison Artillery. At the suggestion of Sir Lancelot he accepted an appointment as a puisne Judge of this High Court in 1918. In 1919 he acted as a member of the Hunter Commission which enquired into the Jalianwala Bag disaster. After eight years of service as a puisne Judge, he became the Chief Justice of this Court in 1926. He was the first puisne Judge of the High Court to become a permanent Chief Justice. In 1934, he returned to England on long leave and resigned his office in the same year. In 1935, Sir George Rankin succeeded Sir Lancelot Sanderson in one of the two paid posts in the Judicial Committee of the Privy Council, created by the Appellate Jurisdiction Act of 1929. In both his private and professional life. Sir George Rankin was noted for his unassuming modesty and natural courtesy. He had a profound knowledge of the law of Insolvency, and he acquired a good knowledge of Hindu and Mohomedan Law. His judgments are noted for their great clarity of expression. Lord Maugham wrote in The Times upon his death (1946)—"There has been no Judge of my time who more greatly impressed me in a sphere he may be said to have made his own." He is considered to be the most capable English Judge that ever came to India since the days of Sir Lawrence Jenkins. Sir George Claus Rankin was succeeded by Sir Harold Derbyshire, Kt. M.G.K.C. (1934-1946), who retired in 1946 and was succeeded by Sir Arthur Trevor Harries.

Sir Arthur Trevor Harries (1946-1952). Few Judges in India had the experience of Sir Arthur of so many High Courts in India. After serving the Allahabad High Court as one of its Puisne Judges, Sir Arthur joined the Patna High Court as its Chief Justice. From Patna he went to Lahore as its Chief Justice and eventually came to the Calcutta High Court as its Chief Justice in 1946. There, he developed a serious ailment and lost the use of his legs. Nevertheless, he bravely carried on the duties of his office with undiminished vigour and untiring zeal until his retirement in June 1952. Upon retirement he began to live in the Flagstaff House situated on the banks of the Ganges at Barrackpore, where he eventually died.

Mr. P. B. Chakravartti (1952-1958). He was succeeded by Mr. Phani Bhusan

Chakravartii, the first Indian to become a permanent Chief Justice of the Calcutta High Court. He had joined the High Court as a Puisne Judge in April 1945. On assuming office he said: "It is a great mistake to suppose, as it is sometimes done, that with the establishment of the Republic and the Constitution of India, Courts of Law have lost a part of their old importance, and that Courts are required only at places where some outside intervention between autocratic authority and the individual is required. In my view the importance of Courts is even greater under a democratic Constitution like ours where, the Courts have been given the function of saying what the Constitution is, of seeing that none of the various bodies, including the legislatures, exceeds the limits of its power, and of seeing further that to no man is justice denied and from no place is the rule of law withdrawn.''

Mr. Kulada Charan Das Gupta (1958-1959). Chief Justice Chakravartti retired in October 1958, and was succeeded by Mr. Kulada Charan Das Gupta, I.C.S., who had been a puisne Judge since May 1948. He was made a Judge of the Supreme Court in August 1959. During his very short term as Chief Justice, he introduced various improvements. The Committee room of the Hon'ble Judges is his creation. He was succeeded by Mr. Surajit Chandra Lahiri (1959-1961) who acted as Chief Justice until 1961, when he was succeeded by the present Chief Justice Mr. Himansu Kumar Bose, who has endeared himself to all by his unassuming manners and personal charm.

Puisne Judges

The first Indian Judge to be appointed a Puisne Judge of the High Court was Mr. Rama Prasad Roy, son of the great reformer, the illustrious Raja Rammohun Roy. He was the Senior Government Pleader at the Sudder Dewani Adawlut and after the establishment of the High Court, became its Senior Government Pleader. He had a very large practice and was a man of immense wealth and influence and lived like a prince. Although he was appointed the first Indian Judge of the Calcutta High Court, he could not, however, take his seat as a Judge, because he died before the letter of appointment arrived in India.

After the death of Mr. Rama Prasad Roy, Mr. Sumboo Nath Pundit (1863-1867) became the Senior Government Pleader of the High Court. He was a Kashmiri Brahmin whose family had settled in Oudh and a branch had settled in Bengal. He was born in Calcutta in 1820 and was educated at the Oriental Seminary. He took service as an assistant to the Record Keeper at the Sudder Dewani Adawlut at a pay of Rs 20/- a month but with the help of certain charitably disposed persons, qualified himself as a pleader, and started practising in the said Court. He was appointed the Junior Government Pleader in 1853, at which time he also became a Professor of Law at the Presidency College.

Upon the death of Mr. Rama Prasad Roy, he became Senior Government Pleader. On 2nd February 1863 he was appointed a Judge of this High Court. There is

a full length portrait of him in Judge's robes adorning the eastern wall of the Court Room no. 5 painted by a German painter (reproduced in this volume). Sitting with such a learned Judge as Sir Barnes Peacock, Sumboo Nath Pundit had often the courage and conviction to differ with him. He was alive to the fact that English law should be modified to suit Indian conditions. Justice Sumboo Nath Pundit died in the year 1867, while in harness. His death was universally mourned.

His place was taken by Mr. Dwarka Nath Mitter (1867-1874) who was a successful lawyer in the Appellate Side, having commenced his practice in the Sudder Dewani Adawlut. He was reputed to have been an orator in the English language. His mastery of the English language drew the admiration of his brother English Judges. He was said not only to have been anxious for doing justice to the case he tried but also in the use of the expressions he used in his judgments. At the same time he was well versed in the Smritis and Nibandhas. Justice Dwarka Nath Mitter died in 1874 and in his place Mr. Ramesh Chandra Mitter (1874-1890) was appointed a Judge. He acted as officiating Chief Justice on two occasions.

Another distinguished Indian Judge of the High Court was Sir Chunder Madhab Ghosh (1885-1907). He was born in 1838 at Bikrampur, Dacca. Chunder Madhab passed his law degree from the Presidency College, Calcutta, and started practising as a pleader in the Burdwan Court. He was, however, not happy there, and eventually he came to Calcutta and joined the Sudder Dewani Adawlut as a pleader. He was a man of independent character. In or about 1881, the Secretary of State for India issued an order that the salary of Indian Judges should be only two-thirds of that received by the European Judges. An Additional Judge was going to be appointed, and Chief Justice Richard Garth casually asked him if he would accept the judgeship. Chunder Madhab replied in the negative, not because he was not attracted by the proposition, but he resented the discrimination in the fixation of salaries between European and Indian Judges. Thereupon, Mr. Mahendra Nath Bose, who was in the Judicial Service was appointed an Additional Judge. Chunder Madhab Ghose worked hard for the removal of this difference in salaries and ultimately at the end of 1884 the Secretary of State for India was pleased to remove this difference in salary amongst Judges of the High Court. In January 1885 Chunder Madhab was appointed a Judge of the High Court, and sat on the Bench for 22 years, till 2nd January 1907 when, upon attaining his 69th year, he resigned from service.

Another distinguished Judge of the High Court was Sir Gooroodas Banerji (1888-1904). He was born in 1844, in an orthodox Hindu Bramhin family. He was himself well-versed in the classics. He received his early education at the Hare School and Presidency College. In 1888, he was appointed a puisne Judge of the Calcutta High Court. During his sixteen years on the bench, he endeared himself to everybody by his unvarying kindness, consideration and unfailing courtesy, and was held by all in high regard as a Judge, owing to his strong sense of justice, and his great learning and the conscientious discharge of his duties. The natural gentleness of his character and his essentially Hindu spirit of never making himself unnecessarily

hurtful to others, be it his colleagues on the Bench or Counsel at the Bar, was sometimes mistaken for weakness. But when it came to the dispensation of justice, he was firm as a rock, and was never known to compromise with his conscience. At his retirement, in 1904, the Advocate General of Bengal Mr. J. Woodroffe said:

"I will only say so far as my experience goes, which extends over the whole time of your Lordship's career as a Judge, never have I heard a single suitor complain that full justice has not been done to him by Mr. Gooroodas Bannerjee, that his case has not been listened to with attention, all the arguments weighed and every effort made to understand what it was and he felt that if the case had been decided against him it was rightly decided."

I do not think that a higher encomium could be paid to any living Judge. Two stories are related about Sir Gooroodas, which may be mentioned here. Such was his sense of duty that the learned Judge never absented himself from Court unless he was physically disabled from doing so. His son Jatindra Nath became seriously ill with cholera. Even on a day when the illness had taken a bad turn, Sir Gooroodas attended Court and it is said that it was the Chief Justice who induced him to go back home. Shortly after he returned home, Jatindra died. His simplicity of character will appear from the following story: As a devout and orthodox Brahmin; he used to go for a bath in the Ganges every morning. Once, when he was returning from his ablutions, a poor old lady met him in the streets and thinking that he was a pujari Bramhin asked him to perform the puja of her household deity. Rather than disappoint her, Sir Gooroodas performed the puja, although the old lady never discovered that she had the unique distinction of her daily puja being performed by an eminent Judge of the High Court. He stubbornly refused to allow anyone related to him to appear in his Court. Thus, Sir Manmatha Nath Mukherjee, his son-in-law, who later on became a Judge of this court, was sternly commanded not to accept briefs in his court.

Another distinguished Indian Judge of the High Court was Mr. Sarada Charan Mitter (1904-1908). He was born in 1848. He had a brilliant academic career of uniform brilliancy, standing first in every examination. He passed his M.A. Examination, a month after he took the B.A. Degree, and in the very next year he became the Premchand Roychand Scholar of the University of Calcutta. He was enrolled as a Vakil in the Calcutta High Court in 1873. In 1902 he was appointed to officiate in the post of a Puisne Judge of the Calcutta High Court and became a permanent Judge in 1904, on the retirement of Sir Gooroodas Banerjee, and retired in December 1908. Although he was on the Bench for a comparatively short period, he is considered to be one of the ablest Judges of this Court. He was noted for his erudition, and his book on the Land laws of Bengal embodying his Tagore Law Lectures, is a well-known textbook on the subject.

Sir Asutosh Mookerjee (1904-1924). One of the best known Indian Judges is Sir Ashutosh Mookerjee, Kt. C.S.I., M.A., D.L., D.Sc., F.R.A.S., F.R.A.C. Sir Ashutosh Mookerjee was born in 1864. He had a brilliant academic career. In

1888 he took his B.L. Degree and was enrolled as a Vakil and served his articleship under Sir Rash Behary Ghosh. While he was building up a large practice, his activities covered a wide field, but his first love was the University of Calcutta, of which he may be said to have been the real architect. In June 1904 he became an officiating puisne Judge of this High Court. In 1906, he was appointed the Vice-Chancellor of the Calcutta University, which position he occupied for a large number of years. His courageous fight for and on behalf of the University of Calcutta was well-exemplified in his celebrated letter to Lord Lytton, Governor of Bengal and Chancellor of the University, which won him the popular title of "Royal Bengal Tiger." Sir Ashutosh acted as the Chief Justice on one occasion. His scholarly judgments are monuments of perseverance and skill. Sir Ashutosh resigned from service in January 1924 and started practising in the Patna High Court. Within six months, however, after his retirement, he died on the 26th July 1924. On the occasion of retirement of Sir Ashutosh from the Bench tributes were given by the Bench and the Bar and Sir Ashutosh said:

"You have referred to my independence as a Judge. I have throughout endeavoured strenuously to hold the scales of justice even and to treat alike all litigants without distinction of caste, creed, race or position, regardless of the status of the Counsel engaged before me, whether Barrister or Vakil, whether Senior or Junior. I have tried uniformly to keep wide open the gates of justice, so that every litigant who considered, rightly or wrongly, that he had a grievance might not have his cause summarily rejected and might have the fullest opportunity to place his case fully on the merits before the highest tribunal—the ultimate Court of appeal in the land.

My ambition has been to attain the ideal of judicial administration, to hear patiently, to consider diligently, to understand rightly, to decide justly. It is for others to judge what measure of success I may have achieved notwithstanding inevitable errors of judgment."

Sir Ashutosh Chaudhuri (1912-1920) was a distinguished Judge of this High Court. He had a brilliant academic career, taking his B.A. and M.A. Degrees in the same year. He was a student of St. John's College, Cambridge, where he took his Law Tripos in 1885. He joined the Bar in 1886, and had a very extensive practice as a Barrister. In cross-examination and advocacy he had few equals in his time. He was appointed a Judge in 1912. At that time, Sir Lawrence Jenkins was the Chief Justice and on one occasion Sir Ashutosh said to Sir Lawrence, in course of conversation that it was the duty of any Barrister, when called upon to undertake the duties of a Judge, to accept the same. It is said that Sir Lawrence took him upon his word, and on the very next day offered him a judgeship. He retired from the Bench in 1920.

Amongst other Puisne Judges may be mentioned the name of Mr. Justice John Paxton Norman (1862-1871). While coming down the steps of the Town Hall, where the original jurisdiction of the Court was then situated, he was cruelly assassinated

by a fanatic Mussalman of the Wahabi Sect.

The High Court has two sides, the Original Side and the Appellate Side. The Original Side deals with original cases and the Appellate Side with appeals from the districts, as also from the City Civil Court. Besides this, there are some special and extraordinary jurisdictions like the Admiralty or Vice-admiralty jurisdiction, and the Constitutional writ jurisdiction. Under the present Advocates Act, 1961, all branches of the legal profession have been unified, but in the city of Calcutta, the dual system has been retained. It is necessary here to set out the history of the Bar in general. Speaking at the Centenary Celebrations of the Bar Library Club on 15th June 1925, (it calculated its origin from the time of the Supreme Court), the Advocate General, Mr. S. R. Das said:

"We should have among our guests tonight, the Chief Justice and the Judges of our High Court, the present repositories and guardians of those great traditions which our association together have gradually built up and which have made the Calcutta High Court and the Calcutta Bar the premier Bar in India. The unique position which the Calcutta High Court occupies is mainly due to the fact that both the Bench and the Bar have always recognised that for the proper administration of justice, an Independent Bar is as necessary as an independent judiciary."

When the Supreme Court was first established in 1774, it started with only one barrister on its rolls—Thomas Ferrer, who later defended Maharaj Nun Coomar. There was no Advocate General. Sir John Day was nominated as Advocate General. The story is related that when he was knighted, King George III said that he was 'Turning day into (K)night'. His Majesty said to Lady Day— "I am making Lady Day in Michaelmas".

In 1825, when the Bar Library Club was first founded, there were only 10 practising barristers. Among the early giants may be mentioned the names of Mr. Ritchie, Advocate General of Bengal, and Mr. Longueville Clarke, who is remembered as being the founder of the Bar Library Club. He lived in one of the houses on the site of which the present High Court stands. He appears to have been a resourceful man, for he imbibed the bright idea of importing ice blocks sawn out of rivers in Boston, which were preserved in a house specially built for that purpose in Hare Street. In those days, artificial ice was not known, and it must have been a rare luxury. Later on, they were joined by Mr. Thomas Hardwick Cowie, who became Advocate General when the High Court came into existence.

Mr. Charles Paul (later Sir Charles Paul) was an Armenian by nationality born in Calcutta. He was called to the Bar in 1855. He became Standing Counsel and thereafter acted as a puisne Judge for a short time. Reverting back to practice, he again became the Standing Counsel and later on in 1873 he became Advocate General, a position which he retained for 29 years. The curious story is related that although he resigned in 1899, he died at the very hour when his resignation was to

have become effective. Sir Charles had the reputation of being a good lawyer, but he did not believe in giving advice gratis. An old client of his, a zamindar, met him in the corridors once while coming from Court and asked his opinion about filing a suit. While walking together he gave the opinion that if his client brought the suit, he would succeed. Thereupon, he brought the suit and lost. He then went to see Sir Charles and reminded him of his advice, but Sir Charles smilingly told him that he should not have relied on a 'walking opinion'. William Ritchie was considered to be a great lawyer, who became Advocate General and member of the Viceroy's Executive Council. His letter defining the duties of the Advocate General and Standing Counsel is said to be still in existence. Mr. J. T. Woodroffe was famous for his industry and application. He was always thoroughly ready with his briefs.

Among the other giants may be mentioned—Sir Griffith Evans, Manmohan Ghose, W. C. Bonnerjee, Arthur Phillips, T. A. Apcar, C. P. Hill, Taraknath Palit, A. M. Dunne, William Garth and Sir Ashutosh Chaudhury who later became a Judge. Mr. Manmohan Ghose was in tremendous demand in criminal cases before the mofussil Courts. He was the son of Sri Ram Lochan Ghosh, a well-known member of the Subordinate Judicial Service. He went to England and was one of the first Indians to compete for the Indian Civil Service. In 1866 he was called to the Bar by Lincoln's Inn and next year he joined the Calcutta High Court. Soon he made his name as a criminal lawyer. He was popularly known as the "counsel of the poor", as he did the cases of many poor litigants who, but for his generosity, could not possibly have afforded his services.

Mr. W. C. Bonnerjee had a striking personality, with his long beard and distinguished bearing. (A painting is hung in the Bar Library Club). His father, Sri Grees Chunder Bonarjee was a well-known Solicitor of this Court. At the age of 20 he went to England with the help of a scholarship and joined the Middle Temple. He was called to the Bar in 1867. He had a fluent and graceful diction, a silvery voice, a thorough knowledge of law and a striking personality. With these, he soon made out for himself a leading practice, not only in the Original side of this Court but also in the Appellate side. In 1883, he was appointed Standing Counsel, but in spite of his large practice he was never offered the Advocate Generalship, an office not offered in those days to Indians. He twice acted as President of the Indian National Congress. In 1902, due to ill health, he left for England and practised in the Privy Council, being engaged in almost every case from India. He died in 1906.

Mr. Taraknath Palit is well-remembered for his munificent gifts to the University of Calcutta. He left his palatial building on Ballygunge Circular Road to the University. Sir Griffith Evans and Mr. L. P. E. Pugh were related, but differed widely in character. Both were credited with a deep knowledge of law. Sir Griffith is, however, said to have been hostile to Indian aspirations while Mr. L. P. E. Pugh was extremely friendly to Indians and practised in these courts up to a ripe old age and died in Calcutta, widely mourned by his friends and admirers. The history of the Bar would not be complete without mention of Mr. William Jackson, better known as

Tiger Jackson. He was a man of strong independence of character, always zealous of the honour of the Bar, fearless in his advocacy, and yet a man of the most generous disposition.

(Lord) S. P. Sinha. Of all the Indian Barristers, the career of Lord Satyendra Prasanna Sinha is the most colourful. He was born in the village of Raipur, Birbhum District, Bengal, in June 1863, in the celebrated Sinha family of Raipur. He and his brother Narendra Prasanna fled to England in 1881. There he joined the Lincoln's Inn, where he won many prizes and scholarships and was called to the Bar in 1886, having been exempted from appearing at the Bar final examination. On his return to India, he at once began to plead in the High Court of Calcutta. In 1903, he became the Standing Counsel of the Government. He was the first Indian to be appointed the Advocate General of Bengal (1908), and was the first Indian to become a Member of the Government of India, holding the law portfolio from April 1909 to November 1910. He then resumed his lucrative practice at the Bar. He acquired a tremendous practice and was in great demand, not only in the High Court but in the mofussil courts. He is reputed to have been a great Advocate and it is said of him that he won his cases in the opening. He presided at the Indian National Congress at Bombay in 1915 and in his presidential speech he begged the British Government to declare their policy with regard to the development of Constitutional Government in India. He became a member of the Imperial War Conference. He joined the Bengal Executive Council but returned to England in 1918 as a member of the Imperial War Cabinet and Imperial War Conference, subsequently becoming a representative of India at the Peace Conference. He was knighted in 1914. In 1918, he was made a K. C., a distinction not previously conferred upon an Indian. At the beginning of 1919 he joined the Lloyd George Ministry as the first Indian Under-Secretary of State, being raised to the peerage as Baron Sinha of Raipur and made a member of the Privy Council. He skilfully conducted the Government of India Act, 1919, through the House of Lords. At the close of 1920, he was appointed Governor of Bihar and Orissa, being the first Indian to preside over a British province. In 1921 he resigned due to ill-health. In 1926 he was appointed a member of the Judicial Committee of the Privy Council. He died on March 4, 1928.

Sir B. C. Mitter was a son of Justice Romesh Chandra Mitter. He joined the High Court in 1897 and practised in it for 31 years. He became the Standing Counsel and officiated for some time as the Advocate General, but unfortunately was not made permanent in that post. He is reputed to have been a man of great erudition and legal knowledge and built up a large practice. In 1929, he became a member of the Judicial Committee of the Privy Council, but unfortunately died soon thereafter in July 1930. On the occasion of mourning his death, Chief Justice Rankin said: "For many years Sir Binod Mitter had been the foremost figure in the Court. His learning was wide and profound and he had a natural gift for the law. The law was the great interest in his life. I well remember feeling when I first came to this Court that to have him as Counsel in a case was a great help to an experienced Judge and even before I came to know him intimately, I was greatly indebted to him for the

instruction and assistance I had derived from him. His was a courteous and kindly nature, serious with a high sincerity, modest, reasonable and friendly. His memory will stand out like a monument in all my recollections of Calcutta." In mourning his death, Lord Dunedin of the Judicial Committee said that Sir B. C. Mitter joined patient and studied judgment to consummate knowledge of various systems of law in India. He was of invaluable assistance to the Judicial Committee.

Mr. C. R. Das. Mr. Chittaranjan Das joined the Calcutta Bar in 1894. When he joined the Calcutta Bar it was a close preserve of English Barristers. Later on, however, the role was reversed. Mr. Monmohan Ghosh, Mr. W. C. Bonnerjee and Mr. Tarak Palit had already made their way to the forefront amongst their British competitors. When Mr. Das joined the profession, there were other promising juniors making headway, like Mr. Byomkesh Chakraborty, Sir Ashutosh Chaudhuri and Sir S. P. Sinha. The services of Mr. Monmohan Ghosh and Mr. Palit were much in requisition in the mofussil criminal courts. In the High Court, there were outstanding English Barristers like Mr. Charles Paul, Mr. Griffith Evans, Mr. J. T. Woodroofe, Mr. Jackson, Mr. C. P. Hill and Mr. L. P. E. Pugh; Mr. Garth and Mr. Dunne were promising juniors. The business of the Original Side, as well as the most important practice in the Appellate Side, were then monopolised by the English Bar. Mr. Das went to England for entering the Indian Civil Service but failed therein and decided to take up the Bar as his career. After joining the Calcutta Bar he started criminal practice, both in the High Court and in the mofussil courts. He soon made his name as an able criminal lawyer. The secret of his success is said to have been, that when he was engaged in a criminal case, good, bad or indifferent, he made up his mind to win it by making the case his own. He first made a mark in the profession as a defence counsel on behalf of Aurobindo Ghosh, in the Alipur Bomb Case. It was a labour of love. Mr. Das was opposed by the redoubtable Mr. Norton on behalf of the Crown, but displayed great ability in handling witnesses and Aurobinda was acquitted. C. R. Das' fame spread far and wide. He was then entrusted with the Dumraon case which he also won. This brought him a fortune. In the Dacca Conspiracy case he argued the appeal before Sir Lawrence Jenkins, who immediately recognised his great ability. His reputation in criminal cases had reached such a high-water mark that the Government of India retained him as the Crown Counsel in the Munition case, offering him higher fees than to Mr. Gibbon, Advocate General of Bengal. At the height of his legal career, Mr. Das entered politics and gave up his practice at the bar, during the non-cooperation movement. This colossal sacrifice, which reduced him from affluence to poverty, raised him in the estimation of the people. He was familiarly known as "Deshbandhu Chittaranjan". He became the acknowledged political leader of Bengal. He died in 1925 after a meteoric career, both in the Bar and in public life. Upon his death, eloquent tributes to his memory were paid by the Bench and the Bar. Chief Justice Sir Lancelot Sanderson said—"My learned brothers and I recognise that the profession has lost one of its most brilliant and most respected leaders and we join with you in expressing our great regret at his very untimely death".

(Sir) Nripendra Nath Sircar came from an intellectual Kayastha family of Calcutta, of whom the name of the Late Prof. Peary Charan Sircar has been a household word to many generations of educated Bengalees. Mr. Sircar at first qualified as a Vakil and practised in Bihar. He accepted an appointment as a Munsiff but soon abandoned it and went to England, where he was called to the Bar from Lincoln's Inn (1907) and joined the Calcutta High Court. By dint of his ability he was able to make headway and enjoyed the most spectacular and lucrative practice ever seen in this High Court. He was a very sound and able lawyer and a keen and incisive fighter. His knowledge of English law and English decisions were profound. His political views were moderate but he fought against all Executive high-handedness and police Zulum, as is evidenced in the Servant defamation case and the Pabna appeal. He became Advocate General (1928), which position he held until his retirement.

Mention may be made here of Mr. Sailendra Nath Banerji, Sir Asoka Roy, Sir S. M. Bose and Mr. Sudhi Ranjan Das, who became the Chief Justice of India. Mr Sarat Bose was not only a great lawyer but was a figure in Bengal politics for many years.

(Sir) Rashbehary Ghose is considered to be the doyen amongst lawyers who rose to be a leader in the profession. He obtained his law degree from the Calcutta University and joined the Bar in 1867. Shortly thereafter he received a Doctorate. He was a profound scholar in law and very soon became a leader in the profession. He had, however, a strong temper and did not spare either the bar or the bench. Capable of biting sarcasm when occasion required, he seldom if ever employed this weapon to inflict unmerited wounds. Many stories are related about his colourful personality. It is said that on one occasion he had brought a large number of books into Court and a learned Judge said, "Sir Rashbehary, I see that you have brought down the whole Library into Court."— "Yes my lord" said Sir Rashbehary, "to teach you the law". It is said that on another occasion, he was appearing in a case but was under the mistaken impression that he was appearing for the plaintiff while in reality he was appearing for the defendant. After the case had progressed to a certain extent, and Sir Rashbehary had made out a convincing case for the plaintiff, a horrified junior apprised him of the real situation. He calmly turned to the bench and said, "My Lord, this is how the plaintiff would make out his case, but now I will proceed to demolish it," and he successfully demolished it! Once a Judge asked Sir Rashbehary if he had read a certain case. "I have not only read the case", said Sir Rashbehary "but I have digested it and made it my own". Sir Rashbehary was profoundly learned and helped the drafting of the Civil Procedure Code. His work "The Law of Mortgages" is well-known. He was a lawyer of whom any bar of any country could very well be proud. He had extraordinary intellectual powers, a brain that retained as easily as it absorbed. He had an independent character which made him a prominent character not only in the Law Courts, but also in public life. He was a tower of strength of the Swadeshi movement. The cause of education was nearest to his heart. In 1913 he made a donation of Rupees ten lakhs and again in 1919, a further sum of

Rs.11,43,000/, to the University of Calcutta for study and research in Science. In his will he made a munificent bequest to the National Council of Education. His heroic opposition to the passing of the Seditious Meetings Act and his scathing condemnation of the indiscreet utterances of Lord Curzon—"Dressed in his Chancellor's Robes and with a little brief authority" will not be easily forgotten.** He died on 28th February 1921, full of years and honour.

The Appellate Bar has had its full complement of legal talent. Mention may be made of Mr. Amar Nath Bose, Mr. Hiralal Chakravarti, Mr. Sarat Ray Chaudhuri, Mr. Roopen Mitter, Mr. Bijon Mukerjea who later became the Chief Justice of India, Mr. Narendra Kumar Basu and Atul Gupta. Dr. Radhabinod Pal acquired fame as a judge of the War Crimes Tribunal and as Chairman of the International Law Commission.

About the solicitors practising in this Court, a comprehensive article will be found in this volume of the Story of the Incorporated Law Society, and some of its brilliant members. Special mention may be made here of the names of Mr. Kalinath Mitter, Mr. Hirendra Nath Datta, Mr. Charu Chandra Basu, Mr. Ganesh Chandra Chunder and Sir Devaprasad Sarvadhikari.

I must now come to the end of my story. I have enumerated the origin and growth of this Court and related the fascinating story of the distinguished Judges who presided over its courts and dispensed justice and of the distinguished members of the Bar who helped them in this onerous task. A complete history of this High Court cannot be set out within such a short compass, and would require several compendious volumes. The High Court reached its final destination when in 1950, after the attainment of independence, it changed its name from "The High Court of Judicature at Fort William in Bengal" to the "High Court at Calcutta". At that time, Sir Arthur Trevor Harries was the Chief Justice, and the transition was marked by a quiet function, and a painting of Mahatma Gandhi was unveiled in the Court of the Chief Justice. While previously the Bench was the close preserve of English Barristers, it has now become exclusively Indian. Whether the high traditions of the past are being kept up, it will be for posterity to declare.

We have at present a Bench of 24 Judges (twenty permanent and four additional) and although the province of Bengal stands truncated, litigation has increased so much that they are unable to cope with the work. The arrears of pending cases is a serious headache, although the position of this High Court is no worse than many others. The only remedy is an increase in the number of Judges. This means, of course, an increase in the available accommodation in the High Court of which there is a great dearth. As it is, there is not sufficient space for providing the requisite number of courts, offices and record rooms. There is at present no provision in the High Court for housing the non-ministerial staff. It is perhaps shocking to find nearly 500 unhappy employees living in the open verandahs and corridors, with their belongings scattered all over the place. Unlike the other High Courts, the Calcutta

High Court has no space to expand. Excepting a quadrangle in the middle of the premises, it has no grounds. The foundations of the buildings are such that another storey cannot be added. In fact, great doubts have been expressed about the security of the structure as it stands at present. At the time when it was built, the technique of building on a soft soil had not been adequately developed. It is, therefore, a difficult problem to find accommodation. There is still some space to the north of the High Court, and it is to be hoped that Government will give its attention to the matter of acquiring the same for the purposes of the expansion of the High Court.

The jurisdiction of the Calcutta High Court at its commencement was very large, and extended to the North-Western Provinces, including the Uttar Pradesh of the present day, Bengal, Bihar, Orissa, Chota-Nagpur and Assam. For some time it had even jurisdiction over Rangoon. This jurisdiction has gradually been curtailed and now the Calcutta High Court has jurisdiction only over the State of West Bengal and the Andaman and Nicobar Islands. Yet, the work of the High Court has steadily increased.

One of the more important jurisdictions exercised by this Court is the constitutional writ jurisdiction, and I can say from my own experience of the said Court for a period of nearly ten years, that the work has now become vast, and is steadily increasing. The High Court has always been considered as the bastion of the liberty of the citizen and has been the last recourse against all kinds of oppression and highhandedness. Naturally, the court is not concerned with the making of the law, but it is only concerned with its administration. During the intervening years, it has administered the law wisely but without compromise. It has dispensed even-handed justice to all, but tempered with mercy. The Judges, assisted by an independent Bar, have done their duty fearlessly and well. A great tradition has been built up.

This in a nutshell is the distinguished story of this High Court and its life through the last hundred years of its existence. It is now getting mellow with age, rich with experience and deeply respected by all to whom the cause of justice is precious. It is enough if I have dealt with its story reverently and yet with love and understanding. To it, we have given the best years of our lives and our best efforts. But ere we end, we must see that the magnificent traditions which have been handed over to us are fully maintained and handed over unsullied to those who follow in our footsteps. So that we may say with Lord Mansfield— "Fiat justitia ruat caelum—Let Justice be done though the heavens fall".

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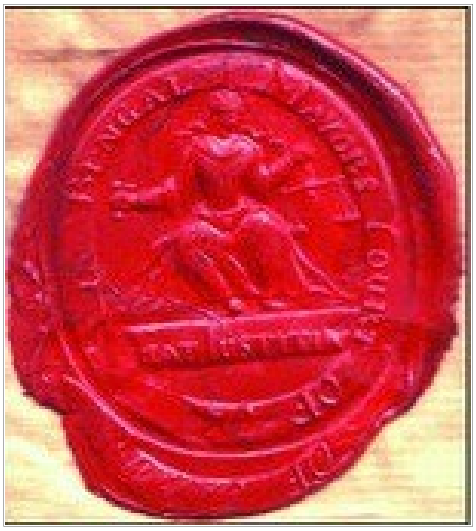
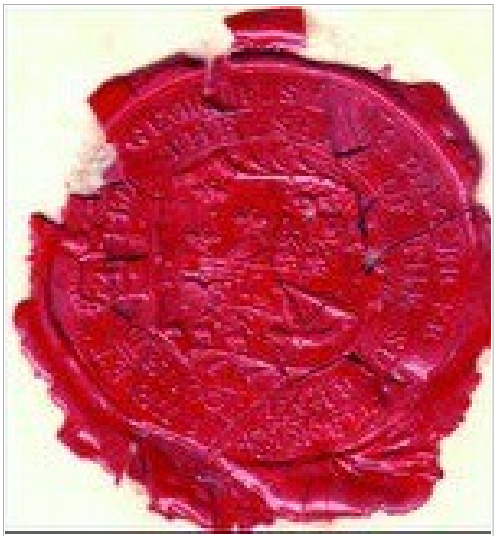
* Reprinted from "The High Court at Calcutta: Centenary Souvenir, 1862-1962"

** "One of the greatest political figures in England said on a memorable occasion that he did not know how to frame an indictment against a whole nation; but Lord Curzon dressed in the Chancellor's robe and a little brief authority was able to frame an indictment not only against the people of India, but also against all the various nations of Asia—Asia which gave to the world Gautama Buddha, Jesus Christ and Muhammad, who may not have taught men how to rule, but who certainly taught them how to live and how to die."

"In the biography of W. C. Bonnerjee, the first President of the Indian National Congress, it is mentioned that later in life he had a very good practice at the Privy Council. He was offered appeals in which he was pitted against the top lawyers of England like Asquith and Haldane. He was later handicapped severely by poor eyesight. His son would read the papers aloud to him. He practised thus for some years before the judicial committee of the Privy Council." – Vicaji J. Taraporevala, Tales from the Bench and the Bar, 2010 ed., 70.



Seal of the Mayor's Court



Seal of the Supreme Court of Judicature at Fort William in Bengal

Seal of the High Court of Judicature at Fort William in Bengal

Seal of the High Court at Calcutta

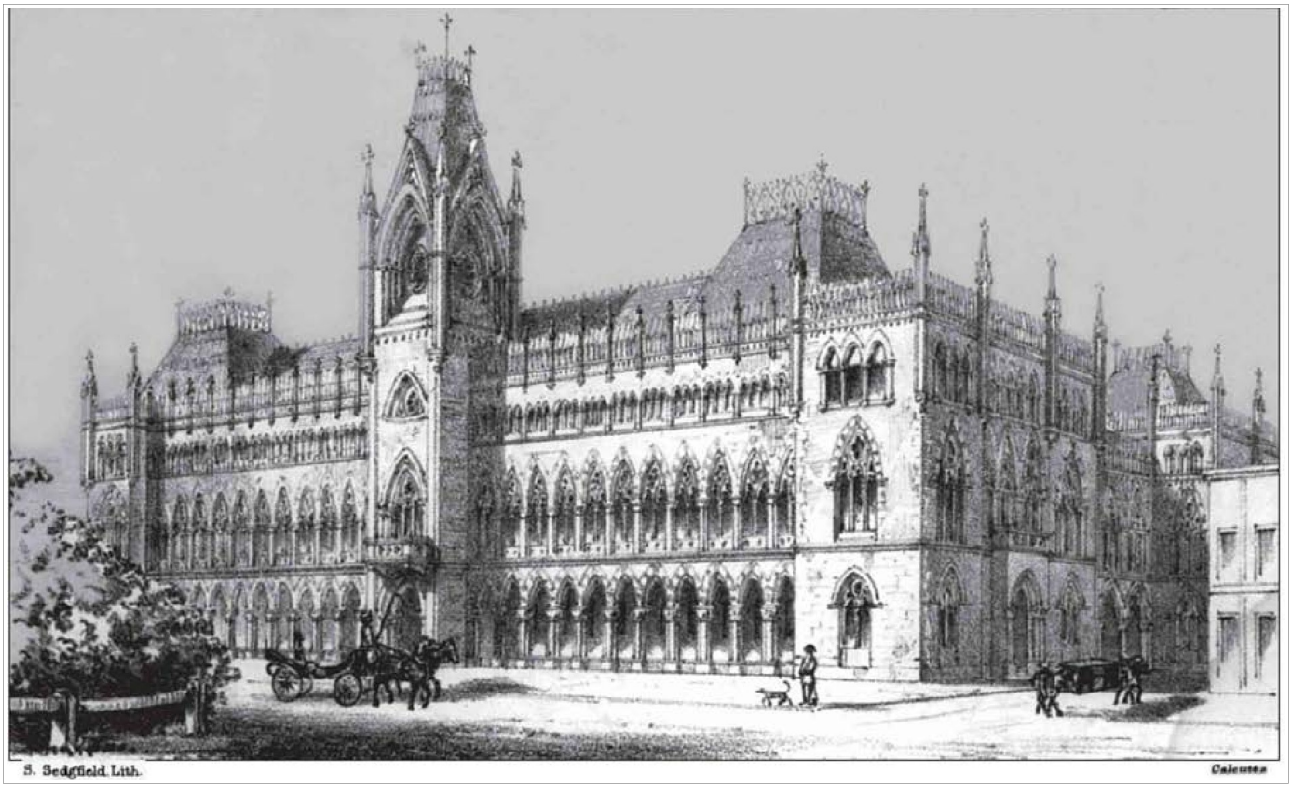
P11

Seals, Stamps and quaint Picture Postcards contd.

Stamp of Staad Haus

The High Court Centenary Stamp

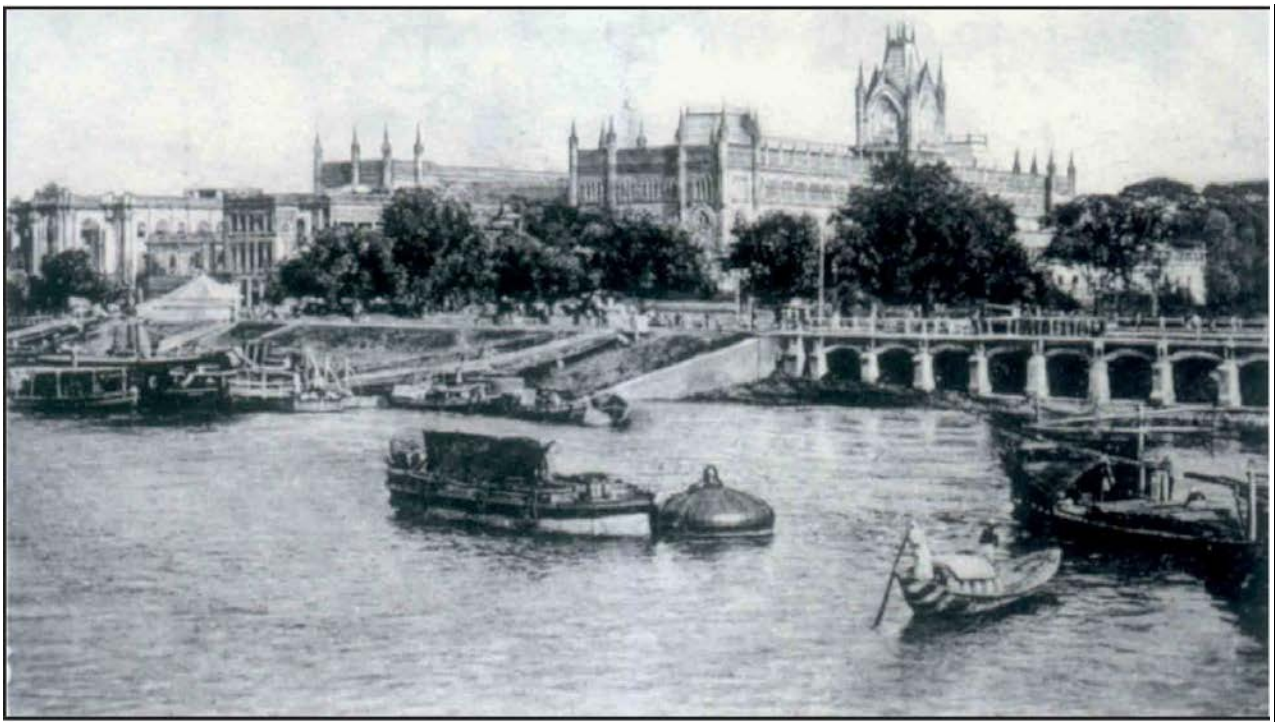
The High Court from a wood engraving



P12

Sail boats with the High Court in the distance

The Hight Court from the Hooghly river Circa 1904



P13

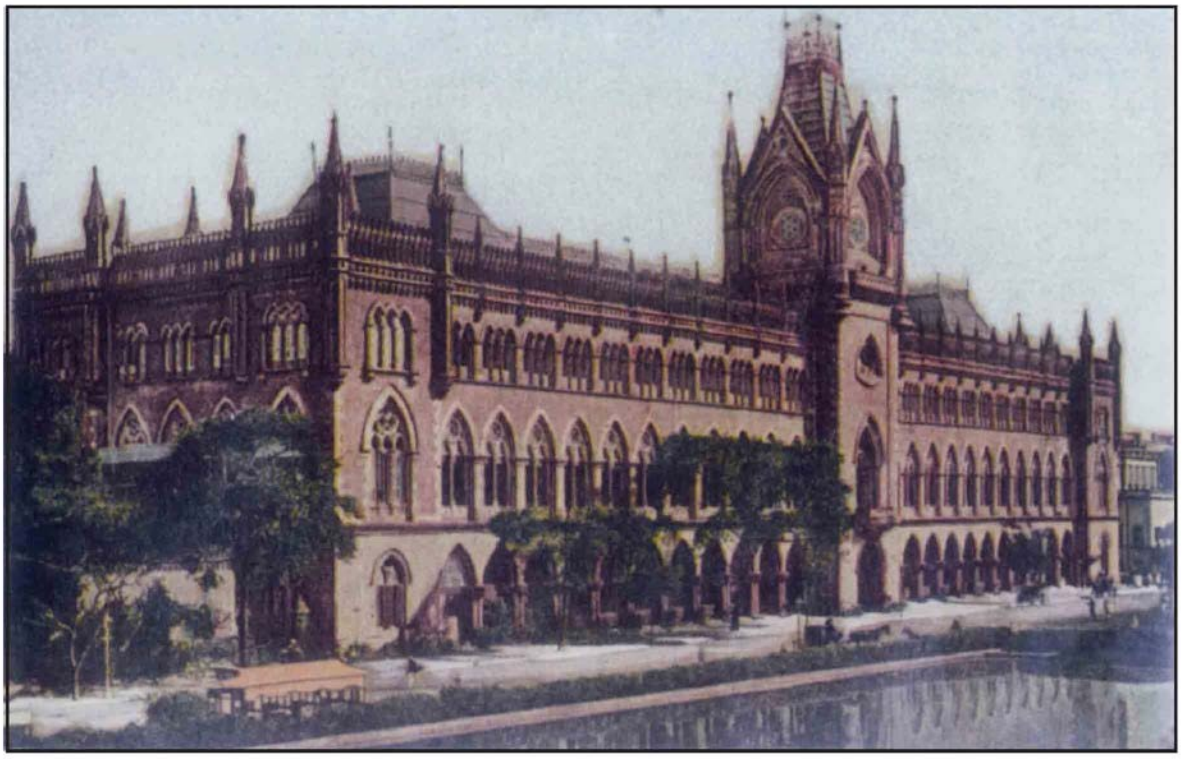
View across the Esplanade

View from the Eden Gardens

P14

The High Court with the now extinct tank in the foreground

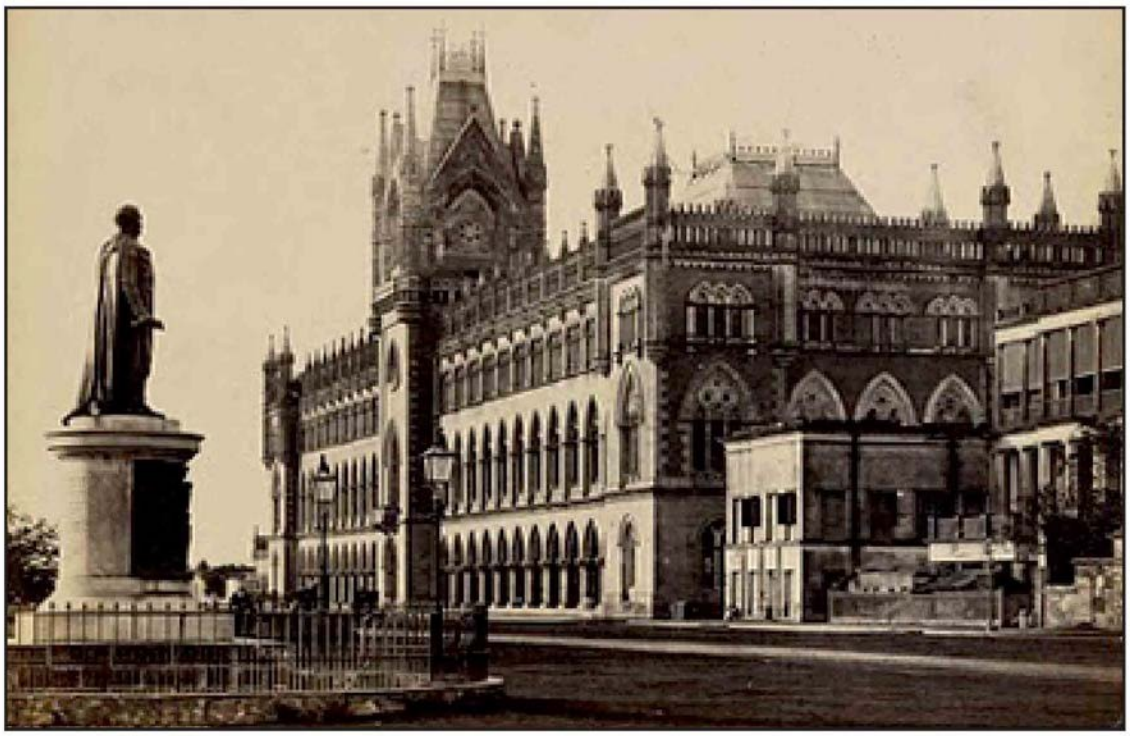
The High Court with a horse-drawn tramcar. Circa 1900



P15

The High Court with the statue of Governor-General Auckland (1836-1842)

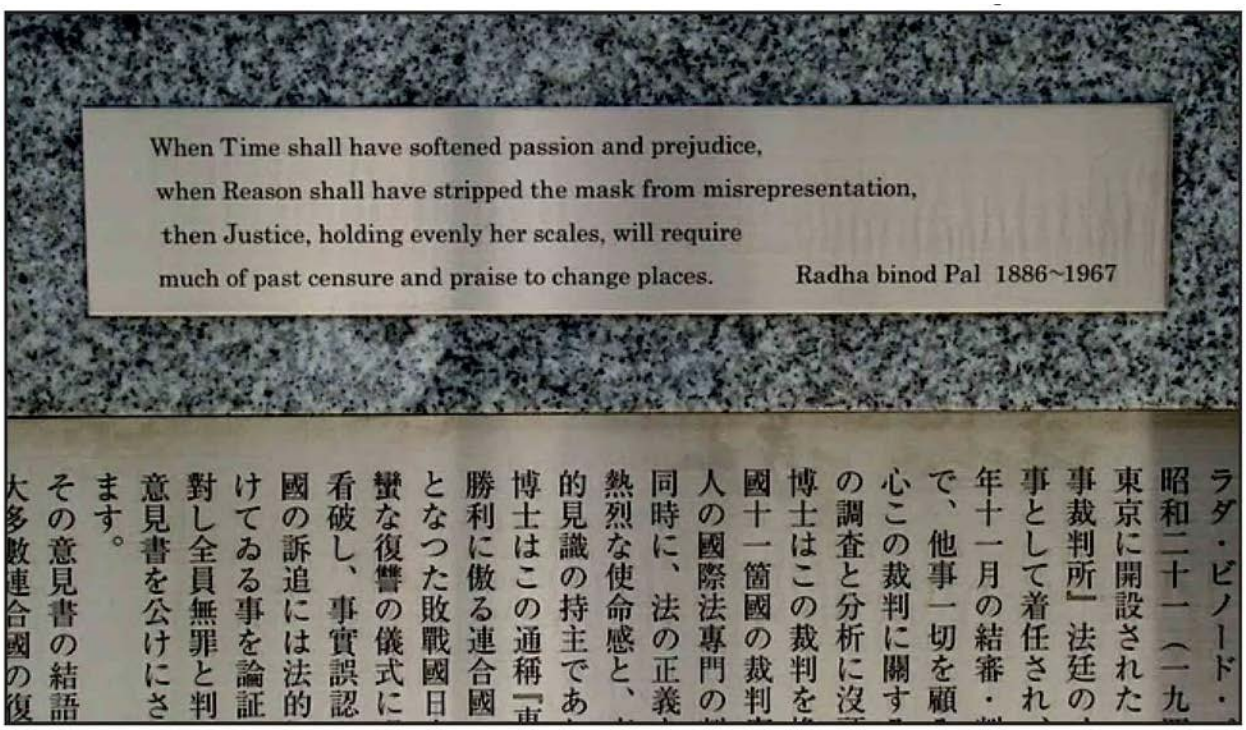
The High Court with the statue of Thomas George Baring
Governor-General and Viceroy (1872-1876)



The High Court Circa 1908

Dr. Radhabinod Pal's Memorial in Tokyo

The Plaque at the Memorial



P18

THE HIGH COURT AT CALCUTTA - A STUDY IN RETROSPECT

Dr. Debiprosad Pal

The heart and core of a democracy lies in the judicial process. Administration of justice is decidedly of the paramount importance in the whole range of governmental functions of a modern democratic State. The very existence of the latter is inconceivable unless it takes upon itself the positive duty of determining the rights and obligations of its subjects or citizens in individual cases. The High Court of Calcutta by its glorious tradition and heritage occupies a prominent place in the judicial administration of our country. This premier High Court is going to complete one hundred and fifty years of its life. An institution is a living thing, it does not yield its secret to the printed words. In tracing the growth and development of any institution we must realize that the roots of the present lie deep in the past.

The Charter granted to the East India Company by Charles II, in the year 1661 gave to the Governor and Council of the several places belonging to the Company in the East Indies power to judge all persons living under the Company in all causes, whether civil or criminal, according to the laws of Great Britain, and to execute judgment accordingly.

In the subsequent grants to the Company of the Islands of Bombay and St. Helena in 1669 and 1674, full power was given for the exercise by the Company of judicial authority according to the British Laws. In the year 1683, Charles II granted a further Charter to the Company, in which the royal will was declared, that a Court of Judicature should be established at such places as the company might appoint; to consist of one person, learned in the civil laws and two merchants; all to be appointed by the Company. This arrangement was continued in the Charters granted by James II in the year 1686 and by William the Third in the year 1698. In 1726, The Court of Directors represented to the King "that there was great want at Madras, Fort William and Bombay, of a proper and competent power and authority for the more speedy and effectual administering of justice in civil causes and for the trying and punishing of capital and other criminal offences and misdemeanours". The Court, therefore, prayed permission to establish Mayor's Courts at the said places. In compliance with the prayer of this petition. His Majesty George I was pleased on the 24th September, 1726, by Letters Patent, to establish Mayor's Courts at Madras, Bombay and Fort William, each consisting of a Mayor and 9 Aldermen; 7 of whom with the Mayor were required to be natural born British subjects. The Courts so established were Courts of Record and were authorized to try, hear and determine all civil suits, actions and pleas between party and party.

In the year 1772 the affairs of the East India Company were examined into by the House of Commons; when it was judged necessary to devise a plan for their future Government which should correct the prevailing abuses, and give strength and vigour to their affairs. A Bill was accordingly introduced into the House of Commons on the 13th April 1772 by Mr. Sullivan, a Director of the Company. The object of the Bill, so far as it respects the administration of justice in India, was the institution of a new Court of Judicature in Bengal instead of the Mayor's Court. On 18th May 1772 the Bill which Mr. Sullivan had introduced was lost on a division.

The House of Commons, however, on 4th May 1773 granted leave to Lord North and others to bring in a Bill for establishing certain Regulations for the better management of the affairs of the East India Company as well in India as in Europe. Lord North's Bill involved important alterations in the constitution of the Company and the arrangement of their affairs. It also proposed the establishment of a Supreme Court of Judicature in Bengal with civil, criminal and ecclesiastical jurisdiction over all persons, excepting the Governor General or any of the Councils of the Government. The Bill, notwithstanding the opposition of the Company, was passed in the House of Commons on 10th June 1773. Thus, the Supreme Court of Judicature at Fort William was established and this authority was exercised on 26th March 1774, when a Charter was issued by which a Supreme Court was erected to consist of a Chief Justice and the puisne Judges and was empowered to administer in India all the departments of English Law. All proceedings pending in the Mayor's Court, which was abolished, were transferred to the Supreme Court.

The jurisdiction of the Supreme Court was declared to extend to all British subjects in Bengal, Bihar and Orissa and they were authorized to hear and determine suits and actions of British subjects against natives, where the cause might involve a sum exceeding Rs. 500/- and where the party in the contract under dispute might have agreed in case of dispute to submit to the Court's decision.

On 28th March 1774 the newly appointed Judges of the Supreme Court, Elijah Impey, Esqr., Chief Justice, Robert Chambers, Esqr., Stephen C. Le Maistre, Esqr., and John Hyde, Esqr., puisne Judges were appointed.

After the Supreme Court was established in the three Presidency towns, it was felt strongly that with a view to better administration of justice in India the Supreme Court and Sudder Courts should in each Presidency be consolidated into one, so as to unite the legal training of the English Lawyers with the intimate knowledge of the customs, habits and laws of the natives possessed by the Judges in the country. Hence, the Bill of 1861 was introduced by Sir Charles Wood in the House of Commons. Thereupon, by Letters Patent, the High Courts for Bengal, Madras and Bombay were established and it was enacted that the Supreme Courts and the Courts of Sudder Dewanny Adawlut and Sudder Nizamut or Foujdary Adawlut should be abolished. The jurisdiction and power of the High Courts were to be fixed by the Letters Patent. Thereupon, the Charters were issued in 1862 and afterwards new

Charters in 1865 constituting the High Courts in Bengal, Madras and Bombay.

As a result of the constitution of the High Court under the Charter, the High Court at Calcutta was vested with Ordinary Original Civil Jurisdiction within the local limits of Calcutta. Suits of every description were brought within their cognizance, except cases in which the Small Causes Court would have jurisdiction. The High Court was also constituted as a Court of Appeal from the Civil Courts of the Bengal Division of the Presidency and from all other Courts subject to its superintendence. The result of the establishment of the High Court was to combine the Judges of the Supreme and Sudder Courts and thereby to constitute a single Tribunal.

With the dawn of Independence and coming into effect of the Constitution of India, the High Court has also been vested with the power to issue high prerogative writs and orders protecting the fundamental rights guaranteed under the Constitution of India and also other legal rights. Before the Constitution came into force, the High Court was empowered to issue one or more of the named Writs either by statute or by Letters Patent, but the territorial limit within which it could do so was very restricted.

With the establishment of the City Civil Court and the City Sessions Court in Calcutta, a new chapter in the system of administration of justice and particularly in the city of Calcutta was introduced. The City Civil Court Act, 1953 was enacted on the recommendations of the Judicial Reforms Committee headed by the then Chief Justice Sir Arthur Trevor Harries. Although the Act was passed in 1953, the City Civil Court was established on 23rd February 1957 when the then Chief Justice of the Calcutta High Court declared the Court to be formally opened. The City Civil Court shall be deemed to be a Court subordinate to and subject to the superintendence of the High Court within the meaning of the Letters Patent for the High Court and of the Code of Civil Procedure. The local limits of the jurisdiction of the City Civil Court shall be the city of Calcutta. Although the pecuniary jurisdiction of the City Civil Court to try suits and proceedings of a civil nature was originally limited to Rs. 10,000/-, by the amendment of the said Act in 1969, the said limit was raised upto Rs. 50,000/- and by the recent amendment in 1980, the limit has been further raised to Rs. 1,00,000/-. The said limit has been further raised upto Rs. 10 lacs. The Courts were established for twin purposes of relieving the High Court of the congestion of its work particularly in its original side and also to afford relief to the poorer people by reducing the cost of litigation.

It will be proper on this occasion to recall to our mind the great Judges whose names are associated with this High Court. The first Chief Justice, who had also been the Chief Justice of the Supreme Court, was Sir Barnes Peacock. He was followed by Sir Richard Couch, Sir Richard Garth, Sir William Comer Petheram, Sir Francis Maclean, Sir Lawrence Hugh Jenkins, Sir Lancelot Sanderson, Sir George Claus Rankin, Sir Harold Derbyshire and Sir Arthur Trevor Harries. The first permanent Indian Chief Justice was Phani Bhusan Chakravartti who held this exalted office from

1952 to 1958. He was followed by Kulada Charan Das Gupta, Surajit Chandra Lahiri, Himansu Kumar Bose, Deep Narayan Sinha, Prasanta Bihari Mukharji, Sankar Prasad Mitra, Amarendra Nath Sen and others. Pursuant to the policy which has been followed in recent times the office of the Chief Justice is now held by a Senior Judge transferred to this High Court. The number of Senior Judges of different High Courts has from time to time adorned the High Office on transfer to this High Court. The illustrious names who have adorned the Bench of this Hon'ble Court may be named: Dwarka Nath Mitter, Chunder Madhab Ghose, Sir Gooroo Das Banerji who became also the Vice Chancellor of the Calcutta University, Sir Asutosh Mookerjee who became later the Acting Chief Justice of this Court and also the Vice Chancellor of the Calcutta Univerisity, Manmatha Nath Mukherjee, Romesh Chunder Mitter, Dr. Bijan Kumar Mukherjee, Sudhi Ranjan Das, Paresh Nath Mukherjee, Sabyasachi Mukharji, Ruma Pal and others. Dr. Bijan Kumar Mukherjee, Sudhi Ranjan Das, Amal Kumar Sarkar and Sabyasachi Mukharji became later Chief Justices of the Supreme Court of India. Justice Ruma Pal was the first lady Judge of this Court to be elevated to the Supreme Court of India. Sir B.N. Rau, a Judge of this Court became a Judge of the International Court of Justice.

Dr. Radhabinod Pal who was for some time a Judge of this Court became a Member of the International Military Tribunal for the Far East for the trial of the war criminals in Japan. He was the only Judge who dissented from the Majority judgment in the Tokyo Trial and declared the Japanese war criminals as not guilty. Dr. Radhabinod Pal was also a Vice Chancellor of the Calcutta University, and was elected by the General Assembly of the United Nations and by the Security Council of the United Nations as a Member of the International Law Commission of the United Nations and later became the Chairman of the said Commission for a number of times.

The contributions of the leaders of the profession not only to this ancient temple of justice but also in the various spheres of our national life have been rich and varied. The names of W. C. Bonnerjea, J. M. Sen Gupta, Tarak Nath Palit, Sir Rash Behari Ghosh, Deshbandhu Chitta Ranjan Das, Sarat Chandra Bose, Dr. Atul Chandra Gupta are remembered with deep reverence.

The type and pattern of justice that the Courts had to administer in the past are also undergoing rapid changes with the emergence of Independence and the great socio-economic revolution that is taking place in its wake. We are indeed living in an age of transition, fast moving from the days when the State was generally regarded as a passive organism intervening only when required to moderate friction that might from time to time occur in the relations between its various elements, into the age of a planned society wherein the State is to be accepted as itself the driving force in social betterment. There is a growing readiness to accept law as a process of social engineering, as an instrument of social control concerned intimately with the socio-economic dynamics. With the increasing activities of the modern State and the expansion of the executive functions of the Government in diverse fields of urban,

rural and industrial development, the horizons of law are expanding in new and different dimensions.

The rise and growth of administrative law has been one of the significant developments in recent times. The process of judicial review of administrative actions and decisions has opened new frontiers in the field of administrative law and the Courts are called upon to exercise their power of judicial scrutiny of the actions and decisions of various administrative bodies and quasi judicial authorities entrusted with the functions of administering law in different spheres of socio-economic life. It is a significant contribution of the Indian judiciary in moulding and shaping the traditional doctrine of rule of law by extending its horizons and expanding the concept to the needs and requirements of our developing society. The principle of equality enshrined in Article 14 of the Constitution has been given a dynamic interpretation and the reach of the great equalizing principle enshrined in Article 14 has been extended to embrace within its sweep the doctrine of promissory estoppel, protection against the arbitrary and unreasonable State action both in the legislative field and administrative action.

The concept of public interest litigation evolved by the Court has given a firm protection against any abuse of process of law or administrative or executive action which is considered to be in flagrant violation of the process of law or of the fundamental principles of judicial propriety or principles of natural justice. The categories of the actions or decisions of the executive are not closed and the Court of Law in the exercise of its power of judicial review can enlarge and widen the sphere of such control by way of judicial review. Hence the tasks of the Judges and the Lawyers have been continuously changing in order to accommodate themselves to the fluidity of life and society in which they live. It is in the consciousness of these fundamental and far-reaching changes that are affecting the socio-economic structure of our times and the consequent demands of socio-economic justice that the Judiciary today is called upon to rise to its new heights in the sacred task of interpreting the laws and the Constitution and to strike a balance between the rights of the individual and the need for social control through the process of law.

THE HON'BLE BENCHER AND I

Hirak Kumar Mitra

It was early June 1964. It wasn't a misty, moisty morning, but bright and sunny. The Bar examinations were over and we were waiting to be called to the Bar by the Lincoln's Inn[1], waiting to be introduced to the Bencher[2] for his recommendation for being accepted as an utter barrister[3].

The huge, solid-looking, veneered door of the Hon'ble Bencher's chamber was closed. We were waiting in an adjoining room at the Lincoln's Inn fields[4]. So far I remember there were ten of us. I was the only Indian in the group.

The names of the candidates were being called alphabetically, surname-wise. The first to go in came out, I guess, in about twenty minutes. So I figured it would be some time before my turn came. I decided to sit back a little and relax. But I couldn't. What would the Bencher be like? Would he ask me tough questions? Would my nervousness show through? What if I didn't fare well enough?

I sat up and looked around. I looked at the faces of the other candidates, at how they sat, and tried to make out from their hands, their body language whether they too were nervous. They all seemed calm, composed, sedate.

Suddenly a thought came to my mind: my student days had come to an end. Now, I would have to face the stark world of reality, of uncertainty. Life as a professional, to begin with at least, would be a fairly long struggle: my father had warned me of that. I felt a tad distressed. But soon I cheered up. Wouldn't I be leaving for Calcutta in a week's time? Wasn't I longing to be back home, to be once more with my father? I hadn't met him ever since I had left in September 1960. Over all these years he would write to me long letters every week, covering every inch of an aerogram, in his inimitable style and handwriting. But my replies would invariably be too short for his liking: "Why can't you find some other time to write – when you're not hurrying off to College?" he would ask and, on odd occasions, he would gently remind me that longer letters were more welcome.

I had spent four years in London, four good, educative years, punctuated by one or two passing bouts of home-sickness. I still remembered the day I had landed, the days I had spent in the University College, London as a student in the undergraduate law course, the great teachers we had had, my shift to Lincoln's Inn, being awe-struck by its buildings and the surroundings – the medieval Hall and Gateway next to Chancery Lane, the New Square in the centre, and the imposing Great Hall, the Library and the Benchers' premises beside Lincoln's Inn Fields. These

remarkable buildings are much more than tourist attractions; they provide educational and training facilities for would-be-barristers and also serve as the professional home for the practising bar. Then there was the Old Curiosity Shop[5] nearby, the fish-and-chips, the hunt for saloons for a cheap hair-cut, the occasional visits with friends to Harrod's, not so much to buy but for window shopping. I would be loathe to leave all these, and my friends! But then . . .

I must have fallen into a reverie. I felt a gentle nudge and the hushed voice next to me: "Mitter, next."

When my name was called I got up, straightened my tie, and walked into the Hon'ble Bencher's Chamber. We shook hands. The warmth of his hand made me realize how cold mine were. He was at least a head taller than me and he asked me with a smile to sit down. His voice was deep and sonorous. He seemed amiable, but all the same I was desperately hoping the interview would be brief.

The interview went somewhat along these lines:

Bencher : How long have you been in England, son?

Me : I came to England in September 1960.

Bencher : I see you did your LL B. from University College, London.

Me : Yes, Sir. I obtained the degree in June 1963.

Bencher : What are your plans? I am sure you'd like to stay on in England, wouldn't you?

Me : No Sir, I wouldn't like to stay a day more than is absolutely necessary.

My answer, though I didn't mean to, must have startled the Hon'ble Bencher. "You mean you did not like our country?" he asked. "No Sir. . . I mean I liked it immensely. . . I enjoyed my stay in England very much . . . and I would be leaving behind some close friends whom I may never meet again," I said. This reply, which was an honest one, seemed to make him happy.

After a few more questions and answers, he asked me, "What do you intend to do when you return to India – practise in some law court?"

"Yes," I said, "I'll join the Bar in Calcutta."

"Do you know anyone in the legal profession in Calcutta?" he asked.

"Yes, Sir, I do. My father is a barrister, and now he is a judge of the High Court

at Calcutta."

"But that won't help you much, you see, to get your career started as a junior barrister," he said, nodding his head a little. "Do you have anyone else in the profession?"

"I have an uncle, Mr R. C. Deb, who is a barrister and a leading lawyer of the Calcutta Bar," I said. "And we are very close, and he is very fond of me."

"Nah, that won't help you either."

His next question was direct: "Do you know any solicitor back home?"

"Well, I have another uncle . . . and he's the senior partner of a very well-known solicitor firm."

"Does this solicitor uncle of yours have a son?'

"Yes, but he is not in the legal profession."

The Hon'ble Bencher's face at once became cheerful. "Then you're all right, my boy".

We talked for some time more, and the Hon'ble Bencher wished me well in life and in the profession.

Nearly fifty years have passed. But the Hon'ble Bencher's words still ring in my ear – and they are as true, I reckon, even today. I have told this story to some of my friends here. The response of everyone has been the same: "The plight of the junior lawyers must have been the same – as in India so in England."

One last word. Before leaving for England I had gone, at my father's bidding, to see Subimal C. Roy, the scholar extraordinary and arguably the finest legal brain that Calcutta ever produced. His parting words were: "Hirak, let me tell you, whatever success you may achieve in life, these three or four years as a student in England will be the best, the most enjoyable ones in your life." As the years have rolled by, I have realized more and more how sagacious Subimal-da's words were!

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1 The Honourable Society of Lincoln's Inn is one of four Inns of Court in London to which barristers of England and Wales belong and where they are called to the Bar. Lincoln's Inn was founded in the middle of the 14th century and is said to be the oldest of the four. It took its name from Henry de Lacy, 3rd Earl of Lincoln and one of Edward I's most influential advisers, though some believe it was named after Thomas de Lyncoln, the King's Serjeant of Holborn. The Earl of Lincoln's crest appears in the arms of the Hon'ble Society of Lincoln's Inn, upon the Gate House, and upon the Archway leading into Carey Street. To name but a few, the distinguished members of Lincoln's Inn

include Sir Thomas More, Lords Mansfield, Hailshamand Denning, Walpole, Addington and Oliver Cromwell, Disraeli and Gladstone, John Donne and John Galsworthy, Margaret Thatcher and Tony Blair, as also Jinnah, Iqbal, Hidayatullah and Shankar Dayal Sharma. Historically speaking, during the 12th and 13th century, the law was taught in the City of London primarily by the clergy. In the 13th century two events happened which destroyed this form of legal education: first, a decree by Henry III that no institute of legal education would exist in the City of London, and second, a papal bill that prohibited the clergy from teaching the common law, rather than canon law. As a result the system of legal education changed and the common lawyers migrated to the hamlet of Holborn, the place nearest to the law courts at Westminster Hall that was outside the City.

2 A Bencher is a member of Council, the governing body of the Honourable Society of Lincoln's Inn, as in the other Inns of Court. The term refers to one who sits on the high benches in the main hall of the Inn which are used for dining and during moots.

3 Junior barristers can also be referred to as utter barristers, a term derived from "outer barristers" or barristers of the outer bar, as distinguished from Queen's Counsel at the inner bar. This follows the practice in English court rooms where the Queen's Counsel sits one row further forward than junior barristers. When students are called to the bar, they are said to be "called to the Degree of an Utter Barrister..." on their certificate of call.

4 London's largest square evolved from two 'waste common fields', Purse field and Cup field, which had been a playground for students from the nearby Lincoln's Inn. A third field, known as Fickett's field, which lay to the south, is now covered by Carey Street, Portugal Street, and part of Serle Street. Ref. The London Encyclopaedia, 3rd Edn., Macmillan, p.485

5 The shop selling antique and modern art immortalized by Charles Dickens.

The accompanying pictures are off the internet.

The Library

The Gate House

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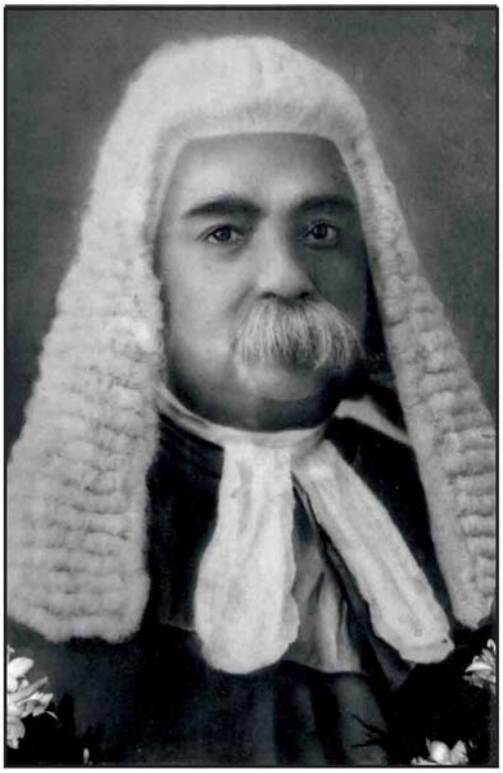
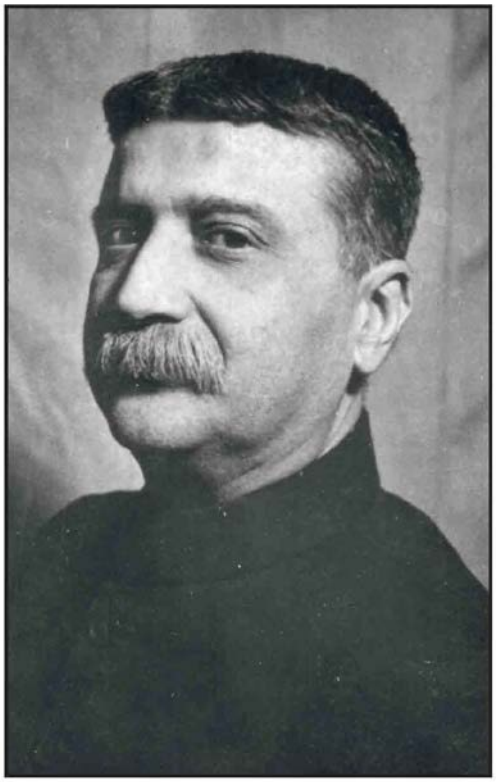


Sir Asutosh Mookerjee



Rama Prasad Mookerjee

Chittatosh Mookerjee

P20

THREE GENERATIONS IN THE HIGH COURT[1]

Chittatosh Mookerjee

Prof. Sabyasachi Bhattacharjee, Justice Shyamal Kumar Sen, President and Members of the Society for Preservation of Calcutta,

Friends,

I express my sincere gratitude to the President and the members of the Society for inviting me to this evening's function which is being held to pay homage to Late Prof. Nisith Ranjan Ray, the founder of the Society. All of us are indebted to Prof. Ray for his efforts to preserve the heritage of this city. After all, the expression "heritage" includes valued objects and things which are worthy of preservation.

Mr Avik Roy requested me to speak about "Three Generations in the High Court". I am somewhat diffident. Since the Calcutta High Court's establishment in July 1862, there have been a number of outstanding Judges, and I am certainly not in that august company.

My revered grandfather Sir Asutosh Mookerjee became a Judge of the Calcutta High Court in 1904 and demitted his office with effect from 1st January 1924. My father Rama Prasad Mookerjee was appointed a Judge of this Court in 1948 and retired on 30th December 1956. My grandfather was the Acting Chief Justice for a few months in 1920 when Chief Justice Lancelot Sanderson went on leave. My father was the Acting Chief Justice between August and November 1956 when Chief Justice P. B. Chakravartti was made the Acting Governor of West Bengal following the death of Harendra Coomar Mookerjee.

I was appointed as an Additional Judge on 2nd April 1969 and was the Chief Justice of the Calcutta High Court from 1st November 1986 to 1st November 1987. I was transferred as the Chief Justice of the Bombay High Court with effect from 2nd November 1987. On two occasions I was the Acting Governor of Maharashtra. For some time I was also the Acting Governor of Goa, Daman and Diu and the Union territories of Dadra and Nagar Haveli.

I must hasten to add that there could be no comparison between my grandfather and me. The difference between the two of us is not just in the size of our whiskers – my grandfather had a huge bushy moustache like Georges Benjamin Clemenceau, France's Prime Minister in the early 20th century, whereas I have only a thin one on my upper lip – but in something much more fundamental.

My grandfather was one of the most outstanding Judges who delivered seminal judgments and at the same time transformed Calcutta University into one of the foremost centres of learning. Because of his spirit of independence and indomitable courage he was called Banglar Bagh (Bengal's Tiger).

When my father served as a Judge, Calcutta High Court had already begun to lose some of its shine, and when I sat in the Bench, it is sad to remark that Calcutta High Court could no longer be compared with the Court of the earlier era with great Judges and outstanding members of the Bar.

In England there is a precedent of grandfather, father and son successively becoming Judges. Charles Arthur Russell, Baron Russell of Killowen (1832 -1900) became the Lord Chief Justice of England and Wales. His son, Frank Russell (1867-1946) was a Lord of Appeal in Ordinary. Lord Frank Russell's son Charles Ritchie Russell (1908-1986) also became a Lord of Appeal in Ordinary.

But three generations of a family becoming Judges one after another is only a matter of coincidence and certainly does not indicate any dynastic trend.

My grandfather had a brilliant academic career. While he was a schoolboy, he once met Pandit Iswar Chandra Vidyasagar in the Thacker Spink bookshop, and Vidyasagar presented him with a copy of Aesop's Fables. Asutosh's encyclopaedic knowledge covered English literature, Sanskrit, history, philosophy and different branches of science, and of course law. But mathematics was his most favourite subject. Amongst Indians he was the first to conduct mathematical researches, particularly in trigonometry, geometry, conics, algebra, etc. When he was still an undergraduate student, his research paper had appeared in an issue of the Cambridge Messenger (1884). 17 or 18 of his research papers were published in different foreign and Indian journals. Some of his papers found mention in foreign textbooks. He had the makings of a great mathematician. The then Director of Public Instructions, Bengal had offered Asutosh a post in Presidency College, Calcutta. But Asutosh had demanded that he be given equal pay with the European teachers and that he would never be transferred so that he might conduct his research work. The Director of Public Instructions did accept the terms of Asutosh. Sir Gooroodas Banerjee, the first Indian to be appointed as the Vice Chancellor of the University of Calcutta, tried to appoint Asutosh as a Professor of Calcutta University, but he failed to raise necessary funds to pay Asutosh's salary of Rs 4000 per year.

Sir Asutosh had remarked on several occasions that his ambition was to be a mathematician, but it was not to be. He had, therefore, drifted to law. Opting for the legal career was perhaps less a matter of choice than of necessity arising out of circumstances. Asutosh's father Ganga Prasad had set up his medical practice and built his house in Russa Road, Bhowanipur in the latter half of the 19th century. Around that time, several High Court Judges resided in Bhowanipur – Justice Sumbhoo Nath Pandit, Justice Dwarka Nath Mitter, Sir Romesh Chunder Mitter,

Justice Chunder Madhab Ghose. Ganga Prasad had come to know most of them closely. Sir Rash Behari Ghose was also a close friend of Asutosh's father. Asutosh had recorded in his diary that Sir Rash Behari had once told him: "None but the best men ought to join the Bar, but times are so hard that these best men must wait before they can succeed". When Ganga Prasad died, Asutosh had little choice but to join the legal profession to support his family.

It is interesting to recall that: (a) when Asutosh read Law in City College, Satyendra Prasanno Sinha (later 1st Baron Sinha of Raipur) was one of his teachers; and (b) when Sir Surendranath Banerjee, the editor of The Bengalee, was punished for contempt of Court for criticizing Mr Justice Norris, who had passed an order in a family dispute directing that the family's Shaligram Shila be brought to Court, it is said that a group of students had pelted stones towards the High Court in protest, and Asutosh was in that group.

Sir Asutosh was an articled clerk to Sir Rash Behari Ghose[2] and for some time his junior. Asutosh soon made his mark as an able and busy lawyer. He had great affection for budding lawyers and would always encourage them. His chamber juniors included Charu Chunder Ghose (later a Barrister-at-Law and a Judge, who was knighted), A. K. Fazlul Haq, the veteran politician who was some time premier of undivided Bengal, and N. K. Basu, the redoubtable criminal lawyer.

While he was still at the Bar, Asutosh was associated with various public bodies. He was for some time Commissioner of the Calcutta Corporation; he was elected member of the Bengal Legislative Council; he also became a member of the Imperial Legislative Council. He frequently participated in the deliberations of these bodies. Since 1891 he was a fellow of Calcutta University and one of the most active members of its various bodies.

When in 1904 Asutosh agreed to become a Judge of the Calcutta High Court, his mother Jagattarini Devi was sore because a Judge's salary would be less than what Asutosh was earning and had even asked him to send a telegram to Simla withdrawing his consent. But it was too late, and Sir Asutosh was made a Judge of the Calcutta High Court on 6th June 1904.

In spite of his busy professional life, Asutosh found time to deliver Tagore Law Lectures and also participate in meetings on scientific topics. During his long tenure as a Judge from 1904 to December 1923, he delivered a large number of memorable and important judgments covering various branches of civil and criminal law.

Chief Justice Sir Lawrence Jenkins sitting with Sir Asutosh had decided a number of cases involving "terrorists". It was rumoured that some of the verdicts did not please the government and Sir Lawrence Jenkins was transferred as the Chief Justice of Bombay, and thereafter he became a member of the Privy Council. When at the age of forty Asutosh became a Judge, his senior colleague Justice Rampini had

told Asutosh that his enthusiasm would perhaps abate with advancing years. Asutosh had said in reply that he would not be justified in continuing as a Judge should his enthusiasm for doing justice diminish or his capacity for work decline.

Earlier, in 1889 Sir Asutosh had been made a fellow of Calcutta University and thus had begun his long and memorable association with his alma mater. In the year 1906 he became the Vice Chancellor and was re-appointed several times up to 1913. He was again the Vice Chancellor from 1921 to 1923, but spurned with contempt the offer of Lord Lytton for a further term as he found it humiliating[3]. His letter written on this occasion is a memorable one.

Sir Asutosh as Vice Chancellor had declined to accept the recommendation of Sir Joseph Bampfylde Fuller, the Lt. Governor of the newly created Province of East Bengal and Assam, that the affiliation of two schools in Sirajgunj in Eastern Bengal be withdrawn on the ground that students of these two schools had taken part in the agitation against the proposed partition of Bengal. The Government of India agreed with the Vice Chancellor and turned down Fuller's recommendation for disaffiliation. As a result, Fuller resigned his office. Sir Asutosh had repeatedly clashed with the Government of India and the Government of Bengal whenever they had tried to interfere with the academic freedom of Calcutta University. On one of those occasions he had declared tellingly, "Freedom first, Freedom second, and Freedom always".[4]

Sir Asutosh had opposed the call given by the Indian National Congress to boycott the schools and colleges affiliated to Calcutta University. He was firmly of the opinion that the University was and should remain a truly independent institution devoted to promoting higher knowledge and research.

In 1921-22 many had begun to urge my grandfather to forge with Deshbandhu Chittaranjan Das a combined opposition to the Government. I have heard from my mother Tara Devi that Deshbandhu visited Sir Asutosh on several occasions and the two held discussions in private.

Sir Surendranath Banerjee became suspicious and shot off a secret letter to the Government of India alleging that Sir Asutosh had come to an arrangement with Chittaranjan Das regarding the forthcoming elections to the Legislative Council, and that Sir Asutosh was backing certain candidates. Surendranath suggested that the Government should intervene and take action because a Judge was associating himself with political activities.

On the basis of this complaint of Surendranath, Sir Malcolm Hailey, Home member, directed an enquiry to be held at Calcutta by Girija Sankar Bajpai. In his report Bajpai recorded that he had heard a good deal of talk about the pact between Sir Asutosh and C. R. Das, but that he had not come across any newspaper statement in this behalf. Finally, though the Indian Government felt that High Court Judges should also be brought within the purview of the Government Conduct Rules, no

action could be taken because the Government was unable to obtain confirmation of the confidential report that Asutosh Mookerjee would be the central figure of the Independent Liberal Party in Bengal and the allegations of Surendranath had not been established.

On the eve of Asutosh's retirement as a Judge, he was given a farewell by all sections of the Bar. They all spoke effusively about my grandfather's ideals of Justice and his abiding connection with the Court.

To digress a little, my grandfather was an avid bibliophile and had built up a library consisting of more than 80,000 books on almost all branches of knowledge. I have heard that once Sir Lawrence Jenkins and Lady Jenkins paid a visit to Asutosh's house. Lady Jenkins, who was a hunter of wild animals herself, asked Asutosh whether there was any book on lion hunting in his library. In a few moments Asutosh took out a book on lion hunting from a bookshelf and presented it to Lady Jenkins.

After his retirement, Asutosh had accepted a brief to appear on behalf of the Maharaja of Dumraon at Patna. It was at Patna that my grandfather breathed his last on 25th May 1924 after a brief illness.

My father Rama Prasad Mookerjee was born on 30th December 1896. After passing the Matriculation Examination in 1913, he was admitted to Presidency College, Calcutta. Netaji Subhas Chandra Bose, Dilip Kumar Roy, Principal Amiya Kumar Sen, Prof. Priya Ranjan Sen were among his classmates. My father obtained a First Class in English both in his B. A. and M. A. Examinations. He took his Law degree, and then in 1919 joined the Calcutta High Court as a Vakil.

At the instance of Deshbandhu Chittaranjan Das, Rama Prasad joined Swaraj party. He was twice elected Councillor of Calcutta Corporation, and took quite a prominent part in the municipal affairs and in several other public bodies, including Calcutta University.

With the sudden death of my grandfather, as his eldest son the burden of the large family fell on my father's shoulder. My father was for some time member of the Council of States, but resigned in response to a call given by the Indian National Congress. After he failed to be re-elected a third time as Municipal Councillor by a very narrow margin, my father began to devote more and more of his time to the legal profession. He was made Assistant Government Pleader and, later on, Senior Government Pleader of the Calcutta High Court.

In 1948 Rama Prasad was appointed as Judge of the High Court, and he retired on 30th December 1956. For a number of years he was a member of the Senate and the Syndicate of Calcutta University, and for a while he was a part-time member of the Law Commission. Rama Prasad died in 1983.

Syama Prasad and Uma Prasad, the second and the third sons of Sir Asutosh, had also joined the legal profession. Syama Prasad was called to the Bar by Lincoln's Inn. But Syama Prasad had "exchanged the legal profession for service to the country". When Syama Prasad was only 33, he was made the Vice Chancellor of Calcutta University. He was the Finance member of Bengal in the Progressive Coalition ministry of A. K. Fazlul Haq. He was the Minister of Industry and Supply of India from August 1947 to April 1950. When Syama Prasad died, Chief Justice Phani Bhusan Chakravartti, in his reply to the Full Court Reference, had paid high tributes to him and said ". . . This Court has a special reason to be grateful to Dr Syama Prasad Mookerjee. The fact that this Court is functioning as a Court of the Union of India is due mainly, if not wholly, to his efforts". The flag of the High Court flew half mast in "acknowledgement of its debt to him and to pay a tribute to his memory".[5]

Uma Prasad preferred to roam about in the different parts of the Himalayan region. His writings about his treks and travels won wide acclaim; he was awarded the Sahitya Akademy Award for his book Manimahesh.

As for myself, I read in Presidency College and in the University College of Law, Calcutta. I could not obtain a first class in my M. A. Examination, and I was persuaded to complete my law studies. Many of our acquaintances, some of whom were lawyers themselves, tried to dissuade me from joining the legal profession. But my father firmly insisted that I become a lawyer. Therefore, with some amount of reluctance, I became an Advocate.

In those days, the earning of a junior in the Appellate Side of the High Court was very meagre. But he had plenty of time to pick up at least the basic principles of law and also to enjoy the camaraderie of other junior members of the Bar, who too had little work. When I was appointed as a lecturer in the University College of Law, I was doubly benefited. I began to have a steady income, and I enjoyed teaching the students, some of whom were older than me. At the same time I began to be earnest about my practice in Court. Gradually, my legal practice flourished.

I was only forty when I was appointed an Additional Judge of the Calcutta High Court. Later on I was confirmed. I became the Chief Justice of the Calcutta High Court in November 1986 and thereafter the Chief Justice of the Bombay High Court from November 1987 to 1st January 1990. While at Bombay I faced a piquant situation when the Bar made allegations of corruption against five sitting Judges of the Bombay High Court. To prevent a total breakdown of the High Court's functioning, I directed that the five concerned Judges would not be assigned any judicial work and no cause list would be prepared for them. The Bar was assuaged and the Court functioned normally. What happened to those five Judges is another story.

As I have already told you, I had twice officiated as the Governor of

Maharastra. On one occasion I was also the acting Governor of Goa, Daman and Diu and of the two Union territories of Dadra and Nagar Haveli.

It has been my good fortune that I have enjoyed the goodwill and confidence of the Bench and the Bar of both the High Courts I had served. In fact all the three generations – my grandfather, my father and I – had all along a most cordial relationship with the Bench and the Bar.

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1 Based on the talk given in August 2011 in the Town Hall at the invitation of the Society for the Preservation of Archival Materials & Monuments of Calcutta.

2 Once a well-to-do litigant briefed Sir Rash Behari Ghose. He promised Sir Rash Behari a handsome reward if Sir Rash Behari could win the case for him. Sir Rash Behari replied that if Sir Asutosh is not the Judge, he could give his word; not otherwise, because Asutosh knew the law too well.

3 By his letter of 24th March 1923, His Excellency the Earl of Lytton had offered to re-appoint Sir Asutosh as Vice Chancellor "if you can give an assurance that you will not act against the Government or seek the aid of other agencies to defeat our Bill. . ." (The "Bill" sought to curb the autonomy of the University) In his reply dated 26th March 1923, Sir Asutosh refuted Lord Lytton's allegations and concluded: "I send you without hesitation the only answer which an honourable man can send – an answer which you and your advisers expect and desire: I decline the insulting offer you have made to me".

4 3rd December 1922.

5 The text of Chief Justice Chakravartti's 23rd June 1953 address, in reply to the reference made to the death of Syama Prasad Mookerjee by Sir S. M. Bose, the Advocate-General, Dr N. C. Sen Gupta, President, Bar Association, and P. D. Himatsingka, President, Incorporated Law Society, is printed in 57 CWN at page cxxiv.

REMINISCENCES

Somnath Chatterjee

Those who have had the opportunity of being associated with Calcutta High Court cannot but admire the Institution not only as a dispenser of justice but also as a great seat of learning of immense value, specially to young lawyers.

I have had the great opportunity of practising in Calcutta High Court as a professional lawyer from January 1954, until I retired for all practical purposes in 1994, for personal reasons. I have been fortunate to have been born in a lawyer's family. As the son of N. C. Chatterjee, an outstanding lawyer, from my student days I could meet many well-known lawyers in our house at 5 Theatre Road, Calcutta.

My father was the first Indian to have stood first in the Bar Examination in England and was also awarded the Langdon Medal for proficiency in Hindu Law. He belonged to a middle class family, with limited financial resources, but intensely committed to inspiring and coveted human values. He had to borrow money to go to England to qualify as a Barrister. Sir Asutosh Mookerjee, who had great affection for him advised him, to go to England. As a Barrister, my father soon developed a very busy practice and could afford to build an imposing house at 5 Theatre Road, Calcutta with a huge library and facilities like having a Tennis Court as well as a Badminton Court.

I vividly remember that during the week-ends, many junior members of the Bar used to play tennis and badminton there. I used to watch them play and came to know almost all of them and enjoyed their affection, as I did from many barristers and solicitors, who worked with my father and used to come to our house.

When I was a student in the Intermediate class, my father, who was for about two years then not keeping well and was unable to continue with his profession regularly, was offered Judgeship, which he accepted. He was active both in his profession as well as in his public life, being connected with an all India political party and our house was always full of people. But during the period when he was a Judge, our house wore a completely deserted look as no one was allowed to visit except on social occasions, which were rare. For nearly fifteen months, when he remained a Judge, only his friend Justice S. B. Sinha could be seen in our house, as both of them came from the High Court together, spent some time in the maidan for evening walk and then spent most of the evening together, generally at our house. Justice Sinha was a very close friend of my father and we also enjoyed his affection. A soft-spoken person, he enjoyed great reputation as one of the most learned Judges, equally respected by his colleagues on the Bench as well as by the members of the

Bar. Dilip, son of Justice Sinha, also a Barrister, was a wonderful human being and both he and Janet, his wife, were very close to our family and they also had a large circle of friends. Alas, both Dilip and Janet are no more and I miss them every moment. I mentioned Justice Sinha's presence in our house only to recall how Judges would lead a life of almost a total recluse.

After qualifying at the Bar Examination, I got myself enrolled as a member of the Calcutta Bar on 4 January 1954. The question came up thereafter as to whose chamber I should join. My father was then practising primarily in the Supreme Court and was staying in Delhi and he and my maternal uncle, Mr K. C. Mukherjee, also a Barrister, discussed the matter and decided that I should join the Chamber of Mr R.C. Deb, subject to his accepting me in his chamber, as already a number of juniors were his pupils.

It was my great privilege to have got the opportunity to be a pupil of Mr. Deb in his chamber, as ultimately his guidance and blessings were of immense help and inspiration to me.

Mr. Deb then used to reside at 1 Rajendra Deb Road, North Calcutta, just opposite Thanthania Kalibari. We used to stay in those days at Alipore and every evening, except on Fridays, I would be driving to Thanthania, reaching there by 6 p.m. to work in Mr. Deb's chamber.

(Incidentally, when my father became Judge, he decided to leave the Theatre Road house, as he felt he could not maintain the house with his limited income as a Judge and rented a house at Alipore Road (with leaking roof), where we all had to shift in 1949. We stayed at Alipore till 1958, when we came to our present house at Ballygunge.)

On week-ends, Mr. Deb worked in his chamber both in the morning and evening which I attended regularly. On week-days he used to work only in the evenings (except on Fridays) till late hours. I used to attend his chamber from 6 p.m. until he would get up at any time between 11 p.m. and 1 a.m, and then I would drive back to Alipore through the deserted roads, and on reaching home found my young wife looking through the window waiting for me to return. Then, only we two were residing at our Alipore residence.

Those days, I hardly had any work as a raw junior. On some Mondays and Fridays, I had one or two briefs in undefended matters. Therefore, I had ample time in the mornings to myself. My father sometimes used to call me as "barrister of undefended cases", more to inspire me than belittle me, advised me to utilize the mornings by reading the judgments reported specially in Supreme Court Reports, All England Law Reports, Calcutta Weekly Notes, Calcutta Law Journal, all of which he subscribed for me and, of course, Indian Appeals.

I sincerely tried to follow his advice by going through those reports and making notes, which greatly helped me in my career.

After I joined Mr. Deb's chamber, I used to work on his briefs by preparing on my own, Lists of Dates or Law Notes, as far as I could understand the issues involved in the matters.

I must confess that initially I found Mr. Deb to be somewhat indifferent towards me and hardly looked into the Lists of Dates or Law Notes that I used to prepare, which greatly upset me. It was disheartening to me that neither had I much work in the Court nor could I have my presence felt in Mr. Deb's chamber. I felt that though I had already spent almost two years, I had no future in the profession and I wrote to my father at Delhi that I should rather look for some other job than be an unsuccessful lawyer. Some suggestions where received that I should join the chambers of Mr. E. R. Meyer, another outstanding lawyer of the High Court.

In the first year of my practice my earning was the 'princely' sum of Rs. 1700/- and Rs. 3400/- the next year, which was surely greatly disheartening. And that was the time when I thought of giving up the profession for some other job.

But, at about that time, something happened which greatly changed my professional career providing encouragement to continue in the profession. In a fairly complicated matter, in which Mr. Deb was appearing, I had as usual prepared a List of Dates and Note on legal issues involved, citing some recent decisions reported in All England Reports. The Law Note apparently was found useful by Mr. Deb and he complimented me for the same and asked the solicitor concerned to send me a 'back-sheet' in the matter, which meant that I would appear in the case as a junior lawyer. I felt greatly excited and also appreciated the good words spoken by Mr. Deb to the solicitors.

Another significant development also took place at about the time, when I was surprised to receive a brief in a regular suit along with a junior lawyer to appear with me. That was beyond my expectation, which gave me great hope that after all I might have a future in the profession.

My junior and I fought the case with great care and preparation, to the best of our ability, before the Hon'ble Mr. Justice P. B. Mukharji, known to be a strict Judge, and the success in the matter was extremely encouraging for both of us, and I found it to be the real turning point in my career.

Gradually, I had a fairly busy practice and in course of time had the distinction of having in my chamber some brilliant juniors like Mrs. Manjula Bose, Anindya Mitra, Mrs. Urmibala (Lily) Mookherjee, Hirak Mitra, Umesh Banerjee, Jyotish Ghosh among others, all of whom were extremely helpful to me.

A practitioner in the Original Side of the High Court, where the Barristers usually practised, gets opportunity to appear in different types of litigation – of course mostly of commercial nature, and I had been lucky to appear in different types of matters which provided great opportunity in gaining experience and confidence. I used to attend regularly Mr. Deb's Chamber in the evenings for nearly three years. Thereafter, as I became busy with my own work, I did not find time to attend his chamber, except for matters in which I was briefed as his junior.

The Constitution of India conferred Writ jurisdiction on the Supreme Court (Article 32) and on the High Courts (under Article 226). It was a very important jurisdiction for the benefit of the common citizens, who suffered wrongs by reason of the action or inaction of the executive. During the initial days of our career in the High Court, only a few Writ Petitions were filed, with only one learned Judge taking matters under Writ jurisdiction for two days a week, even then only from 2 pm to 4 pm. As is known, now in every High Court the largest number of proceedings is constitutional or writ matters.

I had great interest in the study of the Constitutional rights of the people and tried to keep myself aware of issues involved in the writ matters decided by the Court. Gradually I came to appear in matters filed in the writ jurisdiction of the High Court. As I was connected with quite a few labour and employees' organizations, I developed a special interest in service matters, concerning both Central and State Government employees. I had the great satisfaction of challenging successfully the dismissal orders of hundreds of railway men, who were dismissed in the wake of the All-India Railway men's strike. In those matters, I got tremendous help from my chamber juniors, which I wish to acknowledge. I also had the satisfaction of getting released hundreds of detinues, who had been detained under Misa (Maintenance of Internal Security Act), a black law used primarily against political opponents.

As lawyers practising in the Calcutta High Court, we had the great opportunity of watching the forensic performance of some of the outstanding lawyers of our High Court, sometimes as their junior, from whom one could learn how to assist efficiently the Courts and serve one's clients.

From my early years as a lawyer, as my father advised, when I had no work of my own, I used to go to Court rooms where senior lawyers would argue, to watch their performance and to learn from them about advocacy and Court craft, to the extent of my limited capacity.

The lawyers of our High Court, specially the juniors, during my time were extremely lucky to watch some of the great lawyers like Sir S. M. Bose, Shri Atul Chandra Gupta, Advocate, H. N. Sanyal, Sankardas Banerjee, Subimal Roy, E. R. Meyer, A. K. Sen, R. C. Deb, Siddhartha Roy, Gourinath Mitter, A. C. Mitra, A. C. Bhabhra and many others arguing their matters, from which one learnt a great deal. One could legitimately boast that the Calcutta Bar had some of the most

eminent lawyers of the country as a whole.

We feel proud that not only our High Court had a strong Bar but has had many eminent Judges who adorned the Bench and dispensed justice with great ability and commitment.

During my years as a practitioner, the Calcutta High Court has had the great distinction of having on the Bench many judicial luminaries like (to name only a few for want of space) Justices Phani Bhusan Chakravartti (the first Indian Chief Justice of the High Court), Rama Prasad Mookerjee, S. R. Dasgupta, P. B. Mukharji, A. K. Sarkar, H. K. Bose, R. S. Bachawat, D. N. Sinha, Paresh Nath Mukherjee, G. K. Mitter, P. C. Mallick, A. N. Ray, S. P. Mitra, C. N. Laik, Durgadas Basu, Alak Chandra Gupta, A. N. Sen, S. C. Ghosh, Sabyasachi Mukharji, Anil Sen, Chittatosh Mookerjee, M. M. Dutt, G. N. Ray, M. K. Mukherjee, U. C. Banerjee, Ruma Pal and many other successful Judges. (Omission of any name is purely unintentional.) I have had the privilege of appearing before almost all of them (except G. N. Ray).

Our High Court is one of the premier High Courts of the country, not only because it was the earliest to be established, but as a great Institution which has, over the decades, served the cause of justice with ability and commitment. I feel happy to have been a humble participant of the process. I am also proud that my son, Pratap, is now a fairly busy practitioner of the High Court, making three generations of our family closely associated with this great Institution.

REMEMBER AND BE GLAD

Surendra Kumar Kapur

These scattered recollections are about the Bar Library Club, recalled by a fading memory with the aid of mildewed and torn membership lists reminiscent of her frail old law books. A historian more qualified than I must salvage a fuller history and the stories of her members.

About the gender of our Club there is no doubt. She has been the motherly abode of legions of lawyers all of whom were nurtured by her with a maternal and loving care. To use the neuter about her would be insensitive about so gracious a haven; and to portray her in the masculine would be a shade too grim and similarly unbecoming for there is nothing male about her heart.

Subimal Roy [in whose chambers I took my hesitant first steps] once made me spend an exhausting hour trying to describe my home, and at the end of those enervating sixty minutes delivered his first lesson:

"Precision," he said rolling those mesmerizing eyes of his, and repeating himself, "precision" he went on, "is the first requirement of a good lawyer." There was a profound lesson there for all draftsmen in that simple sentence and I have loved to pass it on to affectionately disposed juniors of my company, though some may, and some may not, have learnt the lesson.

How does one describe the Club? She is, of course, in the High Court building itself with its Victorian exterior. The soorkhi-choona that went into the making by the colonials threw up a replicated image of the chateau at Ypres. Perhaps there was a Belgian amongst the colonials or a lover of old chateaux. Are Belgians gargantuan? For the Club has ceilings fully fifty feet high and an enormous hall, with other huge rooms to which entry is through doors at least twenty feet tall.

To my company who love her, the enormous doors are her limbs and the hall and rooms her body; and her tables, her veins, and her raiment, crumbling shelves, adorned with her huge cache of leatherbound tomes that lovingly grace her. From Hyde's Reports to the lowly Indian Appeals, she has them all secreted about her person, and it would take a true bibliophile to collate her precious emeralds and rubies and sapphires and diamonds. She is a big girl, no doubt, but also with about the largest heart that it pleased the Lord to make in Calcutta.

The other day a legal visitor from Bombay plaintively asked, "But why don't you clean the place up?" Perhaps elsewhere they remove the moss and old

ivy from hallowed walls.

Aren't chateaux which conjure up images of vineyards and wines grammatically feminine? And anyway, like Trinity to Sir Arthur Quiller-Couch this house of learning is also to us our "most kindly nurse."

Her age can be spoken of with pride, for she is over 185 years old. She has completed almost a second century of fecundity and is the oldest of her kind in the country. It is a comforting thought that nobody is ever going to take away her undeniable advantage of oldness.

If in age she is incomparable, as she is, the long rolls of her illustrious children would also give her a pre-eminent place in any history of legal India. Amongst the expatriates, within its portals, just for instance, there were Gentle, Page, Langford James, Jackson and the famous Barwell; the last of whom was the last English member of the Calcutta Bar and will always be remembered for his great qualities of head and heart immortalised by the novelist, Shankar, who was his Clerk. So too coming forward with the nineteenth century were W. C. Bonnerjee[1], Baron Sinha of Raipur[2], Sir. N. N. Sircar and Sarat Chandra Bose amongst many celebrated others.

Jackson, who had a smattering of crude Hindi in his vocabulary, is of course remembered for his famous remark delivered purposively sotto voce to his junior about a disdainful arbitrator sitting with a co-arbitrator who was a little hard of hearing:

"One "s__l__"[3] can't hear, and the other "s__l__" won't hear![4]"

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1 First President of the Indian National Congress.

2 First Indian Baron in the House of Lords.

3 The Editor has recommended that the pejorative should be eschewed – hence the blanks are left to the reader's imagination. The advisory is that guessing should follow the alphabetical order beginning naturally with the very first vowel, repetition of which may save further tedious searches.

4 In the interests of moderation this story has been slightly altered but the discerning reader will no doubt easily divine the true circumstances.

There is an anecdotal treasure-trove about Sarat Bose[5] and more than one tale deserves recall. He was sitting in Court waiting for his case when he found the judge continuously oppressing a raw junior who was practically in tears. The great Bose, in common humanity, could bear the prolonged superciliousness no longer. He rose to his feet, to walk out of the room, and in parting, grunted, with disdainful emphasis, "It is my duty, and not as a leader of the Bar to call your Lordship here and now to order." Fortunately, the judge subsided and the junior got respite.

But I have digressed and must get back on line.

The Club was born in 1825, a good thirty-seven years before the High Court itself, so it is heartening to know that this particular sanctum of ours, has always been, in a sense, an elder brother to the High Court; and as Premchand wrote in one of his short stories, a younger brother is always the younger, and the elder brother is forever the elder, and thankfully, even Father Time is never going to be able to change any of that.

The presiding midwife at the time of her birth was Mr. Longueville Clarke and the initial membership was a suggested Rs. 100/-, which was quickly reduced to Rs. 25/-, because payment of the earlier levy, as documented by Cotton, was forcefully and colourfully declined by those early members who were like all emigrants busy remitting their dollars to their homeland.

There is the old tale, far from being apocryphal, and well worth repeating, that the Club's initial body of membership was divided into three classes, consisting of – "those who abstained from paying without making any excuse," and "those who refused to contribute two gold mohurs"[6] and, of course, the largest group of "those who did not object to the amount but declined paying while there were others who would not contribute."

A couple of years ago, the Club had a visitor from Australia who with his downy chin turned out to be a direct descendant of Clarke and his delight at finding out that his ancestor had so large a role to play brought him visible joy! He jubilantly collected the notes and references from all over Calcutta for his family; and we on our part were also gratified that our Club would deservedly also find place in some family archives or maybe a history in foreign lands.

And for that which the ancestor had brought forth, may the lines of Clarke continue to prosper wherever they are!

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5 Elder brother of Netaji and close supporter of Mahatma Gandhi.

6 The hallowed coinage of the Calcutta High Court – one gold mohur – which was the real one in the old days, - now being equivalent to a paltry seventeen rupees.

But as Dylan Thomas said, time passes, as indeed it does, and with its passage a newer breed took over the reins. Recent honorary Committees, taking no lessons from predecessors, have used the tool of coercive speech for extracting the prescribed modest fees to keep things going. It is an historical fact, worthy of place in a commemorative volume, that T___ Banerjee,[7] was observed not so long ago, speaking aggressively and pointing out to certain members, and thereafter, the errants paid up – grudgingly – but still they paid, such being the potency of his prose!

In general however, collections are now fluent and willing, and often generously exgratia for special occasions – as for Bar Dinners and Club Cricket and Football Matches – mostly to subsidize libations and other similarly vital necessaries, so that a shortage of funds is simply not contemplated in fiscal affairs. Regrettably there are a few teetotallers in the ranks now, whose numbers very unfortunately continue to swell, but they are also persuaded to contribute rather than suffer the ignominy and contempt of the true believers to whom the beaded bubbles are always near and dear.

Otherwise, of course members may do much as they like with little to guide them in the shape of compulsive rules. Sanctions, which are the very bedrock of the law, do not rule here in this asylum.[8] So long as one does not actually burn the place down [in which case perhaps the Hon'ble the Chief Justice may have to interfere] they may do very much as they please in the Club's cosy confines.

And anyway smoking is now almost a forgotten sin; though it is perhaps the duty of the historian to note that S_____ Mookherjee,[9] a senior citizen in these parts, who had given up smoking years earlier – while extremely distraught as he frequently is, with events in certain places – did publicly propose a conflagration. But the matter was hushed up by the then Chief Justice himself, his Lordship of course generously confusing the suggested offence of arson with the lesser misdemeanour of smoking! The learned Chief Justice also kindly ignored – as Chief Justices are wont to do – the central fact that the aggrieved arsonist was proposing altogether another kind of the burning of the saints!

When I came to join the Club, it had four rooms, three of which were [as they still are] on the first floor and the fourth, being a smaller hall, on the second floor. The then Advocate-General of West Bengal, the eminent Sir Sudhansu Mohan Bose, of immaculate reputation, was the indubitable Leader presiding in the smallest of the three rooms – adjoining the present court-room No.8 – on the first floor. Jawaharlal

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7 Sometime, in fact, for a pretty long time, some would say, too long a time, the Honorary Secretary of the Club.

8 Hopefully, the use of this term will not expose the present body of members to any other charge.

9 Sometime member of the Union Cabinet in case the reference is missed.

Nehru had invited him with the offer to be the first Attorney General of India, which he declined for reasons of health. He was the quintessential bhadralok who throughout his long and very distinguished career irreproachably carried the majesty of our Court in his dignified arms.

I remember him well because while standing in the lift on my very first day, when I stepped aside with a polite "Sir", to give him precedence, he put his kindly hands on my shoulders and pushing me in place said gently: "Two things, young man! The first is that you must not call me "Sir", and the second is that the queue is for everybody!"

He had with him in the room, amongst others, the redoubtable Sankar Das Banerjee, and if ever there was a combination of diction, resonance, modulation and the clearest articulation, it was in Sankar Das. If you heard him in court he would instil you with the feeling that he had a direct relationship with some akashvani guiding his delivery.

In the room there were others including Bidyut [Bulu] Ghose with his incisive cross examination and T. P. Das of the palely imitated speech from the Bells of Bow, but with thorough preparation.

Many tales of the then occupants of the small room come to mind.

What about Bulu Ghose gently taking the witness – a stenographer originally hailing from South India – all over the pages of the judge's brief and, with random questions about his name, father's name, village and place of birth, ultimately tripping him up on initials typed at the foot of the damning letter the authorship of which the perfidious stenographer had been denying for two days?

What of their sense of humour? It actually happened that Sankar Das addressing uninterruptedly for several minutes, when taking a deep breath, was informed by the judges that though it was always a pleasure hearing him, yet it was their painful duty to inform him that he was in the wrong court, ejaculated: "Say that! Sankar Das Banerjee may be in the wrong Court, but he is never on the wrong facts!"

To which, the passing response in all honesty should be that our learned friend, just like his compatriots, though of course not frequently, was as prone to err.

But, bless his memory anyway. For amongst other good things, it was he who brought us down to the small room as it is called. There we were[10] – waiting to come down, and wanting to come down – to parody Shaw, but with no chairs in sight. The only place was the empty corner of the small room but when we diffidently applied

10 Agewise order – Dipak Basu, Probir Roychoudhury, Prodosh Mallick, Jayanta Mitra, Hirak Mitra, Pronab Ray, and the writer.

an unmentionable occupant[11], albeit senior, disdainfully rebuffed the group. That evening we gathered at Banerjee Sahib's place and over his generous waters proffered our request pointing out the hostility expressed by his neighbour; whereupon the good Sankar Das exploded in choice Bengali: "Kaun S__l__", with more in the same vein following a great precedent!

And so, next day, having fed the upstairs Bar Library in situ we brought our table down and ourselves with it.

It is a little bare now because sadly, Pronab is gone, and there are other unwanted gaps. Also age has dimmed the youth of the remainder though thankfully left their wits in place, even if just a little; which, of course, will also pass in time because as the Buddha said, nothing is permanent. But let us skip over my friends for life, and come back to the choto ghar.

Equally true is the story of T. P. Das asking for an adjournment which he knew was certain to be declined. When the expected happened, T P, who was a trifle long-winded, thereupon opened his large brief and in his sonorous nasal twang gravely informed the Court: "This, my lord, is a four day motion," whereupon the learned judge hurriedly gave him the two months' asked for!

Even a minimal recital of the names of the persons who occupied the middle room would make an Indian Debrett envious on any given day. Too many redoubtables who sat at those two long tables of authentic teak over-flood the memory and all present-day seniors have individual stories about them. How many shall I name? Shall I remember just a few? What about them and their acuity? Subimal Roy [my own first pupil-master] who went directly from the Bar to the Bench of the Supreme Court; Rathin Deb, sometime Advocate General of West Bengal, in the good days, who was also offered a similar direct elevation which he however declined; Ashok Sen who straddled the legal firmament of the country like a Colossus; and so very many illustrious others.

But the story must be of the raconteur amongst them from whom no leg was safe, judicial or otherwise. Snehangshu (Dodho) Acharya, although he was the Advocate General for quite a while, had – bless him – little time for the court and all his time for fun and frolic. With a truly phenomenal memory for yarns he would spend all day long relieving the tedium of humdrum work for others with his enormous store. He deserves pride of place in the scrapbook of the Bar Library Club.

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11 We had them also but their numbers happily are down.

Since this commemorative volume is a serious work there cannot be a place for his real stories but a short [not scatological] example from his attitude to legal matters must be given. Dodho-da was forever looking for grounds to adjourn whatever case he had, and his colleagues knowing him well generally did not resist his requests. One day however he met an obdurate opponent who would not concur. Not daunted in the least, he walked into court without giving notice to the other side; and when the judge saw him, he simply put his left hand around the shoulders of the nearest junior counsel, who had nothing to do with the matter, and politely said to the judge that he wanted an adjournment, giving no reason but the impression mind you, that the embraced junior was the consenting opponent; whereupon the judge granted the adjournment and Dodha-da was off like a shot to his favourite adda[12] in the Library!

The huge hall then was also full of glorious people with faultless talents and immaculate graces and how many of them shall I name and remember? It was hazardous and foolhardy to ask about the academic background of any of them because such a query inevitably brought to light some student or the other of the highest order. Surprisingly, their proficiency was not limited to the arts. There were many who could boast of a First in English literature, Economics, History and even Philosophy. Alongside them, the number also had outstanding devotees from the sciences displaying equal proficiency in Physics, Chemistry and Mathematics; and all their vast knowledge of a multitude of subjects they brought to the service of the law. If Sabyasachi Mukharji[13] was at one corner there was Niren De[14] at the other. Others who were dearly treasured like Jiten Roy and Tapas Banerjee [with their honest hearts and Wodehousian sense of humour], Pesi Ginwalla [our only Parsee contribution but what a supremely elegant one], Gouri Nath Mitter [with his fabulous hospitality] and so many other strong and bravely wonderful hearts.

A. C. Bhabhra, Sankar Ghose[15] and Somnath-da[16], named here following the Bar's tradition in order of seniority – but definitive mentors all – were in that hall and at least I and my generation will always gratefully and devotedly remember each of them for what they inculcated as they warred valiantly in their daily battlefield!

Strangely enough, now that I think back carefully, about their battles, what I do distinctly remember is that – not even once, not ever – did they descend into personalities or make even a single veiled dig or sly reference to the other. And as for

12 In the tongue of the land, a word to describe a gossip session, the principal occupation of the Bar, and sensible people everywhere.

13 Later Chief Justice of India

14 Later Attorney General of India

15 Sometime Chairman of the Planning Commission

16 Later Speaker of the Lok Sabha

hitting at a junior – that was blasphemy because juniors were sheltered and sustained by them.

There was such heartful of fellow feeling and camaraderie at that Calcutta Bar!

They knew that victory in Court was merely a matter of yesterday's newspapers, and though "in fierce hunt", yet each of them preferred to cherish their companions rather than the fleeting success of the moment in Court. Dignity and friendships closer than blood relationships were dearer to them than the strut for the passing hour upon the ephemeral stage.

Later generations have forgotten to emulate their true fine qualities.

And these otherwise serious folk could lay their robes aside and party and play as well as any teenage group because their talents included extraordinary proficiency in music and sports and almost all forms of leisurely pursuits.

For example, forgetting their genius in courts for the moment, I remember Niren De and Siddhartha Ray[17] opening the batting for the Seniors at the Annual Cricket Match with the former saying to the latter, "Manu, we shan't run unless we can walk", and the two of them then sauntering a double century stand at the old Eden Gardens! And this was in the year when both of them were in office!

And the parties, my goodness me! At Gouri-da's[18] everybody was invited. There was no clique business! Every single blessed member was invited, and many a junior made his name by regurgitation in the first place after having "drink taken", or by a more elegant display on the harmonium and tabla and ecstatic singing long before he put into evidence any proficiency at the Bar!

That pattern of entertainment was followed by Jolu-da,[19] and the two Dipankars – Gupta and Ghosh[20], and Minto-da[21] and many other senior members and the nostalgia of their bountiful conviviality is still the flavour of the table whenever the beneficiaries are assembled thereat.

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17 Amongst many other things – sometime Chief Minister of West Bengal.

18 Gouri Nath Mitter, later Advocate General of West Bengal in the good times.

19 Satyabrata Mookherjee also sometime Additional Solicitor General of India, High Court, Calcutta, still adorning the chotoghar, and friend, philosopher, and guide to its present occupants.

20 Dipankar Gupta, later Solicitor General of India, and Dipankar Ghosh, later Additional Solicitor General of India, High Court, Calcutta.

21 Probir Sen, presently patron, guiding the satellites in the middle room.

Not many like clubs can offer similar scintillating events from their historical calendars!

But with the limitations of space and time, let a representative story of that outstanding band of brothers be about the amiable, the shy and most upright Amiya Kumar Basu, the recollection of whose very name adds an ounce or two of joy to the heart. By the way, even today he is regarded by everyone who knew him as arguably the best student of the law in his time and, given the eminence of his contemporaries, that is truly high praise indeed.

My own first introduction to him occurred in the strangest of circumstances. As a complete beginner just about a half-century ago, I was coming out for the seventh time with my only brief, from a famously rigorous court[22] having failed yet again, as the judge had brutally told me, in proving an undefended suit. I ran into him in the corridor when I was in fact as near to tears as possible. Amiya-da had been in the well of the court and had quietly heard the whole effort. He patted my shoulder and spoke to me for the very first time. "Don't you worry. He scratches and bites," he said. "But you did it correctly, and it is going to be all right." That was only one occasion, but there were thankfully many more uplifting moments like that one from him.

On another occasion with Ajoy Ray[23] as my junior, we were before Dipak Sen, J, conducting a suit against three groups of defendants represented by Amiya-da, Bhabhraji, and Mrigen Sen Sahib. Amiya-da with his usual brevity, for he loathed repetition, had completed his cross-examination the previous day. When the Court sat he rose with the utmost candour to apologize to the Court for having put to my witness an erroneous suggestion. I on my part immediately offered that the deposition recording the suggestion may be corrected as he may propose, but this offer was turned down, very gently, with an aside to Ajoy and myself in Bengali: "Don't you understand that I cannot do that for if my suggestion is corrected the answer of your witness will become false and expose him to a charge of perjury."

I hope the subtlety of his honest advice will not be lost on present-day juniors who sadly see little of the suit courts now.

On yet another occasion when I was alone and without a leader against him, before A. N. Sen and S. C. Ghose JJ, before going into court he came up and congratulated me for a piece of cross-examination done in the trial of that very matter against his client, and said that he hoped I would succeed. In the result I did not, but my opponent left me then as always, with happy memories treasured even now.

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22 There were two particular ones in those days so please, Reader, do not think of the wrong place.

23 Ajoy Nath Ray later Chief Justice at Allahabad

I cannot walk into that hall even today without thinking of the chess table presided over by Bapi-da[24] and the ornaments[25] that played there in the old days. The table is gone now but what a wondrous, magical place it was with the sportsmen of the Bar clustering around and even sitting on the table itself cheek-by-jowl enthusiastically encouraging both the players without discrimination in each move; and mine host ever ready to take as many moves back thus giving every suggestion a chance at the board. It was a modest proficiency here that luckily endeared me to De Sahib who with his "f___ked[26] like a dook" was himself a Master of the game. And when he said to the hopeless Bimal Basak,[27] "Bimal, why don't you try the Sicilian Reverse," the unhappy response of that perennial loser was, "De Sahib, all I know is the Indian straight-forward," much to the merriment of the entire table.

When we were dispossessed from that table somebody came up to Rathin Deb Sahib and told him that "Kapur[28] is aggrieved". Whereupon that worthy pursed his lips in his habitual manner and said – a little aggressively for him: "What do you mean by saying he is aggrieved? I am aggrieved!" And indeed he was along with a host of others.

May the congenial ghosts of all who flitted around that table but are unhappily taken from us be blessed forever and a day.

These remembrances actually should have been devoted substantially to the last of the rooms then[29] allotted to the Club which was on the northern side of the building. It was not the room presently in the Club's possession on that floor, but a smaller room, adjacent to that, on its left, but twice removed.

That was the library to which my company made its way when we first entered the Bar.

As I have said, it was a small room, which had two entrances, one of which was permanently shut. Going through its single doorway, one would find that immediately on the right was the enclosure of the librarian, Monoranjan Babu, and on the left was the telephone booth. Beyond that there were seven round tables altogether.

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24 Nirmal Roy Choudhury presently of the left hand corner table near the entrance.

25 F. St Regis Surita, Debi De, Ajit Roy Mukherjee, Arya Mitra, M. M. Sen, Dipankar Gupta, Suhas Sen [later a judge of the Supreme Court], Samar Deb [later Chief Justice, and if I may say so, a very sore loser], Salil Roy Choudhury [later Judge], and a very long line of eminent and distinguished associates.

26 Please rhyme with 'dook' only.

27 Later, Judge and Chief Justice at Patna.

28 Self-advertisement, of which copyright is reserved.

29 Before 1965, when the room was surrendered to the Chief Justice.

If teak had not gone into the making of those tables there was no lack of teak in those gracing those tables; and presiding over them – in clockwise order beginning from 7'o clock were Jolu-da, Hironmoy-da, R. C. Nag, Moni Bose, R. L. Sinha, Tarun Bose[30] – and ending at 6'o clock, Dipankar Ghosh.

Age has not withered in the mind and in the heart, the warmth and kindliness of that first forensic home. Very fortunately and thankfully, many of that first convivial lot are happily still with us so I need not in this essay remember them for you.

But lamentably, two of the ladies are gone[31], and the third is in retirement.[32] All three, as members of the Bar, were philosophers in their own ways, and separately contributed great fun to the family upstairs. With their gifts of hearty boisterous laughter and wholesome quality there was no glumness when any of them was around.

I have stories about all of them but one of Khastgir, J. should find place here.

Now it came to pass that one fine day a winsome lass became a member of the Club and the bees who surrounded her were many and several. But admiration has been known to turn the heads of famous beauties and the new member proved to be no exception to the rule.With the heads and homage of the male Bar [from dotage to infancy] lying at her feet our new incumbent advanced on Khastgir, J. and with a simpering look said to her senior:

"I am told, Padma-di, that when you came to the Bar you looked like me."

Now philosophers, as Dickens said, are merely men in armour. Our philosopher was not to be flustered.

"Nonsense," was her immediate crushing reply. "My curves were all in the right places."

Modesty is a lesson that the Bar teaches in many different ways.

On a serious note, it is a matter of history that there have been many efforts to suppress the Original Side of the High Court and the Bar Library Club. But despite the censorious glares, the vulgar condemnation and downright abuse both still continue to battle on valiantly taking on all comers.

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30 T. K. Bose, Senior. It is gratifying to find that junior who is also at the Bar, in his own way, unlike some other contemporaries, is maintaining the traditions of his most hospitable father.

31 Padma Khastgir, J. and Urmibala [Lil-di] Mookherjee, wife of Satyabrata Mookherjee.

32 Sm. Monjula Bose [Khuki-di] later a judge of the Court.

Those who denigrate these two institutions would do well to remember the sorry state in which all types of other experiments for alternative dispute resolution find themselves today. Arbitration is tedious, tardy, prohibitively high-priced and seldom adequate. The tribunals are in total disgrace and the odd exceptional member amongst their ranks proves nothing at all. It would be in the public interest to revoke all such jurisdictions and restore the High Court to its proper place and pre-eminence.

So the prayer on our lips can only be that both should gloriously survive and continue to prosper forever hereafter.

I have digressed to this issue only to remember the perfect enquiry made by one of us when the jurisdiction of the High Court was enhanced from Rs. 100/- to Rs. 50,000/-. My friend, Arijit Chaudhuri, in despair at the onslaught, puffing away at his pipe walked up to Dipankar Ghosh and asked:

"I say Dipankar, can you tell me where I can get a good second-hand begging bowl?"

To which the answer, from that touchstone of all my sensibilities typically was, "We won't need it yet."

That was close to thirty-two years ago, and the Bar Library is still there serving a necessary public purpose with vigour and vitality.

Our children have gotten better than us. Our progeny is by the Grace of God ready with the mantle properly in place. I would back them against lawyers from all over the world on any stage, anywhere at all. The Bar Library is still there and flourishing for very good reason.

The moral is that if you push to the precipice, the ranks will only get better and stronger.

But let the final case for our robust stamina and proof of the fact that we are of the living be in the words of Dipankar Ghosh, my classical friend, philosopher and guide.

It so happened that we were on opposite sides in an appeal before S. C. Ghose and Sisir Mukherjee, JJ. The appeal was against an order appointing a Receiver and he was the petitioner, and I, the respondent. Such an order is generally an appealable order but the court below had directed security to be furnished by the Receiver which, however, had not been done. Now, there was an old decision of Sir Asutosh Mookerjee, where Sir Rashbehary Ghose had argued and lost, with the Division Bench holding that until the security was furnished the order was inchoate and hence not appealable. I got up to object that the appointment of the Receiver was not an appealable order, whereupon, Pronab, his junior, let out a guffaw, and Dipankar, also

unaware of the precedent, to pull my leg, said that he had to confess that the point was new to him. Mukherjee, J. initially smiling so as to say that I was wrong, asked for authority, and it was then that I produced the judgment. On the case being cited Dipankar suggested that there should be an adjournment for it to be considered. And then came the exchange between him and the judges, both Ghose, J. and Mukerjee, J taking my side in the lighter vein:

"Mr Ghosh, have you seen who decided and who argued?"

At which back came my confident friend's reply:

"So what, my lords. On the record, a lawyer argued and a judge decided. We are no different from them, I hope."

Dipankar, after all, was only proving the point that comparisons are odious, and also that legends were there, and will always be there, in the chairs of the Bar Library Club.

In the words of Sahir Ludhianvi, may her boughs be in bloom forever!

MARCH 1967 to DECEMBER 2011

Samaraditya Pal

I have survived 2011. But that does not matter much. The importance of the title is its symbolic significance as one proceeds to read it hopefully to the end.

We are currently celebrating 150 years of two great sons of Bengal (Rabindranath Tagore and Swami Vivekananda) and a great Institution (the Calcutta High Court). As usual, on such occasions a brochure is published and most of the articles are crafted to praise the persons or the institutions carefully avoiding any blemishes. I have seen the good and the bad in these 44 years. I have a lurking fear that I may not have succeeded in articulating both. There is no template provided and this essay may turn out to be a collection of disorderly thoughts. What I write here is what I have heard and seen after joining the Bar in 1967. I will refer to the Calcutta High Court as "our Court".

What struck me from the very beginning was the courage of our Judges and this was confirmed beyond doubt in relation to an election case filed in our Court in 1982. At a press conference on February 9, 1982, the Election Commission announced that the final voters' lists would be published on 1st March, 1982 and that the election to the West Bengal Legislative Assembly would be held any time between April and June, 1982. West Bengal had been won by the Communist Party of India (Marxist) and their allies in the election held in 1977 after the revocation of the emergency declared by Indira Gandhi and the Congress led by her was comprehensively routed not only in West Bengal but also in many of other States. The next election was due in 1982 and it was in relation to that election that the Election Commission held the press conference and announced the date. The Congress was not happy with the revision of the electoral rolls. A writ petition was filed in early February, 1982 in our Court challenging the constitutional validity of the Representation of the Peoples' Act, 1950 as well as that of 1951. The matter appeared before Justice Sabyasachi Mukharji. He made ad-interim order on 12th February, 1982 which had the effect of upsetting the schedule fixed by the Election Commission. At this interim stage the matter was taken to the Supreme Court. A Bench consisting of three judges of the Supreme Court viz. D. A. Desai, A. P. Sen and Baharul Islam issued the following direction on 23rd February, 1982:

> "It is requested that the writ petition shall be placed on the Board of the learned Judge on Wednesday, February 24, 1982 and shall be heard and hearing completed and order pronounced before the expiry of Thursday, February 25, 1982. . . The learned Judge should proceed to hear the matter without considering any direction about production

of the documents by the Election Commission or by any parties as that part of the order is stayed at the instance of Election Commission. The parties are precluded from making any requests for adjournment."

Mukharji heard the matter on February 24 and fixed February 28 for judgment which was very unlike him at the interim stage. On the 28th he entered a packed Court Room no. 8 with a grim face. I was present in the court room as an onlooker. He looked upset and angry. He commenced the reading of his judgment and his opening words were something like ". . . today we see erosion of cherished values all round us. . ." and then proceeded to make it known unequivocally that our Constitution and the laws do not permit the Supreme Court to direct how the High Court and its Judges should discharge their judicial functions and to dictate the time within which a Judge must dispose of a case. He confirmed his earlier interim order.* He had the courage and integrity to say so and do so.

In a series of cases the Supreme Court made avoidable observations regarding our Court. In 1980 in a case where a litigant initiated proceedings in our High Court to neutralize the effect of an order passed by the Patna High, the Supreme Court said:

> Perhaps, as we had occasion to remark during the course of the hearing, some parties are unable to reconcile themselves to the fact that the Calcutta High Court has long since ceased to have jurisdiction over the area comprising the State of Bihar which it had several decades ago.

A few years later (1984) in a Siliguri municipal tax matter where our Court directed interim stay of recovery of tax the Supreme Court was again upset:

> We will be failing in our duty if we do not advert to a feature which causes us dismay and distress. On a previous occasion, a Division Bench had vacated an interim order passed by a learned single Judge on similar facts in a similar situation. Even so when a similar matter giving rise to the present appeal came up again, the same learned Judge whose order had been reversed earlier, granted a non-speaking interlocutory order of the aforesaid nature. This order was in turn confirmed by a Division Bench without a speaking order articulating reasons for granting a stay when the earlier Bench had vacated the stay. We mean no disrespect to the High Court in emphasizing the necessity for self-imposed discipline in such matters in obeisance to such weighty institutional considerations like the need to maintain decorum and comity. So also we mean no disrespect to the High Court in stressing the need for self-discipline on the part of the High Court in passing interim orders without entering into the question of amplitude and width of the powers of the High Court to

grant interim relief…

In Dunlop (1985) Chinnappa Reddy again stated:

> It is indeed a great pity and, we wish we did not have to say it but we are afraid we will be signally failing in our duty if we do not do so some courts, of late, appear to have developed an unwarranted tendency to grant interim orders with a great potential for public mischief for the mere asking. We feel greatly disturbed.

In ONGC the question arose as to whether our Court had territorial jurisdiction to entertain a matter. The Supreme Court held it did not but did not stop there. Justice Ahmadi said:

> It must be remembered that the image and prestige of a court depends on how the members of that institution conduct themselves. If an impression gains ground that even in cases which fall outside the territorial jurisdiction of the court, certain members of the court would be willing to exercise jurisdiction on the plea that some event, however trivial and unconnected with the cause of action had occurred within the jurisdiction of the said court, litigants would seek to abuse the process by carrying the cause before such members giving rise to avoidable suspicion. That would lower the dignity of the institution and put the entire system to ridicule. We are greatly pained to say so but if we do not strongly deprecate the growing tendency we will, we are afraid, be failing in our duty to the institution and the system of administration of justice. We do hope that we will not have another occasion to deal with such a situation.

The Supreme Court has no supervisory jurisdiction over the High Court. May be our Court had erred. The Supreme Court would be justified in disagreeing on merits and set aside the orders as the appellate forum. But what did the Supreme Court expect to achieve by these uncalled for observations? It would be naive to suggest that it was trying to raise the standards of our Court or was on a reformist mission. These observations had unfortunate consequences. One could notice that they induced a lack of confidence in many of the Judges. They discharged their functions in fear of how the Supreme Court would react and not how their conscience responded. Some Judges openly said so in court. Many of the members of the noble profession held out veiled threats (when it suited them) and reminded the Judges that the Supreme Court was watching. What is most unfortunate is that the injurious effect of these observations has not healed yet.

But there were Judges who responded to the dictates of their conscience and dispensed justice without fear or favour. And amongst them I would like to name Justice Anil Kumar Sen. I have not had the privilege of seeing the great judges of the

past when the air was purer and I am told there were many. I did not know Anil Sen when he was at the bar nor had I appeared before him on my own till about 1983. In the meantime he had built up a reputation of being intolerant and short tempered and perhaps in retaliation the Bar on one occasion boycotted his court. Anil Sen refused to budge. On the mediation of Justice A. N. Sen (if I am not mistaken) the boycott was lifted. Behind his stern exterior is a sound intellect and an open mind. As counsel one appeared before him safe in the belief that justice and nothing but justice will be done. He is the best example of how an unpopular Judge in office earns respect after retirement. When he came to attend the Independence Day celebration in our Court some time after his retirement, a sizeable number of members of the Bar surrounded him reverentially. All of us were at ease, and he looked happy and content.

The redoubtable Justice Tarun Kumar Basu restrained the threatened arrest of Indira Gandhi in the Janata Party regime by injuncting the authorities in Darjeeling (where she was perhaps relaxing or making it difficult to arrest – which of the two I cannot recollect). T. K. Basu was blessed with a sharp intellect and was totally fearless. A first in Tripos in Economics (University of Cambridge) his pro-citizen leanings were easily perceptible. For example, when the counsel for the Revenue said if tax is stayed the government cannot run the country, Basu retorted without batting an eyelid:

"Well Mr. X you have the mint but the citizen doesn't."

Arguments stopped and his ratio decidendi had been laid down.

Again, when his turn came for transfer as Chief Justice, he was offered the Chief's seat in the Bombay High Court. I came across him at the Calcutta Club on a chance visit when he was chatting with a gentleman over good whisky. He asked me to join. The gentleman asked: "Why did you turn down the Bombay offer?" The reply was prompt. "I don't want to be an errand boy of the executive."

In early 1967, a writ petition was filed by the industrial corporate body Jay Engineering and others complaining that some of their employees blockaded their business premises, completely obstructing the passages for personnel and groups including food for those who were confined to their offices. In spite of the Police authorities being informed there was no response from them and the reason for such inaction was that the State Government, viz., Home and Political Department, had issued two circulars which directed the Police not to interfere in 'legitimate trade union activities.' A special Bench of 5 judges was constituted for hearing this case. These blockades and confinements came to be known as 'gherao'-s. The situation in the State was a matter of great concern as these activities of the trade unions and their members initiated a flight of capital from West Bengal. The courage and independence of our High Court was put to test. The Court had to answer whether it should allow the rule of law (the inarticulate major provisions of our constitution) to prevail or not. Chief Justice D. N. Sinha delivered the principal judgment. The very

first paragraph of his judgment was prophetic:

> This application and a number of other applications relate to a group of cases commonly described as "gherao" cases. The expression "gherao" is not entirely new and already finds place in three Bengali dictionaries. But as will be presently described, it has now acquired a connotation and meaning which is entirely new. In its new garb it has acquired a semblance of enviable notoriety. News of gheraos are now widely published in newspapers and are avidly read by the public.
>
> Like many other words it may soon be considered as a contribution of West Bengal to semantics and I have no doubt that it will presently appear in all standard dictionaries in the English language.

This prophecy came true and the Oxford dictionary, amongst others, says it is: "a protest in which workers prevent the employers leaving a place of work until demands are met".

But the importance of the judgment lies in its emphatic condemnation of the use of intimidation and violence in the "furtherance of a dispute between the employers and the employees". After referring to the relevant provisions of the Trade Union Act, 1926, Chief Justice Sinha observed:

> The net result of the decision set out above is that Ss.17 and 18 of the Indian Trade Unions Act grant certain exemption to members of a trade union, but there is no exemption against either an agreement to commit an offence or intimidation, molestation or violence where they amount to an offence. Members of a trade union may resort to a peaceful strike, that is to say, cessation of work with the common object of enforcing their claims. Such strikes must be peaceful and not violent and there is no exemption where an offence is committed. Therefore, a concerted movement by workmen by gathering together either outside the industrial establishment or inside, within the working hours is permissible when it is peaceful and does not violate the provisions of law. But when such a gathering is unlawful or commits an offence then the exemption is lost. Thus, where it resorts to unlawful confinement of persons, criminal trespass or where it becomes violent and indulges in criminal force or criminal assault or mischief to person or property or molestation or intimidation, the exemption can no longer be claimed.

This judgment is of seminal importance particularly in our State. Such scenario has travelled from commercial establishments to educational institutions and

hospitals and, whenever the state sponsored agitations and violence or inaction is brought to our Court, Jay Engineering is inevitably called in aid.

Justice Binayak Banerji hauled up the Chief Minister in contempt. In 1965 milk was in short supply which prompted the State to promulgate the West Bengal Milk Products Control Order. This statutory order restricted consumption of milk, and the sweet-loving Bengalees challenged the order in our Court. While the matter was pending, Prafulla Chandra Sen, the then Chief Minister of the State, in the course of his speech broadcast by All India Radio, made several comments on controversial matters which were awaiting adjudication. The Chief Minister, as we all knew, was a Gandhian and not very conversant with law. Justice Banerji asked him to show cause as to why he should not be held guilty of contempt of court for interfering with the administration of justice. He was held guilty. The matter went to the Supreme Court. While setting out the facts the Supreme Court referred to the order asking him to show cause and then made a pertinent remark:

> Instead of making a frank statement before the Court, the Chief Minister was apparently advised to adopt grossly technical pleas. Counsel informed the Court that the Chief Minister did 'not like to use any affidavit showing cause'.

This technical plea resulted in Justice Banerji holding him in contempt on the basis of the materials before him. The finding of Banerji was upheld by the Supreme Court. The point to be noted by most of our Judges of today is that Banerji had the courage of his conviction and sentenced the Chief Minister of the State for making a speech which deserved to be punished.

Lawyer's English (as it can be readily seen here) hardly has literary flair. But there were exceptions and Justice Sisir Kumar Mukherji was one of them. A student of English, he disclosed his literary skill in his judgment in a matrimonial case as revealed by the following excerpts:

> This appeal concerns an unfortunate marriage of a young couple and its still more unfortunate sequel. Lakshmi Sanyal, the appellant before us, a girl of 19, born of respectable parents and of good education might have married the respondent Sachit Kumar Dhar her first cousin only for love, but she married him when she did, largely compelled by circumstances. It appears that the girl is sensitive, all too human, and basically of good nature but lacking in purpose and strength of will. Unhappily for her, she has found no moorings in life. As is only to be expected, the girl knew her cousin from her early childhood. But it seems that he did not mean much to her until 1958 when on his return from Europe they were thrown into close proximity, more by accident than by design. The respondent had become a Roman Catholic Christian in 1952 and developed a certain

passion for his adopted faith which he still retains. He seems to have drawn upon the Roman Catholic Church not only for his spiritual sustenance but also for his career. He lectures and writes on Christian theology and comparative religion. Through the Church he has found many friends at home and abroad.

The parties saw a great deal of each other and fell in love. Some of the love and affection survived the ordeal of marriage. Writing to him shortly after her marriage, she calls herself 'one who always disturbs you, teases you' – and adds 'but there is no way out as we are partners throughout our life and even on death. Is not that so?'

Elsewhere in her correspondence there is a certain wistfulness, a sense of tears in things. She writes:- "I switched on the radio. An appropriate song was in the air – clouds are gathering upon clouds – do you remember the words? Outside, the sky has become dark, overcast with clouds – no, let me talk of other things or else it will be distressful. Since last night I have been thinking of the beautiful thoughts and words of your letter with a keen feeling of pleasure. I have lost the power of writing. Now my only desire is to talk to you in silence . . .". Again, she writes: "Dearest, I never knew anyone could be so good, so utterly wonderful until I knew you. But is it necessary to describe my feelings? By description, I cannot convey my feelings at all. Your beauty, your virtues – everything of yours makes me smile and cry at the same moment. What a power you have; what a precious thing I have got; how fortunate I am.

Justice Mukharji comments:

The beauty and sincerity of her feelings break through and light up the drab and inept official translation. This is not the cry of anguish of a girl who has been induced by fraud, coercion and undue influence to marry the man she does not love, as she wishes the court to believe.

The institution and the Judges and lawyers generally earned respect. They did not contrive to command respect. When I joined the Bar I appeared before some such Judges (Binayak Banerjee, P. B. Mukharji, D. N. Sinha, Arun Mukherji) and worked with counsel like Ranadeb Choudhury, Subimal Ray, S. C. Sen, Amiya Kr. Basu). Later when I was noticed I got opportunity to work with R. C. Deb, Gouri Nath Mitter, Subrata Roychoudhury, Bholanath Sen, Somnath Chatterjee, Dipankar Ghosh, S. B. Mookherjee, R. C. Nag, Saktinath Mukhopadhyay and, of course, Dipankar Gupta, the most gentle, modest and brilliant lawyer in my estimation. All these judges and lawyers conducted themselves with exemplary behaviour in court. Sustaining the

dignity of the system was uppermost in their minds.

Gradually the standards started slipping. Murmurs started spreading in the corridors regarding the integrity of the institution and the litigants seemed to be losing confidence and cynicism was creeping in. The executive branch of the State manned by the CPI (M)-led Left Front took advantage of this general decline and brought the Judges within the zone of consideration of discretionary quotas in allotting land and accepting other hospitalities held out by the State. Rewarding pliant judges was a strategy adopted by Indira Gandhi and the executives of many States followed her footsteps. The Left Front fine-tuned the strategy in West Bengal.

This malady is not my opinion. This morning (January 15) the Telegraph's front page headline refers to the speech of Kapadia, Chief Justice of India (delivered at the Nani Palkivala Memorial meeting) where he cautions the Judges not take into consideration the majority in power or any majoritarian view to gain populism.

The lawyers have remained silent witnesses to the decline. The politicization of the Bar has split the lawyers in different groups. The Calcutta Bar is letting down the litigants in many ways, for example, suddenly the Court is asked to rise for the day because the Bar has adopted a resolution not to attend because a member of the Bar has died in a tragic accident. On one such occasion when a Division Bench presided over by Justice Chittatosh Mookerjee was requested to rise he could not suppress his curiosity and asked an embarrassing question:

"Since when did we become professional mourners?"

When these closures took place too frequently, Chief Justice P. D. Desai refused to accede to such requests. We retaliated by 'cease work'. The impasse was resolved when at a meeting of the Bar and Judges it was decided that we should at least stop working from 3.30 p.m. and return home as a mark of respect to the latest departed soul. Litigants suffer. Arrears keep on piling. Justice is denied. We are pulling down this great institution. We have failed. Let us pray that the next generation will restore the confidence in the litigants. In the meantime let us celebrate.

Our Court has to contend with a number of day-to-day problems like overcrowding (lawyers and litigants), division of time of the day earmarked on diverse basis for hearing of matters, absence of proper determination (i.e. as to which judge would be at home with what type of matters), lack or insufficiency of some essential facilities like clean toilets, separate canteens for lawyers (irrespective of membership of which association) and litigants, elevators, departmental cobwebs, etc. and alarming indiscipline in the overall functioning of our Court for which all concerned are guilty.

We are in the midst of a highly technological era. Computers and internet are

fast replacing the age-old typing and printing press. Online law reports enable us to carry our libraries wherever we go. Email has facilitated instant exchange of correspondence. Substantial advance has been made in our Court to catch up with the times. For example, we can see the listing of the cases on the previous evening. Much more needs to be achieved provided we (Judges, lawyers and the staff) do not permit politics to act as a spanner in the works. Some of the younger generation are utilizing the new technologies looking at the future. Good for them!

This essay sounds cynical. I admit it is so. Some introspection is called for after 150 years. In the mood for celebration it may not be wrong to think of ways to retrieve the glory and scale greater heights as well.

* Unfortunately the judgment is not reported.

HISTORY OF THE BAR ASSOCIATION

Balai Lal Pal

[With updates and additional inputs by Bidyut Kiran Mukherjee #]

No account of the eventful life of the Calcutta High Court during the past century can be complete without an autobiography of its Bar Association which has played no mean role in the colourful drama of administration of justice in the country. Yet the task of presenting such a narrative is beset with inherent difficulty to one who approaches it with full awareness of the function of a historian. The relation between history and the historian is described by a contemporary historian thus:

"We sometimes speak of the course of history as a 'moving procession' . . . The historian is just another dim figure trudging along in another part of the procession. . . The point in the procession at which he finds himself determines his angle of vision on the past".[1]

Viewed in this light, the autobiography of an institution will fail to tell the whole story since its story-teller occupies a point in the procession which can give him an authentic view of only a part of the procession, for the rest of which he has to draw on sources other than personal knowledge and visual experience. The present story is narrated by a member of the Bar Association who has witnessed and participated in only the last quarter of its century-long procession. He is fully conscious of his liability to the reproach of ignorance but he has tried his best to escape that of partiality.

PEDIGREE AND SEAT

No record seems to be available of the exact circumstances which led to the foundation of the Bar Association. It appears from extant sources that before the establishment of the High Court there was a Sudder Court Bar Library which claimed amongst its members Prosunnya Coomar Tagore, Ramapersaud Roy, Moonshee Ameer Ali, R. T. Allan, Shumboonath Pandit, R. E. Twidale, Dwarkanath Mitter, Sreenath Doss, Mohesh Chunder Chowdhuri, Ramanath Bose, Romesh Chandra Mitter, Gasper Gregory, W. B. Money, Doorgamohon Doss and Chunder Madhub Ghose.

It is interesting to note that the President of the Sudder Court Bar Library was Lord Ulick Browne, Registrar of the Court. It was so much under official control that it could not purchase even a bookshelf though there were sufficient funds but had to pass a resolution for applying to the Registrar for the supply of the thing. Even

"useless books for which there is hardly sufficient room in the Library" could not be disposed of by the Secretary of the Library. This scavenging operation had to be duly sanctioned by the Registrar of the Sudder Court.

How the whiteman's prestige reigned supreme over the affairs of the Library will be evident from what happened at the meeting of the members held on the 13th July 1861 under the august chairmanship of the Registrar President, Lord Ulick Browne. A book on Java written by Mr. W. B. Money, a Barrister member of the Library, contained certain passages which appeared to some members to be derogatory to the Sudder Court Bar. The matter was discussed at the meeting and the following resolution was at first proposed by Babu Unnoda Persaud Banerjee and seconded by Babu Dwarkanath Mitter: "that Mr. Money be requested to state distinctly whether he did or did not intend the disparaging remarks contained in the work on Java to apply to the Sudder Bar and if not, that he will publish a statement to that effect in the Newspapers and also in the second edition of his work".

Such a resolution at the instance of two "Natives" demanding an explanation from a whiteman must have stunk in the nostrils (not reported whether snuff-stuffed) of the white President. It met with a predestined fate—it was put to vote and lost. Then the age-old colonial method of petition-and-prayer was resorted to and the following letter was proposed to be written to the offender:

"We are glad to have the fullest assurance of Mr. Money by his letter dated 27th June last that he did not intend to include in his strictures the Pleaders of the Sudder Court and that he has undertaken to give publicity to his expression of opinion which owing to the curtailment of the printer has been kept back and as it is likely that he may be misunderstood before a second edition appears, we hope Mr. Money will be pleased to take early measure to give publicity to his opinion by means of the Newspapers of this country and such other mode as he may think proper".

The resolution in support of this letter was proposed by Babu Ashootosh Dhur and seconded by Babu Kishen Kishore Ghose. The Sahib's Izzat was amply protected by this resolution and so it had an easy passage.

Since its inception the Sudder Court Bar Library used to be supplied regularly with the following periodicals from the Court: (1) Sudder Dewani Monthly Decisions, L.P. (2) Nizamut Monthly Decisions, L.P. (3) Sudder Dewani Monthly Decisions, N.W.P. (4) Nizamut Monthly Decisions, N.W.P. (5) Acts of Government (6) Law Journal Reports (7) Jurists, and (8) Bengalee Government Gazette. The supply of these periodicals was discontinued for some unknown reason about the middle of 1861 and the Secretary of the Bar Library had to send a petition to the Registrar of the Sudder Court for restoration of the supply.

The roll strength of the Library in the year 1862 was 50 and the annual subscription for membership was Rs.25/-. In 1863 the Library appears to have

already assumed the name of the High Court Bar Library and its roll strength rose to 74. In 1865 the name of Babu Woomesh Chunder Banerjee (W. C. Bonnerjee of later days) appears on the roll of the High Court Bar Library. The members' list for 1867 proudly bears the name of Rash Beharee Ghose. In 1873 the name of the Library appears to have been changed to High Court Vakils' Association. In 1874 one finds the roll strength of the Association increased to more than 100 and on the roll are found the names of Gooroodas Banerjee and Saroda Charan Mittra.

It may be of interest to note here that about a quarter of a century after the establishment of the High Court men in authority thought of condescending to confer on some Vakils the proud rank of "Advocates". The suggestion was conveyed to the Vakils' Association by the British Indian Association through its Secretary (Peary Mohun Mukherjee), the text of whose letter dated 6th June 1887 is worth reproduction here:

"It has been suggested to the Committee of the British Indian Association that in the interests of the public as well as of the members of the Native Bar it is desirable that a number of selected Vakeels or Vakeels of a certain standing should be enrolled as Advocates and allowed to practise in the Original Side of the High Court. Before the Committee take any action in the matter they will feel obliged by your ascertaining the views of your Association in this matter and informing whether the proposal is agreeable to that body. "

The reaction of the "Native Bar" to this feeler was prompt and significant. The Vakils' Association informed the British Indian Association that it was very desirable that Vakils who were of a certain standing should be admitted and enrolled as Advocates so as to enable them to practise on all sides of the High Court but that enrolment by selection was open to objection.

How the landed aristocracy came to be selected as the medium of approach and action in the matter is not known. It seems that the colonial pattern of administration made the atmosphere favourable for the landlords to have a voice in the development and organization of the Bar. Dean Pound notes how in the Colony of Virginia the landed gentry were jealous of lawyers and waged a relentless war against them for more than a century[2].

The Vakils' Association continued till 1928. In August that year, as a result of the changes brought about by the Indian Bar Councils Act, 1926, the Association assumed its present name.

The Association and its predecessor have all through their career been housed in the same building in which the Appellate Side of the Court functioned. From 1862 when the High Court was established till 1872 when the present building was completed, the Appellate Side Courts were held in the building on Lower Circular Road opposite to the Race Course which was later occupied by the Military Hospital.

During this period the Vakils had their Library in that building. When the High Court moved to its present magnificent building in 1872 the Vakils' Association was given the big hall on the first floor which has since been occupied by it.

CLIMATE AND COOLERS

Interpretation of history is the acknowledged province of experts. Still the introduction of electric fans into the Association rooms may plausibly be linked with the exhausting experience of a British Chief Justice in the stuffy atmosphere of one of those rooms. While unveiling the portrait of Sir Romesh Chandra Mitter at the Vakils' Association room in May 1901, Sir Francis William Maclean opened his address thus: "I am confident, gentlemen, that you will agree with me that upon a hot afternoon in Calcutta at the end of May and in a certainly very crowded room which shows the interests taken in the present proceedings, it will neither be in the interest of the speaker, and far less in the interest of the audience, that I should detain you with anything in the nature of a lengthy speech."

Shortly thereafter, on the 10th June 1901, a special general meeting of the Vakils'Association was held with Babu Ram Charan Mitra, Senior Government Pleader and President of the Association, in the chair, who observed that it was desirable that the Association rooms should be fitted with electric pankhas and invited discussion on the point. On the 25th June 1901, a high-powered committee was appointed consisting of Babus Mahendra Nath Roy, Monindra Nath Bhuttacharjee, Jogendra Chandra Ghose and the secretary of the Association who were "authorised to find within a week which firm in Calcutta can supply the best electric pankhas and which firm should be entrusted with the work of fitting up the rooms of the Association with electric fans." Their decision on the point was to be final. The time-limit set for their decision and the authority conferred on them suggest that the heat of the city had become too oppressive for further delay in the matter. In came the Electric Fans in July 1901 at the cost of Rs. 1,830/- to the Association. But it is recorded to the credit of the Secretary that he managed to defray the costs without touching its invested funds though he had been authorised by the general meeting to sell G.P. Notes worth Rs. 2,000/- for the purpose.

The electric fans had no doubt their desired cooling effect. For, three years later, in July 1904, the same learned British Chief Justice, while unveiling the portrait of Sir Gooroodas Banerjee in the same Vakils'Association Room, prefaced his address with these encouraging words: "Amidst the wear and tear of judicial life and in a tropical climate and in the midst of responsibilities of the office which I fill, it is refreshing and grateful to take part in a ceremony such as that of this afternoon." There was the inevitable reference to the unkind climate of Calcutta but no doleful comment on the heat of the afternoon.

Two other events of 1904 strike the keynote of the Association's institutional life—ceaseless vigilance for the rights and interests of its members and grateful appreciation of their legitimate recognition. On the occasion of the appointment of Dr. Asutosh Mookerjee as an Additional Judge of the High Court the Association expressed its thankfulness to the Chief Justice, Sir Francis William Maclean, and to the Government of India as the appointment gave effect, though not fully, to the recommendations of the Public Service Commission relating to the appointment of Vakils as Judges of the High Court. Lest this approach of the Association be regarded as entirely partisan, it may be noted that the Calcutta Weekly Notes welcomed the appointment "as a recognition of local talent and also of the claims of Vakeels of approved ability to higher judicial appointments"[3]. It observed further: "If knowledge of the language, of the manners and customs of the country, of the sentiments and feelings of the people, general intelligence, legal learning, large experience, amiable manners and agreeable temper be the criterions for making a good selection for the Bench, we feel no hesitation in saying that it would be difficult to point to a more deserving person than Dr. Mookerjee."

The other significant event was the protest made by the Association on the 29th July 1904, against the treatment received by Vakils at the hands of Mr. Justice Rampini, a white Civilian, which was described in the unanimous resolution of the Association as "highly unsatisfactory being attended with marked want of courtesy and sometimes even with insults." This was followed by a second resolution to the effect that "a copy of this resolution be submitted to the Hon'ble Chief Justice with an humble request that His Lordship will be graciously pleased to take such remedial action as His Lordship may think fit."

In those days of Moderate politics such a step was considered by some members to be too bold—maybe, dangerous also. So a fortnight later a meeting of the Association was held on their requisition to reconsider the second resolution, when a prominent member observed that it was not expedient to send a copy of the resolution to the Chief Justice and proposed that the above resolution be rescinded. Unfortunately for him, the Direct Actionists won the day—his proposal was put to vote and lost by a narrow margin. It may be of interest to note that at the original meeting a Khan Bahadur member of the Association had suggested that even the first resolution need not be passed but that the Association might get the requisition convening the meeting published in some newspaper and see what effect it would produce. But his go-slow, wait-and-see policy was not accepted by the Association.

Press publicity, however, sometimes produced the desired effect. One day a British Judge did not sit on the Bench on the ground of his reported illness. Maybe he preferred to stay at home trusting the well-tried Beecham's Pills to tone up his dull stomach for the same night's Dinner at Government House. The Court Circular issued

by His Excellency's A.D.C. in charge of Invitations, which was very often a front-page feature in the newspapers of those days, showed a number of celebrities who had been honoured by the invitation to dine with the Lat Sahib and in the list prominently figured the name of the indisposed British Judge. An Indian-owned English daily took editorial notice of the two events in a neutral manner. The two news items—the absence of the Judge from the High Court and his presence at government House—were juxtaposed, followed by the editor's sly comment: "Comment is needless". History does not record another instance of such indisposition-absence thereafter.

But it would be hazarding a bold prophecy to suggest that history will not repeat the Rampini affair. If intellect was not the monopoly of the British in India, as historic events have established beyond doubt, so was not bad manners. Though Rampinis and their ilk have left the Indian shores for good, a search for their Indian counterparts may not be altogether futile. Historians find and accept a sense of direction in history itself. It is sincerely to be hoped that history will not direct the Bar Association to embarrass a Chief Justice again with a request or taking such remedial action as he deems fit against the judicial antics of a colleague.

A passing reference may be made here to the serious situation created in 1920 by the New Appellate Side Rules of the High Court. No official intimation was given to the Association about the contemplated changes in the Rules and when current rumours led the Association to write to the Registrar asking for an opportunity to express its views on the proposed changes, the request was unceremoniously refused. The Rules were published in September during the Long Vacation of the Court and on the re-opening of the Court they stirred up very strong feelings in the minds of the members of the Association. Though as a result of the representation made by the Association the Rules as published were modified, the modifications failed to satisfy the Association. On the 21st March 1921, the Association passed a resolution unanimously to the effect that the members of the Association were to suspend practice on and from the 1st May 1921 and the suspension was to remain in force until the New Rules were rescinded or modified to the satisfaction of the Association. Good sense seems to have prevailed with the authorities as a result of a deputation of the association having waited upon the Home Member to the Government of India and the proposed date of suspension of practice by the members was shifted to the 1st June 1921. Things went on favourably in the meantime and ultimately the united stand taken by the members of the Association produced the desired effect of eliminating all the objectionable features of the New Rules.

PORTIAS IN Propria Persona

It has been noticed above that in 1862 the strength of the membership of the Association was 50. Regard being had to the state of affairs prevalent in all British colonies in their infancy, it would be hardly fair to sneer at this numerical leanness. Even a city like New York in its Colonial days under Royal Governors could not

boast of more than forty-one lawyers practising in the city between 1695 and 1769[4]. In a century, however, the roll strength of the Bar Association has risen to over 780. Of these already about twenty are women and their inroad upon what was so long a masculine preserve seems to be quite steady and effective. These Portias (not Doctor Balthasars) have not found their entrance to the High Court or its Bar Association barred by any trade-unionism on the part of the males. In the matter of robes, except for the discipline of black gowns, no other restraint has been imposed upon them either by the Judges of the Court, officially or individually, or by the Bar Association. Their hair-do is free-style; they are not required to completely cover and conceal their hair as the women barristers in England were required to do in 1922[5]. Luckily for most of them (maybe, unluckily for the rest), none has suggested as yet that they should wear trousers. Such a suggestion need not necessarily be attributed to a wag for it did occur to knowledgeable men. It is a Lord Justice of the English Court of Appeal who expressed these solemn thoughts:

"I do not know how, or by whom, it came to be decreed when women were admitted to the bar, that they should wear wigs. If it be realised that the barrister's wig is simply an unchanged masculine fashion in hair-dressing no decision can appear more absurd. With equal reason, or the lack of it, the woman barrister ought to have been called upon to wear trousers—of (if the fashion had survived) 'that pleasing and extensive variety of nose and whisker for which the bar of England was so justly celebrated' in 1828."[6]

BATTLE OF ROBES

In the matter of robes, however, the male members of the Association were not so fortunately placed. It was a long wait for them before they obtained permission from the Court to take off the head-dress which was looked upon as a badge of inferiority and to don the gown which was then the exclusive privilege of the Barristers. Since 1896 the question of dress reform for the Vakils raised its head from time to time but was shelved for reasons of expediency every time. But a decade of mounting unrest brought matters to a head in 1906. In July that year, by a unanimous resolution, the Association suggested a distinctive costume for the Vakils such as the University gowns without any head-dress or any other suitable costume without a head-dress. A letter was addressed to the Registrar, Appellate Side, in terms of the resolution and a favouable reply was vouchsafed by him towards the end of that year. At long last the Vakils learnt to their profound satisfaction that the Chief Justice and the other Judges of the Court had approved of their proposed appearance in gowns and without a head-dress. But a colour-bar was imposed on the Vakils' unfortunate gown, the Registrar having asked the Association to select a colour other than black, which was the colour of the Barristers' gown. As in other fields of British Colonialism, the colour-question proved to be a thorny problem in this field of gowns also. For the sample of Blue-black Alpacca which had been sent up by the Vakils' Association for approval of the Court was considered not sufficiently distinctive by the Chief Justice and the other Judges of the Court and the Association was asked to

send for approval "material of a more distinctive colour so that the Vakils' gowns would be clearly distinguishable from that of a Barrister". The question of colour was debated at length by the Association at a meeting when some members went to the length of suggesting the dropping of the matter rather than be forced by the Judges to appear in a gown of loud or glaring colour which would make them the laughing-stock of the public. Sober sense however prevailed and Babu Ram Charan Mitra, the President of the Association, was authorised to see the Chief Justice and the other Judges and discuss the colour-question with them. It seems that the apartheid in gowns was settled some time in May 1907 and the Court fixed the time for the wearing of gowns by Vakils. On the 27th May 1907 a special meeting of the Vakils' Association had to be convened for seeking an extension of the time till the re-opening of the Court after the Long Vacation. Perhaps the sartorial talent of Metiaburz had expressed its inability to master the distinctive features of the new-fangled thing at such short notice.

But the battle was not won. The blue gown only gave the Vakils a strategic jumping-board for the next attack. The D-day, however, came more than two decades later with the enactment of the Indian Bar Councils Act, which directed the maintenance of one common roll, namely, that of Advocates. The much expected hour arrived for an all-out bid for victory and so the Bar Association claimed that "uniformity in the matter of robes must follow, as an inevitable logical consequence, the unification of those entitled to plead before this Hon'ble Court under one common denomination, 'Advocates'." This claim was voiced in its representation to the Chief Justice and the other Judges in January 1929. The Bar Council made a recommendation on the matter which caused deep resentment among the members of the Bar Association. Ultimately, after prolonged controversies, came the resolution of the Full Court in May 1929, in the following terms:

(a) Advocates entered on the roll of Advocates of the High Court of Judicature at Fort William in Bengal when appearing in Court will wear a black gown of stuff or alpacca cut after the pattern of the gown worn by King's Counsel but with sleeves to the elbow only.

(b) Advocates entitled to practise on the Original Side may wear bands.

(c) Barristers may wear their own gown.

(d) Advocates not entitled to practise on the Original Side will not wear bands.

This decision of the Court was deplored by the Association "as it made a distinction between Advocates in the matter of robes against the spirit of the Bar Councils Act". As a mark of disapproval all the members of the Association who had been elected to the Bar Council resigned their seats on that body. Further, the Association made a representation to the Chief Justice and the other Judges requesting them to grant all non-Barristers the option to wear their blue gowns. The

net upshot was that there followed a mixture of blue and black gowns among the members of the Association—and the battle of robes remained undecided.

Things went on in this way till about the end of 1940 when a rule was framed by the Court conferring the right on non-Barrister Advocates of a standing of three years or more to get themselves enrolled as Advocates entitled to practise on the Original Side. Though the rule was silent on the question of robes, its effect on the robes was intelligible to all concerned. It was understood that the Vakil-Advocates who got themselves enrolled on the Original Side would have the same option as was enjoyed by such Vakil-Advocates in the past and that non-Vakil Advocates, when entitled to practise on the Original Side, were to add bands to their black gown, but those who were of less than three years' standing or those who did not choose to get themselves enrolled on the Original Side would have to wear the black gown without the bands. The practical effect of this new rule on the junior non-Barrister Advocates now entitled to wear that white appendage was thus described by the Calcutta Weekly Notes:

"The Barristers will remain, as they are, safe in the enjoyment of their present rights, suffering from their present disabilities, and only subjected to an influx into their special domain of a large class of persons, suddenly enfranchised; and the latter, though wearing the sacred thread of the bands, will not yet acquire the privileges of the caste but will remain, so far as the Original Side is concerned, an ineffective and dubious class, banded, branded, stranded."[7]

The title to tie that fluttering piece of white round the neck was favourably noticed by the All-India Bar Committee in these words: "The Calcutta High Court has prescribed a common robe for all Advocates with liberty to the Barrister Advocates to wear the Barrister's gown and to the Vakil Advocates to wear the Vakil's gown, all being entitled to wear the band."[8]

The V-Day arrived at long last with the Supreme Court Advocates practising in the High Court. Today in the daily procession of robes in the Court verandahs only a master's eye can tell the real Inn-stuff from the ersatz interloper. But the mark of "Natives" is still impressed on the wearers of the real stuff[9].

LAW AND OTHER THINGS

The Association's Library is well-equipped and is as up-to-date as the country's foreign exchange restrictions permit. Its collection of rare and ancient treatises is so inviting that sometimes some of them have mysteriously found their way to the College Street old-book hawkers' sheds where many a priceless work of historical importance not unoften changes hand–unwept, unhonoured and unsung. In his report for the year 1933 the Secretary of the Bar Association had to recommend that in order to protect the rare books from further depredation by hawkers, strict rules should be made regarding admission of outsiders into the rooms of the Association.

With the rich intellect of the dead in its library and the no less valuable intellect of the living in its membership the Bar Association has lived a life marked by both length and breadth. As an association it has been directly concerned with fostering cooperation among its members and safeguarding the interests of the legal profession and maintaining its lofty traditions. But through its members it has indirectly participated in a fuller life both in the field of law and other spheres. Its roll proudly bore the names of men who in later life blossomed out into some of the most eminent judges and jurists of the country—such names as Sir Romesh Chandra Mitra, Sir Rash Behary Ghose, Sir Gooroodas Banerjee, Sir Asutosh Mookerjee, Dr. Trailokya Nath Mitra, Golap Chandra Sarkar, Dr. P. N. Sen, Sir Manmatha Nath Mukherji and Dr. Atul Chandra Gupta. In Dr. Bijan Kumar Mukherjea the Association recalls with reverence the memory of a member who, after a period of successful advocacy, adorned the Bench of the Calcutta High Court and, on transplantation in New Delhi, shed lustre on the office of the Chief Justice of India.

Among its members are many notable "firsts". Dr. Rajendra Prasad, the first President of the Indian Republic, began his professional life as a Vakil of the Calcutta High Court. Shambhunath Pandit was the first Indian Judge of this High Court. Sir Romesh Chandra Mitra was its first Indian Officiating Chief Justice and Sri Phanibhusan Chakravartti its first permanent Indian Chief Justice. Dr. Radhabinod Pal is the first National Professor of Jurisprudence .

In the field of legal research the Association looks with pride on the record of its members. The blue ribbon of legal research in this country—the Tagore Law Professorship of Calcutta University—came to the eminent members of the Association on numerous occasions. Legal philosophy and literature owe not a little to the illuminating contributions of Dr. Rash Behary Ghose, Dr. Gooroodas Banerjee, Golap Chandra Sastri, Pandit Prannath Saraswati, Sarada Charan Mitra, Jogendra Chunder Ghose, Dr. Bijan Kumar Mukherjea and Dr. Radhabinod Pal.

The Bar Association notes with equal satisfaction the contribution of its members in other spheres of life as well. In the field of education Sir Asutosh Mookerjee left behind the stamp of his personality and genius as the maker of modern Calcutta University. The Association claims as its own three other Vice-Chancellors of Calcutta University—Dr. Radhabinod Pal, Sri Charu Chandra Biswas and Sri Surajit Chandra Lahiri. In a sense the Association may also claim two other Vice-Chancellors—Dr. Syamaprasad Mookerjee and Dr. Pramathanath Banerjee —as its own since they began their career at the Bar as members of the Association.

In the field of International Law also the Association has an enviable record. In 1945 Dr. Radhabinod Pal, then an active member of the Association, was appointed as the Indian Judge on the Tokyo War Crimes Tribunal for the Trial of Major Japanese War Criminals. His dissenting judgment which covered more than 700 pages in print won the acclaim of all impartial jurists and publicists whose outlook did not suffer a change under the stress of bitter experiences of the total war. While

reinforcing his criticism of Victor Trials with an excerpt from Dr. Pal's Judgment, Lord Hankey paid this glowing tribute: "As a good many British and American lawyers are known not to share the orthodox legal views, it may be of interest to quote a few brief extracts from the dissenting Judgment of Mr. Justice Pal, the representative of India, at the Tokyo trials. The whole passage is characterized by independence, lucidity and learning; unfortunately, considerations of space forbid more than the following glimpse"[10]. Dr. Pal continued his contributions to the development of International Law by active participation in the deliberations of the International Law Commission to which he was elected in 1952 and has since been selected as occasion arose. Later he won the unique distinction of being the first jurist to be elected Chairman of that body for the second time.

Though the Association in its own life tried its best to steer clear of politics the contribution of its members in the political field is not negligible. For active participation in the national struggle for freedom the name of Dr. Rajendra Prasad comes foremost in the mind. The loss suffered by the profession proved to be a national gain. Even if the participation of some of the members of the Association in the legislative affairs of the country before the twenties be considered not worthy of serious notice, fairness demands a reference to the part played by some of its members in the Legislature functioning after the Montford Reforms. Mr. A. K. Fazlul Huq remained a very prominent figure in Bengal politics for long, crowning his political life with the Chief Ministership of undivided Bengal. One has to recall with pride the part played by Sri N. K. Basu as a member of the Bengal Legislative Council in the interest of administration of justice. His celebrated speech in March 1935, in support of two motions in connection with the demand for grant under the head "Administration of Justice" inspired the Editor of the Amrita Bazar Patrika to write a leading article entitled "Calcutta High Court" which caused contempt proceedings to be drawn up against him. The relevant portion of the leader ran:

"We are glad to find that in the Bengal Legislative Council yesterday there was discussion about administration of the Calcutta High Court. Every word of Mr. N. K. Basu was true. It is so unfortunate and regrettable that at the present day the Chief Justice and the Judges find a peculiar delight in hobnobbing with the Executive, with the result the judiciary is robbed of its independence which at one time attracted the admiration of the whole country. The old order of things has vanished away. We wish the Chief Justice and the Judges appreciate the sentiments of the public. The generation that has gone by should be an ideal to them."

The case was heard by a Special Bench of five Judges including the Chief and Sir Tej Bahadur Sapru appeared on behalf of the Editor. As the Editor offered no apology or regret for the views expressed in the editorial article, he was sentenced to simple imprisonment for a period of three months[11].

Roscoe Pound sees in a Bar Association "an organization of lawyers to promote and maintain the practice of law as a profession, that is, as a learned art

pursued in the spirit of a public service—in the spirit of a service of furthering the administration of justice through and according to law"[12]. The Bar Association of this High Court has been steadfast in its allegiance to this ideal throughout its life.

GREAT EXPECTATIONS

The Association cannot, however, afford to rest on its glorious past. India is now at the threshold of the most eventful chapter of its planned life, to the success of which all Indian institutions, both public and private, should endeavour to make their solid contributions. The best way in which the members of the legal profession can be of real assistance is to strengthen the foundation of the Rule of Law in the country by propagating the real purposes which Law stands to subserve, for the enlightenment of the Government and the people alike. If the welfare of the country is to be assured, the Government must develop a genuine respect for Law and the people must acquire a confidence in the authority of Law. In the creation of this healthy atmosphere young lawyers of the country have not an insignificant role to play.

It would be pertinent to recall here the advice given by Chief Justice Rajamannar of the Madras High Court in his inaugural address at the Diamond Jubilee Celebrations of the Advocates' Association, Madras, in April 1949. He said:

"If I am not being pedagogic, I have one suggestion to make. I wish some of the younger members of the Association form study circles to critically review contemporary legislation and examine problems of constitutional and international law and give the benefit of their studies not only to the profession but to the general public as well. For, neither the politician nor the senior lawyer has the time or the inclination to devote himself to juristic or theoretical studies."[13]

Though this advice was given almost on the eve of the inauguration of the Indian Constitution, it has not lost its value through the passage of more than a decade. It is to be hoped that the Bar Association will have a fruitful future by encouraging its younger members to engage themselves in the socially useful task indicated by the eminent Chief Justice of one of the three Presidency High Courts of the country. It is equally to be hoped that Government will be generous in its financial assistance to the Association for this task by enabling it to found handsome scholarships attractive to promising research-workers. Such generosity on the occasion of a High Court Centenary is not without a precedent. The Maharashtra Government made a grant of Rupees Five Lakhs to meet the expenditure of the Bombay High Court Centenary Celebrations held in April 1962[14]. Even a fifth of the amount will go to lay a solid foundation for the conduct of legal research under the auspices of the Bar Association.

This atmosphere of study and research can alone maintain the element of learning which is the very essence of the legal profession. It is useful to remember here the duty cast upon the members of that profession as it appears to Dean Pound.

He says:

"Learning is one of the things which sets off a profession from a calling or vocation or occupation. Professions are learned not only from the nature of the art professed but historically have a cultural, an ideal, side which furthers the exercise of that art. Problems of human relations in society, problems of disease, problems of the upright life guided by religion are to be dealt with by the resources of cultivated intelligence by lawyer, physician and clergyman. To carry on their tasks most effectively they must be more than resourceful craftsmen. They must be learned men."[15]

It is the presence of the learned men that primarily distinguishes a bar association from a retail grocers' association or a plumbers' association.

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1 What is History? by E. H. Carr (Trevelyan Lectures delivered in the University of Cambridge, January-March 1961); quoted in The Times Literary Supplement, November 17, 1961

2 The Lawyer from Antiquity to Modern Times by Roscoe Pound (1953), p. 136

3 (1903-4) 8 C. W. N. (Notes), 229

4 History of the City of New York by David T. Valentine (1853)—quoted in A History of the American Bar by Charles Warren (1913), p. 96

5 Wig or Biretta: Miss Buzfuz or Portia: by the Right Hon'ble Lord Justice Mackinnon (1945) 61 Law Quarterly Review 32

6 Ibid

7 (1940-41) 45 C.W.N (Notes) 30.

8 Report of the All-India Bar Committee (1953), P. 19

9 Lincoln's Inn by Sir William Ball, O.B.E., King's Remembrancer, p. 283

10 Politics, Trials and Errors by The Rt. Hon'ble Lord Hankey (1950) pp. 132-133

11 See, for detailed report In the matter of Tushar Kanti Ghosh (1935) 39 C. W. N. 770

12 The Lawyer from Antiquity to Modern Times by Roscoe Pound (1953) p. 14

13 Diamond Jubilee Souvenir of The Advocates' Association, Madras, p. ii

14 The Amrita Bazar Patrika (Calcutta) 12th April, 1962, p. 9

15 The Lawyer from Antiquity to Modern Times by Roscoe Pound (1953), p. 9

* Reprinted from The High Court At Calcutta Centenary Souvenir, 1862 – 1962

Bidyut Kiran Mukherjee adds:

History is the witness that testifies to the passing of time; it illuminates reality, vitalizes memory, provides guidance in daily life and brings us tidings of antiquity.

Our Association is a living and ever-growing institution. The number of our members, which had swelled to 1800 odd in the mid-80s of the last century, now stands at about 6000. Incidentally, there are several members of the Bar Library Club who are also members of our Association.

Over the years a few more rooms and cubicles have been allocated for the Bar Association, both in the Main building and in the Centenary building, and yet there is shortage of accommodation. It goes without saying that more space is needed.

Our Association has been witness to several changes, some apparent, others not quite so. For instance, these days one finds many a lawyer of the fairer kind coming to Court not swathed in the conventional sari but wearing salwar kameez and other dresses, adding to the pleasant diversity, sartorial or otherwise.

A public address system and several television sets have been put in place. The T.V. sets double up as electronic boards indicating which matters are going on in which Courtrooms; Our "Study Room" has a computer and other facilities where a member can do serious research oriented study. Such additions have certainly enured to the benefit of our members. Our Association library is also being kept up-to-date as far as practicable – despite many odds. Our members have also had a hand in the upgrading of the High Court first-aid clinic. Cigarette smoking is a strict no-no in the Association rooms.

It is also pertinent to note that two of our lady members have been elevated to the Bench of our High Court, while quite a few of our members have been elevated as High Court and Supreme Court Judges. The late Ajit Kumar Dutta and Balai Chandra Pal, members of our Association, adorned the high office of the Advocate General of West Bengal. In the political sphere, the present Chief Minister of our state, Ms Mamata Banerjee, is a member of our Association. Even today there is a member of our Association who is a member of the Lok Sabha, another of the Rajya Sabha, and several who are members of our Bidhan Sabha. Such legislator-members are keeping a long tradition alive.

In the fields of culture and sports, too, our Association has not been found wanting. Commemorative volumes, containing eminently readable articles written by our members, have been brought out on the occasion of the centenary and sesquicentenary of the High Court. A "News Letter" is also being published.

Our Dramatic Society deserves compliment for its cultural pursuit and its

endeavour to help the needy. It celebrated its diamond jubilee in 1990 with the stage-play of Bankim Chandra's Durgesh Nandini. Legal luminaries like Dr Atul Gupta and Ajit Dutta had associated themselves with the Society, and our amateur actors – for the Dramatic Society is not a professional body – have time and again displayed their histrionic talents and given stellar performances, albeit with so little time for rehearsals.

The members of our Association also participate in various sports. Justice Mukul Gopal Mukherjee's was possibly the solitary instance of a High Court Judge officiating in international cricket matches as an umpire. One of our members, Deb Mukherjee, had captained the Bengal and East Zone cricket teams in the not so distant past. Our Abdul Masud represented Bengal (and also Bihar) while Ranjan Roy played for Rajasthan in Ranji Trophy tournaments. Many of our members regularly make use of the facilities available in the High Court Club which has its tent and playground in the Maidan.

The Bar Association has a long history. But it cannot afford to rest on the wings of its glorious past. It has to move on with the times, and each individual member has to contribute his mite to the propagation and strengthening of justice.

The Bar Library Club

Jayanta Kumar Mitra

The High Court at Calcutta, which used to be known as the High Court of Judicature at Fort William in Bengal, was established and formally opened on 1st July 1862. It has thus stepped into its 150th year, celebration for which has started this year and is expected to continue till 1st July 2012, when it completes 150 years of its glorious existence.

We, the members of the Bar, consisting of the Bar Association, the Bar Library Club and the Incorporated Law Society, rejoice the occasion, not only because our members have from the birth of these respective Associations been a part of this venerable and ancient Institution, but also for having been effectively a part of the justice delivery system continuously for all these years.

Of the three Associations, the Bar Library Club is the oldest. It was born on 16th July 1825 at a meeting held in the then Registrar's office and attended by sixteen English gentlemen, all attached to the Supreme Court, consisting of 9 practising Barristers, 4 other Barristers who respectively were described as the Keeper of the Records, Registrar, Sworn Clerk and the Clerk of the Papers, and two others, one of whom was the Attorney, Prothonotary and Clerk of the Crown and the other was known as the Examiner and Sealer.

It is to be noted that by the time the Bar Library Club was formed, the Mayor's Court was abolished, and by the Charter issued on 26th March 1774 the Supreme Court of Judicature at Fort William in Bengal was established, with the Hon'ble Sir Elijah Impey as the Chief Justice and three puisne Judges. It is interesting to note that it was this Elijah Impey who was used by Warren Hastings to bring about the doom of Maharaja Nand Coomar. Macaulay described him as "the most serviceable tool of Hastings", and in connection with the execution of the Maharaja, Macaulay gave vent to his disgust regarding Impey by saying "no other such judge has dishonored the English ermine, since Jefferey drank himself to death in the Tower". The accommodation in the Old Court House (Charity School) building having been found singularly insufficient, the Supreme Court was moved from its existing place to a rented house located at Esplanade West.

It appears from contemporary records that the Bar Library Club was formed more out of necessity than with any sense of camaraderie or fellow-feeling amongst the practising Barristers. Barristers had no place in the Court Building to sit and work while waiting for their matters to be called on, and therefore they had to commute between their chambers situated at a distance and the Supreme Court Building, or

else they had to hang around in the Court premises until their cases were taken up for hearing. Added to the aforesaid difficulty was the problem that the Bar had no library worth the name where members of the Bar could consult reported authorities on Common Law, Chancery, Admiralty, Ecclesiastical Law, and other branches of law, and to get ready with matters before they were called on in Court.

It was one Longueville Clarke, a distinguished Barrister practising in the Supreme Court of Bengal, who was primarily responsible for the creation and establishment of the Bar Library Club. Clarke's untiring efforts, infectious enthusiasm, phenomenal power of persuading people and never-say-die approach in solving an apparently insoluble problem – all these were pressed into service to carry into effect the desirable object of bringing into existence a library of law books for the lawyers with the added benefit of a club for their relaxation and study.

Longueville Clarke was able to persuade James Weir Hogg, the Registrar of the Supreme Court, the only person who had a decent library of law books, to sell his library to the Bar Library Club on acceptable terms, and also to persuade Justice Buller to allot a room to the Club in the premises of the Court House.

On 15th June 1825, at a meeting held at the Registrar's office, Longueville Clarke's proposal for establishment of a law library for the use of the Bar was accepted, the Prospectus framed was approved, and it was further resolved that he be empowered to carry it into effect.

Ultimately, on 16th July 1825, in a meeting of the Bar Library, Longueville Clarke submitted his Report which was unanimously accepted. In the said Report he declared that the books bought from James Weir Hogg have been carefully catalogued and recorded the price at which the books have been purchased, out of which "I have already paid sicca Rs. 1,500/-. The total amount of debt still due to Hogg is sicca Rs. 4428-6-0 for which you have a credit of 4 years; and I have also induced Mr. Hogg, on account of prompt payment of Rs. 1,500/- and the promise of making it up to Rs.2,000/- by the end of this month, to waive his claim of interest". Clarke got the books in the Library arranged alphabetically in 4 different classes, namely, Reports, Text Books, Codes of Law and Miscellaneous, and handed over a well-organized library to the Club with the following final paragraph in his report:

"I have only to add that having executed, to the best of my ability, the trust which you reposed on me, I am desirous of avoiding further responsibility and am anxious to resign my charge to the Committee whom you may appoint".

Longueville Clarke continued to be Secretary and Treasurer of the Club until 1840. During this time the Club had to pass through a period of acute financial problem, primarily because of non-payment of subscriptions by its members. In order to keep the Club going, Clarke had to pay out of his own pocket a sum of Rs. 3,000/-. This fact was recorded in a meeting of the Bar Library Club held on 19th January 1833

when Clarke presented his "Statement of the Affairs of the Bar Library", wherefrom it appears that no subscription was collected from October 1830 other than two admission fees of Rs. 250/- each from two new entrants, namely, Sir John Peter Grant and Leith, as against the actual expenditure of the Bar Library in excess of Rs. 3,600/-. Hence, Longueville Clarke in the "Statement of Affairs" noted:

"The statement which I now submit also proves that the prosperity of the Bar Library must have continued, had the members not withheld their subscriptions, or refrained from meeting for adoption of new measures. Rather than so useful an institution would be broken up, I have supported it for 2 years at my exclusive expense, but I must decline doing so any longer as the debt is now upwards of Rs. 3,000/-". Sd/- Longueville Clarke.

As an aftermath of the above meeting, we find that Bar Library reduced the subscription of its members from Rs. 32/- to Rs. 25/- per term to accommodate the defaulters, who could be divided into three classes – "those who abstained from paying without making any excuse", "those who refused to contribute 2 gold mohurs", and "those who did not object to the amount but declined to contribute".

Another important and interesting development took place during the formative years of the Bar Library. Prior to 1833, gentlemen on being admitted to the Bar used to become members of the Club as a matter of course without election and on payment of the admission fee. In a meeting held on 2nd March 1833, at the suggestion of Clarke, it was resolved that henceforth any advocate and officer of court wishing to become a member should be proposed by one member and seconded by another, and the approval of the members should be obtained by means of ballot before the gentleman concerned was introduced to the membership of the Club. At that time there being only seventeen members of the Club, casting of three black balls was sufficient to exclude an applicant from membership.

It appears from records that in July 1840, Longueville Clarke resigned his membership of the Club. Though it is not recorded what was the immediate cause of his resignation, it is evident that it was his dissatisfaction with the running of the affairs of the Club and some of the proposed changes sought to be brought about in that respect. However, the members did not allow him to stay away from the institution which was so dear to his heart, and we find that on 2nd March, 1841 he was re-elected as a member of the Club Committee, and subsequently as its Secretary. He continued as such till 1862, when he left India after having been actively connected with the Club for the first 37 years of its existence.

Meetings held by the members of the Bar Library Club have often seen interesting resolutions being passed. For instance, on 29th May 1852 it passed a resolution that the name of a member, who had committed a marital offence, be erased from the list of members and that his admission fee be returned. A few years later, on 4th July 1860, a resolution was passed which gave rise to the rule that "no

conversation which takes place between members within the Club should be repeated outside".

The first Indian Barrister to become a member of the Bar Library was Gyanendra Mohan Tagore, the only son of Prasanna Kumar Tagore, also a prominent lawyer who practised in Sadar Dewani Adalat and a well-known citizen of Calcutta during his time. Gyanendra Mohan was called to the Bar by the Inner Temple and became a member of the Bar Library in November 1865.

The ones who followed him were: Monomohan Ghose, who was called to the Bar by Lincoln's Inn in 1866, and Michael Madhusudan Dutt, who was called to the Bar by Gray's Inn in November 1866. Monomohon Ghose became a member of the Bar Library Club in 1868, but Michael, though he applied for, was not admitted to the membership of the Club.

Incidentally, Michael's heart and soul were dedicated to the cause of literature. His burning desire to make a mark in English literature prompted him to write Captive Ladie. His epic contribution in the form of Meghnad Badh Kavya, Hector-badh, Rizia: The Empress of Inde (an unfinished play written in blank verse), etc. have not only carved out a permanent niche for him in the temple of Bengali literature, but has also enriched it immensely for the benefit of the posterity.

Woomesh Chandra Bonnerjee became a member of the Bar Library Club in November 1868 after he was called to the Bar by the Middle Temple in June 1867. With two other Barristers, Monomohon Ghosh and Gyanendra Mohon Tagore, he used to occupy a table at the Bar Library Club, which humorously came to be termed as "Asia Minor" by their English counterparts. As the first President of the Indian National Congress he presided over its deliberations at Bombay in 1885 and again in 1892 at Allahabad. W. C. Bonnerjee had a very liberal religious outlook. He remained a devout Brahmin throughout his life though his wife embraced Christianity. It is interesting and gratifying to note the great personal bond of friendship between the two greats of the time, namely Michael Madhusudan Dutt and W. C. Bonnerjee, which remained firm till the end of the life of Michael, although W. C. was 20 years younger to him. In fact, in a tragic circumstance, when Michael left his wife Henrietta and her two children in Paris, it was W. C. Bonnerjee who came forward to render them financial help to tide over their immediate difficulties.

At this juncture I must digress a bit from my story of the Bar Library Club to bring a very important fact in the history of our judiciary on record. By and under the Letters Patent dated 14th May 1862, the High Court of Judicature at Fort William in Bengal was established and by the same Charter it was constituted to be a Court of record. Three Judges, including the Chief Justice, were appointed from the Supreme Court, and five Judges were appointed from Sudder Dewani Adalat to adorn the Bench of the High Court. The Supreme Court and the Sudder Adalats were abolished and ceased to exist from July 1862. Thereafter, on 28th December 1865 the earlier

Letters Patent of 1862 was revoked, and by the Charter of 1865, the High Court of Judicature at Fort William in Bengal was directed and ordained to continue. The foundation stone of the existing building was laid in 1864 at the site of what was then known as the "New Court House", and the construction of the High Court building was completed in May 1872. The building was designed by Mr. Walter Granville, Government architect, on the model of the "Staad Haus" at Ypres in Belgium.

The High Court of Judicature at Fort William in Bengal commenced functioning from 1st July 1862, but the High Court could be removed to the present building only in May 1872 when its construction was completed. Till such time, the Original Side of the High Court was operating from the Town Hall next door, where the Club was allotted a room.

When the High Court moved into the new building, the Bar Library Club was allotted two rooms on the first floor for its members, one of which came to be known as the "Inner Room" where no outsiders were allowed to enter. Luncheon used to be served to the members in the large room till almost the end of the nineteenth century. However, with increasing number of members joining the Club, the problem of their accommodation became acute in the limited space available. In 1897, the Bar Library fortunately was allotted another room on the second floor, which thenceforth was used for luncheon of the members of the Club. This arrangement continued till the 1920s, whereafter the Club was obliged to convert the room on the second floor also into a Library for accommodation of its new members.

However, no chronicle of an institution will be complete without reminiscing about the intellectual giants who created its glorious past and elevated it to its present stature, either by their involvement in public life through their invaluable contribution in the struggle for independence of their motherland and thereafter in their effective involvement in the administration and governance of a free India, or by means of their contribution in the fields of literature, art and culture, or simply by advancing the cause and administration of justice not only by their superb advocacy and astute analysis of the legal principles, but by their interpretation of the Constitution of India or by assisting in the framing of beneficent legislations in public interest and in the interest of those sections of the litigants for whose benefit they were framed.

It is a matter of great pride that five of its members have been Presidents of the Indian National Congress, namely W. C. Bonnerjee, Lalmohon Ghose, Ananda Mohon Bose, Lord S. P. Sinha (Baron Sinha of Raipur) and Chittaranjan Das. Deshbandhu Chittaranjan sacrificed his lucrative practice, when he was at the pinnacle of his professional career, to join the non-cooperation movement called by Gandhiji.

Among other members of the Bar Library Club who took active part in the Swadeshi movement were Ashutosh Chaudhary, J. Chaudhary, Abdul Rasul and B. C. Chatterjee, all of whom were called to the Bar towards the end of the nineteenth

century, except B. C. Chatterjee who became a Barrister in 1906.

Sarat Chandra Bose, who was called to the Bar in 1915, was a giant amongst men. His towering personality, his family background, his indomitable courage both in Court and outside against formidable adversaries made him a legend in his lifetime.

Another political disciple of Deshbandhu Chittaranjan Das was Jatindra Mohan Sengupta, who became President of the Bengal Provincial Congress Committee, leader of the Swarajya Party in the Council, and Mayor of Calcutta, succeeding Deshbandhu after his death.

We remember with reverence Pramatha Mitter, whose involvement in the formation and running of "Anushilan Samiti", of which he was the President, for organizing and inspiring the Bengali youth to fight for the independence of their motherland. He was called to the Bar in 1876, and after returning from England became a member of the Bar Library Club.

During the freedom struggle, our Library produced people of the stature of Jatindra Mohan Sengupta, B. N. Sasmal, Kiron Sankar Roy, all products of the early 20th century, and all of whom gave up their lucrative professional career to respond to the call of their motherland.

It has been said that the Bar Library "Club has, throughout the nation's struggle for freedom, served as a 'brain bank' on which political leaders have freely drawn".

Thus, many political ideas were conceived and found place in the print media through leading articles in The Bengalee edited by Surendranath Banerjee, The Forward edited by Chittaranjan Das, The Nation edited by Sarat Chandra Bose and The Nationalist edited by Dr. Shyama Prasad Mookerjee.

The two members of the Club who took a leading part in the Hindu Mahasabha were Dr. Syama Prasad Mookerjee and Satyendra Nath Banerjee. Syama Prasad became the youngest Vice Chancellor of Calcutta University at the age of 34. In later years, as a member of the Nehru Cabinet, being the first Cabinet of independent India in 1951, he dominated the Indian political scene. Then, there was Sachin Chaudhuri, the first Bengali Finance Minister of the Government of India.

In more recent times, the Bar Library has produced two members who became the Chief Ministers of West Bengal. Jyoti Basu, the stormy petrel of Bengal politics during the time when Dr. B. C. Roy was the Chief Minister of West Bengal, became a member of the Bar Library Club, though he never practised in the law Courts. He was a Minister in the Cabinet of Ajoy Mukherjee, and ultimately became the Chief Minister of West Bengal in 1977, when the Left Front came to power.

Siddhartha Sankar Ray, a Barrister from Inner Temple, became a member of the Club in 1947. Early in his career, after he was elected to the West Bengal Assembly, he was appointed the Judicial Minister in the Cabinet of Dr. B. C. Roy. Later, after a short stint as the Minister for Education at the centre, he became the Chief Minister of West Bengal in 1972, when West Bengal was passing through a very difficult time. Ray was subsequently elected as a member of the Parliament, and was inducted as a Cabinet Minister in the Indira Gandhi Government. He also served as Governor of Punjab and Ambassador to the United States.

In the cabinet of S. S. Ray there were three members of the Bar Library Club who were elected members of the Legislative Assembly and were made Ministers, namely Dr. Sankar Ghosh, who became the Finance Minister, Bholanath Sen, who was appointed the PWD Minister, and Ajit Panja, the State Health Minister, who was thereafter elected a member of Parliament and went on to become a Minister in the Central Cabinet.

A brilliant lawyer, Ashoke Sen, who became a member of Parliament, was also a Cabinet Minister at the Centre and held the portfolio of Minister for Law over a long period.

A legend in his life time, Sankar Das Banerjee, held a special place amongst lawyers. A formidable Advocate and man with a towering personality, his court craft became the subject matter of numerous snippets which members of the Bar loved to narrate to the junior members. He acquired the unenviable distinction of having held three offices at different times in his career: Finance Minister for the State of West Bengal in the Cabinet of Dr. B. C. Roy, Speaker of the Legislative Assembly of the State, and lastly, the post of the Advocate General of the State.

One of the great Parliamentarians of our time, Somnath Chatterjee, was called to the Bar from the Middle Temple, and became a member of the Club in or about June 1953. A formidable adversary as a counsel in Court, his contribution to the development of Parliamentary system in India, first as a Parliamentarian and thereafter as its Speaker, is a matter of great pride for the members of the Bar Library Club.

We had the privilege of having as a member of the Club a gentleman like Snehansu Kanto Acharya (“Dodo-da” to all), a magnanimous soul who was ever so popular with all, young and old alike. He was the Advocate General of West Bengal when Jyoti Basu was the Chief Minister. He regaled the members of the Club with his stories, limericks, anecdotes, snippets and naughty jokes. He gave away all his ancestral wealth and professional earnings by generous donations to charities and for social welfare.

R. C. Deb was a lawyer par excellence. His analysis of complicated and abstruse legislative provisions with precision and clarity was remarkable. More than

that, he was an Advocate with impeccable manners, both within and outside the Court, a quality the juniors were advised to emulate.

The contribution of the Bar Library Club to the bench of the Supreme Court and the High Courts of different States in India, is quite remarkable. S. R. Das, Amal K. Sarkar, R. S. Bachawat, G. K. Mitter, Arun K. Mukherjee, Ajit Nath Ray, Subimal C.Ray, Amarendra Nath Sen, Sabyasachi Mukharji, Umesh Chandra Banerjee and Ruma Pal were all members of the Bar Library Club before they became Supreme Court judges. Subimal C. Ray, a distinguished jurist, is the only lawyer from the Calcutta Bar who was elevated to the Supreme Court Bench directly from the Bar under Article 124(3) of the Constitution of India. S. R. Das, Amal K. Sarkar, Ajit Nath Ray and Sabyasachi Mukharji adorned the highest judicial post in the country, namely, that of the Chief Justice of India.

The rich tradition of the Bar Library Club was not built in a day, nor was its members confined to the pursuit of professional achievements only. Apart from contributing to the enrichment of public life by active participation in shaping the future of the country, some of the members of the Club have flowered also in the field of art and literature. Michael Madhusudan has been described as "the father of Bengali blank verse" and "a synthesis of Vyasa and Valmiki, Homer and Virgil, Milton and Spencer".

Atul Prasad Sen (1896), a member of the Club, was a poet, lyricist, composer and a lawyer all moulded in one, whose songs and poems inspired many a young heart in pre-independence days and are cherished even today. At or about the same time, another Barrister with a natural flair for literature joined the Bar Library Club. Pramatha Choudhuri (1887), writing under the pen-name Birbal, created waves in Bengali literature with his unique conversational style of writing. A man learned in Sanskrit and French, he was a close associate and confidant of Rabindranath Tagore, and as the editor of Sabujpatra made the periodical a household name. Tapan Mohan Chattopadhyay (1922), a member of the Club was a well-known writer on historical events. His meticulous study of history, masterly assimilation of facts and racy description of events found expression in historical books like Palashir Yuddha.

However, members' contribution in writing was not confined to the field of literature only. Their powerful pen had illumined different spheres of art, architecture, planning and development and critical analysis of various contemporary issues.

Sir John Woodroffe was called to the Bar in 1880 and joined the Bar Library Club soon thereafter. He became a Judge of the High Court, and earned the reputation of being one of the brightest judges of the Court. His knowledge of law found expression in the books he wrote on law. His knowledge of Sanskrit was phenomenal, as has been demonstrated by his treatise on Tantra which is said to have unravelled the "mysteries of the higher mind hitherto unknown to the West". As an erudite scholar in Sanskrit and a jurist of repute Prasanta Behari Mukharji, apart from being

one of brightest intellects on the Bench, authored books on jurisprudence and the law of trust. A great lawyer and powerful Advocate, S. C. Sen (known to the Bar and the Bench as Kailu Sen) had contributed immensely to the growth of company law in India by his illuminating books on various aspects of corporate jurisprudence. Dr. Sankar Ghosh, in the midst of his busy practice as a lawyer and despite his involvement in politics, first as a State Cabinet Minister and then as a Minister at the Centre, had authored a number of books on political history and planning like Political Ideas &. Movements in India, Renaissance to Militant Nationalism in India, and Western Impact on Indian Politics (1885-1919).

Members of the Club have had the good fortune of seeing within the portals of the Library many a scholar of outstanding repute. R. C. Bonerjee (1901) was a classical scholar in English literature, Hirendra Nath Mukherjee (1934) was a lecturer in Economics at the Post Graduate level in Calcutta University, Kiran Chandra Mukherjee (1921) was an outstanding scholar in Greek and taught English and Philosophy at the same University.

In the field of sports, Bar Library Club can proudly proclaim that the first Indian swimmer to cross the English Channel, Mihir Sen, was its member. In spite of their phenomenal practice, members like Niren De, Siddhartha Sankar Ray and others excelled in the game of cricket and represented Bengal in Inter-State cricket tournaments, apart from being University Blues in their respective Universities.

Quite apart from anything else, I ask myself: How many associations of professional lawyers can boast of having produced two Attorney Generals of India (Niren De and Milon Kumar Banerjee), and three Solicitor Generals (Hem Nath Sanyal, Milon Kumar Banerjee and Dipankar Prasad Gupta). This Club has so far produced seven Law Members of the Government of India, twenty Tagore Law Professors, and three members of the Judicial Committee of the Privy Council.

The Bar Library Club, which was originally conceived and constituted out of necessity, is now both a Club and a Library of repute. The dream of Longueville Clarke has materialized and matured into an institution, which today is just over a decade short of completing a double century. It has a well-equipped library with a huge collection of books and journals, some of which are rare tomes. On the one hand it provides a place to its members for research and study on legal subjects, and on the other for resting their weary limbs after an exhausting session of arguments in Court. Down the years its tables have served as a meeting place of its members, where they sharpen their wits and indulge in lively tête-a-tête on any subject under the sun: from law to literature, politics to pottery, current news to latest movies, magic of Messi to the record-breaking feats of Sachin.

The story of the Bar Library Club will remain incomplete without the mention of the Bar Dinners. Bar Dinners are a periodic happening. We have had Bar Dinners in honour of a Judge, a member of our Club, on his elevation to the Supreme Court,

on the occasion of a member attaining some high office or completing fifty years of practice, and even for celebrating the foundation day of the Club. A special attraction of any such gathering is the sumptuous spread followed by a regaling after-dinner speech.

The Bar Library Club is a great leveler – its members grow up learning to mix with one another on equal terms, however big in earning, deep in learning, venerable in age or great in pretensions. The Club's "Scrap Book", carefully preserved, records the tidbits of experience of its members, both inside and outside the Court rooms.

The Club has served the society all these years as an essential and unique institution which has helped to build people of character and learning. It is hoped and expected that it will continue to do so at a time when the requirement of the country for such people is ever so much more.

Longueville Clarke with his signature from the reverse of the cheque below

Gyanendra Mohun Tagore

A Cheque drawn in favour of Longueville Clarke in 1846

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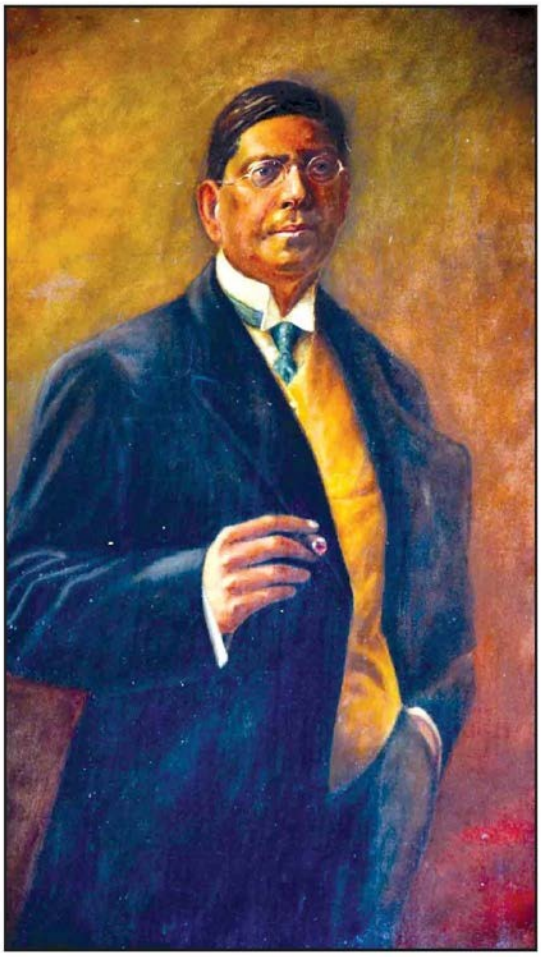

Chittaranjan Das -
A rare portrait in European attire

Syama Prasad Mookerjee in England while qualifying for the Bar - 1926

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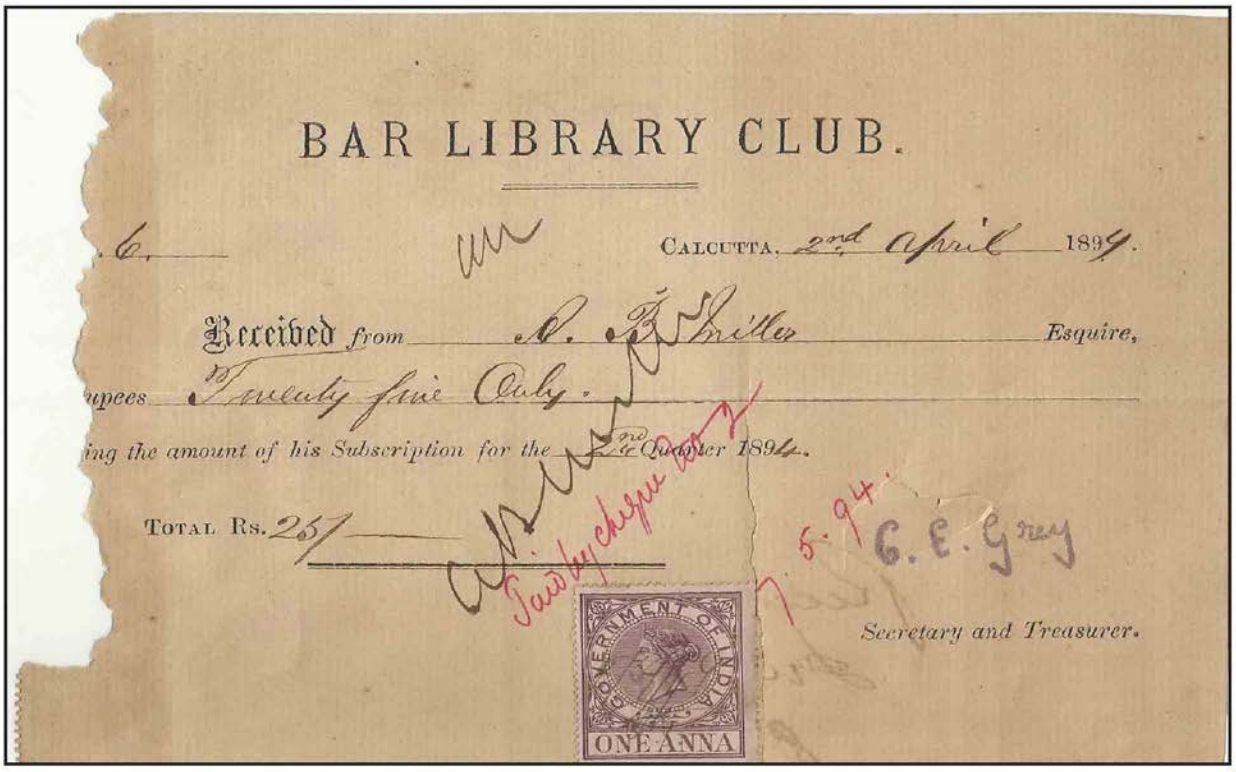


BAR LIBRARY CLUB.

No. 6. Calcutta, 2nd April 1894.

Received from A. F. Miller Esquire,
Rupees Twenty five Only.
being the amount of his Subscription for the 2nd Quarter 1894.

Total Rs. 25/-

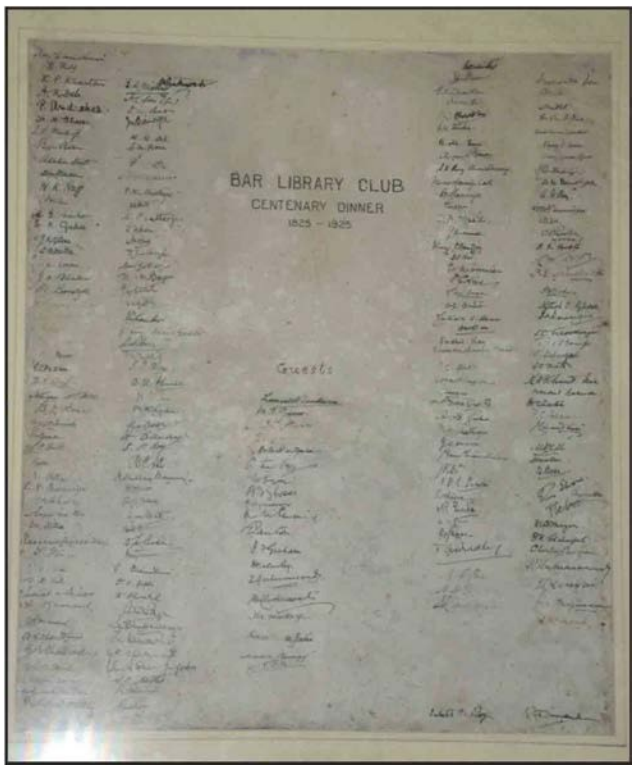
Paid by cheque No 7. 5. 94.

G. E. Grey
Secretary and Treasurer.

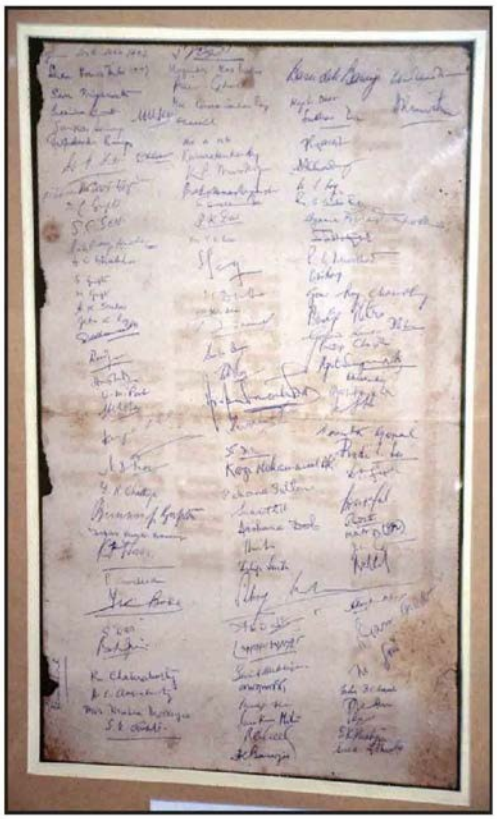
GOVERNMENT OF INDIA
ONE ANNA

A Bar Library subscription receipt

Signatures of members attending the centenary dinner (1825 - 1925)



Signatures of members attending the 150th anniversary dinner (1825 - 1975)



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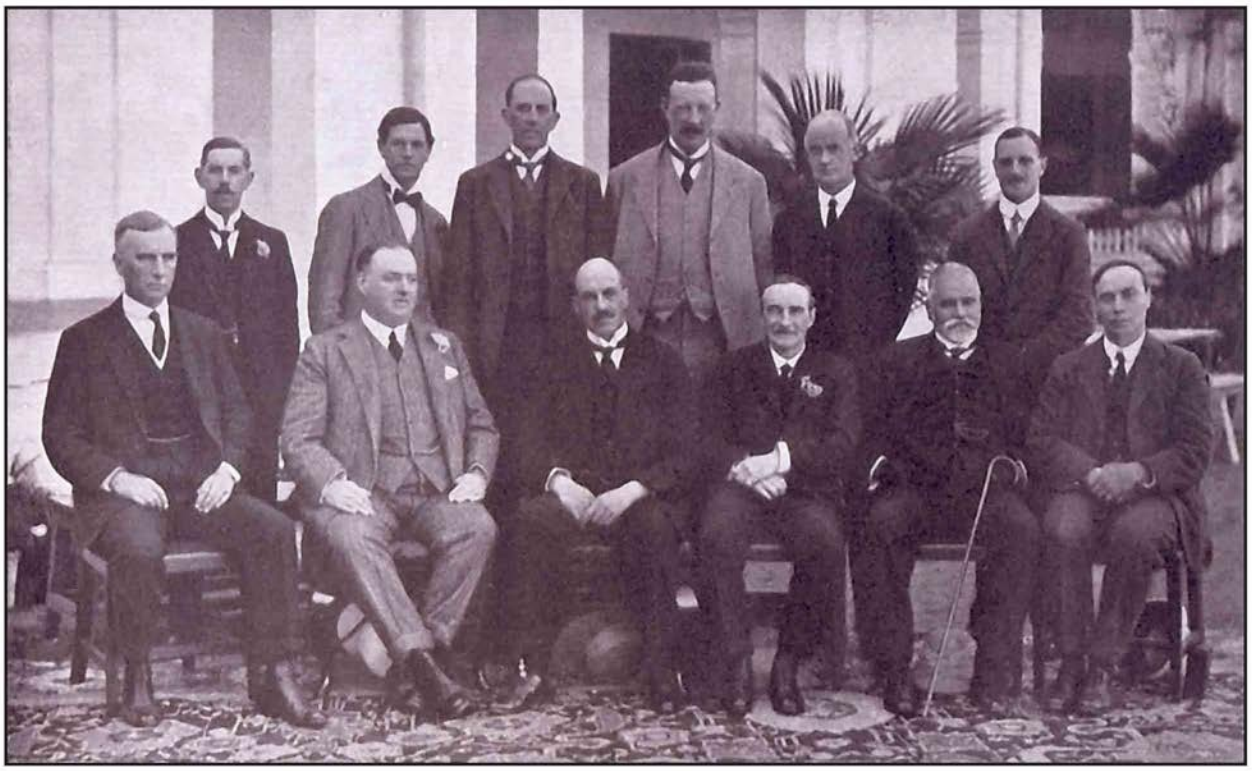
Attorneys' Garden Party *Circa* 1902

Sitting on Chair Left to right Sri A.C. Ghose, Sri B. Banerjee, Sri N.C. Bose, Mr. M. Remfry, Sri K.N. Mitter and Sri J.C. Mitra. Standing 1st Row Left to Right, Sri Surendra C. Ghose, Sri N.C. Gupta, Sri S.C. Ghosh, Sri S.C. Mitra, Sri N.C. Dutta, Sri M.M. Chatterjee. Sri A.K.G, Sri M.N. Sen, Sri A.K. Thakur and Sri R.M. Chatterjee. Standing Back Row Left to Right, Sri S.S. Banerjee, Sri Sarat C. Ghose, Sri J.N. Basu, Sri B.B. Dutt, Sri G.C. Mondal, Sri M.L. Sen and Sri L.N. Kheury.

Standing : G. E. Raney, Alan Parsons, Charles Roberts, M. C. Seton, W.S. Marris, F. C. T Halliday
Sitting : Sir William Vincent, Lord Donoughmore, E. S. M, Sir WIlliam Duke, B. N. Basu, C. H. Kisch



P24

THE INCORPORATED LAW SOCIETY : ITS EVOLUTION

Amal Kumar Sen

"It could be said with confidence that everybody of Bengal who has became anybody in India and Bengal came in a way from the Calcutta High Court and Incorporated Law Society of Calcutta which produced some of the most brilliant, intelligent men one can think of." – Siddhartha Shankar Ray

i

The High Court of Judicature at Fort William in Bengal, now called the High Court at Calcutta, was established by Letters Patent in 1862.

In our Calcutta High Court, there are three Lawyers' Associations, the "Three Arms" so to say of the High Court. These are: (a) The Bar Library Club; (b) The Bar Association; and (c) The Incorporated Law Society of Calcutta.

(a) The Bar Library Club is an Association which was originally formed for and by Barristers, but at present Advocates can also become its members. The Bar Library Club was brought into existence on 16th July 1825;

(b) The Bar Association was formed in and around the year 1862 and has expanded in number and increased in strength over the years. Most of the Advocates and many of the Barristers are also members of the Bar Association; and

(c) The Incorporated Law Society of Calcutta was formed on 6th August 1908 originally for the Attorneys and Solicitors but the membership of this Association is now open to Advocates. The members of these three Associations assist the Hon'ble Judges in effectively implementing the judicial system.

"Attorney" is an old English word and signifies one who is appointed by another to do something in his absence, and who has authority to act in the place and turn of him by whom he is delegated. Originally there was a distinction between "Solicitor" and "Attorney"; the former did not have the latter's power to bind his principal. The title of "Attorney" was abolished by the Supreme Court of Judicature Act, 1873 and "Attorneys" came to be called "Solicitors" (Encyclopaedia Britannica, vols. 2 and 20).

A Solicitor is a lawyer who acts for the client and assists Advocates. In England there are laws to regulate the Solicitor's profession. As in England, a Solicitor or Attorney investigates the title of a person to land, prepares contracts of sale, conveyances and Wills, obtains probate of Wills and frequently acts as executor and trustee. He prepares briefs for Counsel, arranges evidence, follows up a case in Court from inception to conclusion, interviews clients, advises them generally on their legal problems, and writes letters and notices for them. He pilots company promoters through the legal technicalities of forming companies. On difficult questions he takes the opinion of Counsel. Attorneys, or for that matter Solicitors, are a special feature of the dual system of law prevalent in Britain, and it envisages a division of labour between acting and pleading in Court.

Earliest Mention of Attorneys or Solicitors

The earliest mention of Attorneys is to be found in the Charter of 26th March 1774. It was introduced by King George III of Great Britain, France and Ireland in the 14th year of his reign, and it was by and under this Charter that the Supreme Court of Judicature at Fort William in Bengal was established. The Charter of 1774 made provision for admission and enrolment of Attorneys-at-Law, besides Vakils and Advocates, for conducting cases, and the dual system prevalent in Britain was followed here.

We find the name of one Richard Jarret as the earliest Attorney acting in the newly formed Supreme Court. He is known to have acted as the Attorney of Maharaja Nand Coomar in his ill famed trial by the Supreme Court. Jarret also served as the Attorney of East India Company for some time.

Initially, the Europeans, the Armenians and the Jews who had settled in Calcutta formed the majority of Attorneys. In 1793 there were 14 Attorneys of the Supreme Court and they were all either Englishmen or Europeans. Gradually, however, the rules were modified to enable Indian lawyers, who had thus far been practising as Vakils, to become Attorneys.

With effect from 1849, a Rule came into force providing for appointment of a Board of Examiners. Five examiners would conduct the examination and testify to the fitness and capacity of the examinee to act as an Attorney of the Supreme Court. A new rule, introduced on 29th July 1849, provided that an articled clerk was required to enter upon service as an articled clerk at the age of 21 years or more, under a contract in writing, to some Attorney of the Court and to continue in service of such or some other Attorney of the Court for three years after commencement. One Ramanath Law seems to be the first Indian to be admitted as an Attorney of the Supreme Court.

From ancient documents available in the archives of our Society's Library, it appears that in 1851 the Attorneys of the Supreme Court mooted a proposal and

obtained requisite permission for construction of suitable rooms to be used as the Attorneys' Library and accommodation. There are documents which show that construction of the first Attorneys' Library was made with funds raised by the Attorneys themselves. On 17th February 1857 the Attorneys came together and founded the Calcutta Attorneys' Association.

Clauses 9 and 10 of the Letters Patent, under which the Calcutta High Court was established, provided for admission and enrolment of Advocates, Vakils and Attorneys, and the dual system of practice prevailing in the erstwhile Supreme Court of Bengal was left intact as far as the Original Side was concerned.

History of the Incorporated Law Society of Calcutta (ILS)

The Incorporated Law Society of Calcutta was formed on the 6th June 1908 in terms of the Licence granted by the local Government under provisions of the Indian Companies Act, and the objects mentioned in the Memorandum of Association were adopted. One of its objects was to support and protect the character, status and interest of the legal profession in general, another to promote honourable practice and repress malpractice. The founders of the Society devised a system for administration of justice which would be efficient and acceptable.

With the formation of the ILS, the property and funds of the Calcutta Attorneys Association were transferred to the ILS, and all the members of the Attorneys Association, except one, were enrolled as its members.

The following members were the founders and promoters of the ILS and constituted its first Council:

President – H. C. Egger, Esq., M.V.O.

Committee – Kally Nath Mitter, Esq., C.I.E.
H. W. Sparkes, Esq.
N. C. Bose, Esq.
Gonesh Chundra Chunder, Esq.
F. M. Leslie Esq., Hony. Secretary.

The first Annual Report of the Committee of the Society for the period ending 31st December 1908, placed at its First Annual General Meeting held on 23rd January 1909, recorded the fact that the Society had received recognition from the Chief Justice and Judges of the Court as well as the Government of India and that of Bengal.

To qualify as a Solicitor / Attorney-At-Law one had to become an articled clerk under a Senior Solicitor and pass all three, i.e. Preliminary, Intermediate and Final,

examinations. This system of examination, however, is no longer in vogue.

The training received by an articled clerk was essential. It was useful and at the same time very exacting. Many eminent lawyers feel that without such training the knowledge of the lawyers, particularly regarding the High Court Rules etc., is really incomplete.

In this connection, the words of Justice V. M. Coutt Trotter are worth quoting:

"I do not believe that any one who claims the right to appear in Court as an Advocate who has not gone through the training involved in the serving of articles is fitted in the least to do the class of work which properly appertains to the Solicitors."

In 1926 the Indian Bar Councils Act was passed and the distinction between Vakils and Advocates was removed. Quite a number of Attorneys became Advocates and vice versa. Attorneys could only act and not plead in the Original Side of the High Court, but as Advocates they could both act and plead in the Original as well as Appellate Side of the High Court and in all lower Courts.

With the passing of the Advocates (Amendment) Act, 1976 the system of Attorneys was abolished. All lawyers are now Advocates, and Advocates who choose to act are being accepted as members of the ILS. However, the old system is still being continued to some extent. Some of the Advocates, who were formerly Attorneys, and also those who were not so, prefer to work in their chambers and seldom appear in Court. It seems that this dual system, this division of labour will continue.

Contribution of Solicitors

To quote M. C. Chagla in his book Roses in December: "When I hear Original Side appeals and when I see the preparation and presentation of arguments, I know, having been at the Bar, to what extent all that is due to the hard, persevering and unrecognized labours of the solicitors and let me take the opportunity of recognizing their merit which is often not acknowledged".

The Attorneys or Solicitors of Calcutta have made rich contribution to the cause of justice. By and large they confined their practice to the original side of the High Court and specialized in conveyancing and in some or the other branch of law. They mastered the art of documentation and writing letters on behalf of their clients. It is said that the foundation of pleadings in many an important case involving complicated facts and points of law was laid in the letters written by the Solicitors.

The interaction of Solicitors with the junior members of the Bar has always been something to be appreciated. Eminent Senior Solicitors used to guide junior

counsel, train them up, and provide support. They made the junior counsel acquire a kind of ability which was qualitatively different from that of an ordinary lawyer.

There are several well-known families of Calcutta who have taken up the profession of Solicitor / Attorney for generations.

Conclusion

I think it can justly be claimed that our profession has contributed in a large measure to the building up of the great tradition of the Calcutta High Court and in inspiring confidence of the people in the administration of justice by our High Court.

In this connection it is worth mentioning that two of the Solicitors of the Calcutta High Court were Vice Chancellors of the Calcutta University; three were Speakers of the West Bengal Legislative Assembly; a good few were members of the Legislative Assembly; and at least one member of the Incorporated Law Society was a Cabinet Minister of the Government of India and Government of West Bengal. Moreover, many of the Solicitors were members of Parliament, while quite a few were Mayors of Calcutta Corporation.

Last but not the least, some of the Judges of this Hon'ble Court are from the Incorporated Law Society. Justice Satyabrata Mitra (Retd.), Justice Pinaki Chandra Ghose, Justice Ashim Kumar Banerjee and Justice Jyotirmoy Bhattacharya are sitting Judges of this Hon'ble Court.

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Pen sketches of some of the pre-eminent Attorneys / Solicitors of the Calcutta High Court

A good many of these gentlemen, besides making a name for themselves in the legal profession, became important public figures as political leaders, mayors, councilors, and/ or cabinet ministers.

Ramanath Law was a member of the well-known Law family of Ahiritola in Calcutta. He was the first Bengali, nay Indian, to become an Attorney of the Supreme Court of Bengal. This was on 17th February 1857. He was associated with the Attorneys'Association and was a partner of the then well-known firm of Solicitors, M/s Swinhoe Law & Co. G. C. Chunder was his first articled clerk. Justice U. C. Law belonged to his family.

Girish Chunder Bonnerjee became an Attorney in 1859 and a Partner of "Allan, Judge & Bonnerjee". It was the recommendation of Girish Chunder, along with Pandit Iswar Chandra Vidyasagar and others, that helped Michael Madhusudan Dutt to ultimately get enrolled as an Advocate of the Calcutta High Court. W. C. Bonnerjee, the first President of the Indian National Congress, was

from this family.

W. C. (Woomesh Chandra) Bonnerjee began his career as an Attorney and was a maker of the Calcutta Attorneys Association. Later, he proceeded abroad to qualify for his Bar Examinations.

Ganesh Chandra Chunder was enrolled as a Solicitor in 1868. In 1872 he separated from Gillanders and started practising as an Attorney in his own name. In the same year he was admitted as a Vakil. He soon became one of the leading members of the profession and showed his mark in other spheres of life as well. He was the first Bengali Solicitor to be appointed Deputy Sheriff of Calcutta. He was a member of the Bengal Legislative Council in 1892. He started the firm of G. C. Chunder & Co. in 1894 with his eldest son, Raj Chunder Chunder. "He was a man above the common measure," said Sir Lawrence Jenkins, the then Chief Justice, "and one could not know him without perceiving his strong common sense, his sound judgment and his independence of thought and action."

N. C. (Nemai Chandra) Bose was enrolled as a Solicitor on 17th April 1872. His first articled clerk was Bhupendra Nath Basu, followed by J. C. Dutt and Hirendra Nath Dutt. Swami Vivekananda then Narendranath Dutta was for some time one of his assistants.

Bhupendra Nath Basu was a versatile genius. He was enrolled as a Solicitor on 19th March 1884 and very soon became a leader in the profession and founded the firm M/s B. N. Basu & Co. He became President of the Indian National Congress in 1914 and was a very active and eminent figure in all-India politics. He was instrumental in drafting the Montague-Chelmsford Reforms Report and was known as the "Power behind the Throne". After his death on 16th September 1924, The London Times wrote: "Mr. Basu was the most far-sighted man in Bengal. While most Bengalis are thinking weeks or months ahead, Mr. Basu was always thinking years ahead", while Lord Montague said, "Indians do not know what Bhupendra Nath Basu has done for them. If he was born in England the Englishmen would have built a golden statue for him".

Sir Deva Prasad Sarvadhikary became a Solicitor in 1888. He was an eminent educationist, lawyer and social leader. He hailed from the well-known Sarvadhikary family of Khanakul-Krishnanagore in the District of Hooghly. One of his grandsons was Shankar Prasad Mitra who became Chief Justice of the Calcutta High Court.

Raj Chunder Chunder, son of Ganesh Chandra Chunder, passed the M.A. Examination with credit and was enrolled as a Solicitor in 1893. He was the second Bengali Solicitor to be appointed Deputy Sheriff of Calcutta. On his death a reference was made at the Calcutta High Court when Justice Ashutosh Chaudhuri observed: "His death was a great loss to the profession and to the Court. A worthy son of a worthy father, he commanded the confidence of all."

Hirendra Nath Dutta, who was enrolled as a Solicitor in 1894, was an erudite scholar, a true Vedantist, an ardent Theosophist, a sound lawyer and an outstanding author. He took active part in the Swadeshi and anti-partition movements. He was a great friend and admirer of Dr. Annie Besant.

Pramatha Chandra (Paltu) Kar became a Solicitor in 1894. He had the good fortune and privilege of coming into personal contact with Shri Shri Ramakrishna Paramhansa, and also Swami Vivekananda, whom he helped in various ways in founding the Ramakrishna Mission and Math at Belur. He was associated with the Tuberculosis Hospital at Jadavpur (now known as Kumud Sankar Ray Tuberculosis Hospital) since its very inception.

Priya Nath Sen, or Barababu as he was better known, was enrolled as an Attorney on 17th January 1895. He founded the firm M/s P. N. Sen & Co. He built up a good practice and was a very popular gentleman.

Satish Chandra Sen became a Solicitor in the year 1896 and continued in the firm of Orr Robertson and Burton until 1909 when he left and started a firm under his own name. In 1911 he formed the firm of Messrs Dutt & Sen with Bankim Behary Dutt. He was a Founder-Member of the Bengal National Chamber of Commerce, and was intimately connected with sports, various social organizations and the stage.

Jatindra Nath Basu, a nephew of Bhupendra Nath Basu, enrolled as a Solicitor in 1898. Like his uncle, he began his political career as a member of the Indian National Congress but left it when the Congress accepted the policy of non-cooperation under the leadership of Gandhiji, and joined the National Liberal Federation after its foundation in 1919. He was a delegate to the 1st and the 2nd Round Table Conferences. In the words of the Calcutta Weekly Notes: “Mr. Basu was one of the Calcutta’s most distinguished Solicitors, but the respect that he commanded was due less to his success in the profession than to his remarkable integrity of character and a natural born clarity which endeared him to whoever came to know him”.

Mani Lal Sen became an Attorney on 6th August 1898. At the instance of Surendra Nath Banerjea he took active part in drafting the Calcutta Municipal Act.

Kumar Krishna Datta was born in 1868 in the well-known Datta family of “Hatkhola”. He practised as a Solicitor in the Calcutta High Court from 1899. He acted for and took up the defence of Aurobindo Ghosh, Barin Ghosh and others who were implicated in the Manicktolla Bomb Case. He was very closely in touch with many well-known patriotic papers and journals. Both his son, Asim Krishna Dutt, and grandson, Ashok Krishna Datta, enrolled as Solicitors and became members of the Parliament.

Manmatha Nath Sen (Mejobabu) was enrolled as an Attorney on 11th January

1899 and practiced in the same firm with his elder brother Priya Nath Sen. He was elected President of the ILS in 1943 and served the Society in that capacity till his death.

Durga Charan Banerjee became a Solicitor in 1907. He joined the firm of Orr, Dignam & Company as an assistant and was its first Bengalee partner. He was held in great respect in society and was connected with various organizations.

Mathura Nath Mitra was enrolled in 1907. He first joined the firm of Messrs T. H.Wilson & Co., of which he later became a partner. Mitra started practising independently from 1914. In 1946 he teamed up with his sons B. N. and P. N. Mitra and continued under the firm name of M. N. Mitra & Co.

Bijay Kumar Basu qualified as a Solicitor in the year 1911 and joined the firm of his maternal grandfather, G. C. Chunder. After the death of G. C. Chunder and Raj Chandra Chunder, Basu became the senior partner of G. C. Chunder & Co. He was elected Mayor in 1928-29. He was for some time Member of the Executive Council of the Governor of Bengal.

Debi Prosad Khaitan was enrolled as a Solicitor in 1911. He was made a member of the All India Congress Committee. In 1922 he became a member of the Bengal Legislative Council and he remained as such till 1926. He joined some friends to establish the Indian Chamber of Commerce, Calcutta in 1926 and the Federation of Indian Chambers of Commerce and Industries in the following year. He was elected to the Constituent Assembly of India and was an important member of that great Assembly.

Nirmal Chunder Chunder, son of Raj Chunder Chunder, became a Solicitor in 1915. He was a brilliant student of Calcutta University. He became a right-hand man of Deshbandu Chittaranjan Das. He was one of the 'Big Five' in Bengal, the other four being Sarat Chandra Bose, Tulsi Charan Goswami, Nalini Ranjan Sarkar and Dr. Bidhan Chandra Roy. On his death, Chief Justice Phani Bhusan Chakravartti said: "He presided over his profession with great dignity, great success and to the great benefit of the Court".

Rabindra Chandra Deb was enrolled as an Attorney in 1916 and joined the firm of Messrs G. C. Chunder & Co. in 1917. Cool, collected and unruffled in all circumstances, he was a man of sharp intellect, sound judgement and a warm heart. His sons Ranen Deb and Ramendra Chandra Deb were Solicitors and partners of G. C. Chunder & Co., while his second son Rathin Deb was a leading Barrister of the Calcutta High Court and was the Advocate General of West Bengal for some time.

Indra Chandra Ghose became a Solicitor of the High Court in 1916. He stood first in the final Attorneyship examination and was awarded the Belchamber's Gold Medal. Indra Chandra Ghose completed 50 years in practice. His third son Sambhu

Chandra Ghose retired as Chief Justice of this Hon'ble Court. One of Indra Chandra's grandsons is Justice Pinaki Chandra Ghose, while two others are partners of M/s Sandersons & Morgans.

Durga Prasad Khaitan had a brilliant academic career standing first in the B.A., M.A. and B.L. Examinations of the Calcutta University and also in the final Attorneyship examination. Enrolled as an Attorney in 1917, Durga Prasad practised as an Advocate and as a Notary and was connected with several organizations.

Nripendra Chandra Mitra was enrolled as an Attorney on 5th September 1917. In July 1948 he was appointed Solicitor to the Government of West Bengal and continued till 1979. He had a long and close association with Rabindranath Tagore, Sarat Chandra Bose and Subhas Chandra Bose.

Phanindra Nath Bose, who enrolled as an Attorney on 7th September 1917 after serving Articleship under his father Ramesh Chandra Bose, upheld the highest ideals and traditions of the profession. He was closely connected with Shri Aurabindo Ashram, Vivekananda Society, Ramkrishna Vedanta Math and several other institutions. Mr. Justice Shyamal Kumar Sen (Retd) is one of his grandsons.

Sushil Chandra Sen became a Solicitor on May 26, 1919 after a brilliant academic career. He was considered an authority on Company Law. The Companies Act is said to have been amended in 1936 on his advice. From 1937 till his death in 1946 he was the Solicitor for the Government of India in Calcutta.

Iswar Das Jalan was enrolled as a Solicitor in 1921. He retired from practice in 1947 to become Speaker of the First West Bengal Legislative Assembly and was re-elected as a member in 1952. One of his grandsons Dr. Bimal Jalan was the Governor of the Reserve Bank of India, while another Dr. Kamal Jalan is a well-known doctor.

Prabhu Dayal Himatsingka was articled in the firm of Manuel Agarwala & Co. and was enrolled as an Attorney-at-Law in June 1921. He was a veteran revolutionary Congressman, was arrested in the famous Rodda Arms Robbery Case. He was elected as a member of the Parliament for two consecutive sessions in 1962 and 1967 and was a signatory to the Constitution of India. His 100th birthday was celebrated by the ILS on 16th August 1989. He died aged 102.

Sudhir Kumar Mandal (S. K. Mandal) was enrolled on 28th September 1924. He was a partner of Fox & Mandal. He was Solicitor to the Central Government in Calcutta for a period of 23 years from February 1946 to March 1969, and Solicitor of the Income Tax Department for about 20 years from 1950 to 1970. His two sons, Dinabandu Mandal and Arun Mandal, are well-known Solicitors.

Saila Kumar Mukherjee became a Solicitor on 29th July 1926. Apart from being a legal person he was a very popular public man in Howrah. He was a Speaker and a

State cabinet minister.

Satyendra Nath Sen, who was enrolled as a Solicitor in 1929, was Solicitor to the Government of India in New Delhi between October 1956 and October 1959, and again Solicitor to the Central Government in Calcutta between January 1960 and February 1968.

Bhagwati Prasad Khaitan was enrolled as an Attorney-at-Law on 13th March 1930. Apart from professional activities, he led an active life in educational, social and other public fields.

Sudhir Chandra Ray Chaudhuri became a Solicitor on 8th September 1931. He was Mayor of Calcutta both before and after Independence. He became a member of the Legislative Assembly in 1953 and 1957.

Rash Behari Mitra was a brilliant student and an Ishan Scholar. He got a high 1st Class in the L.L.B. Examination and stood first in the final Attorneyship Examination in 1933. He was a partner and later the proprietor of the firm Mitter & Boral. One of his sons Sunil Kumar Mitra is a senior member of the Society and was its President for a few years.

Keshab Chandra Basu passed his final Attorneyship examination in the year 1934, and having stood first received the coveted Belchamber's Gold Medal. He was enrolled as a Solicitor on 13th September 1934. He joined M/s P. Co. And later became the senior partner of the firm and established his reputation as a Solicitor. Mr Anindya Kumar Mitra, the present Advocate General of West Bengal is one of his sons-in-law. His son Mr Kaushik Basu is at present Economic Adviser to the Finance Department of the Government of India.

Dinabandhu (Danti) Sen became a Solicitor on 10th March 1937. He belonged to the well-known "Sen Family of Bagbazar" and was the youngest son of Manilal Sen. He became a member of his grandfather's firm M/s B. N. Basu & Co. His elder son Amal Kumar Sen is a Solicitor, the only Solicitor to become President of the Calcutta Club. Danti Sen's youngest son Justice Shyamal Kumar Sen(Retd.) started his career as an Advocate of the Calcutta High Court before being elevated to the Bench in 1986. He was also the Governor of West Bengal for some time. Justice Sen later became the Chief Justice of the Allahabad High Court and Chairman of the West Bengal Human Rights Commission.

Dr. Hirendra Kumar Ganguli was enrolled as an Attorney in 1937. He was the Official Liquidator attached to the High Court for quite some time. He discharged his functions as Official Liquidator with efficiency, honesty and integrity. "Hirubabu", as he was better known in the Indian classical music circle, was a tabla maestro and an eminent disciple of Ustad Babu Khan of Delhi.

Rajendra Nath Majumdar was enrolled as a Solicitor on 4th March 1940. He was associated with many philanthropic and educational institutions in various capacities, besides being Mayor of Calcutta for two terms.

Dr. Pratap Chandra Chunder became a Solicitor on 31st August, 1945. He had a very distinguished academic career, and excelled in the study of Ancient Indian History and Culture. Pratap Chandra became the Education Minister in the Morarji Desai cabinet. He was Chairman of the Heritage Commission of West Bengal, member of the Governing Body of The Victoria Memorial Hall, President of Rabindra Bharati Society, and Chairman of The Indian Institute of Social Welfare and Business Management, Calcutta.

Dwipayan Sen, a student of Presidency College, Calcutta, was enrolled as a Solicitor on 7th February 1949. He became a partner of the firm S. N. Sen & Co.

Kamal Kumar Basu became a Solicitor on 8th February 1949. In 1952 he was elected as a Member of Parliament, and was perhaps one of the youngest members at that time. He earned a good reputation as a Parliamentarian and later as Mayor of Calcutta.

Salil Kumar Ganguly, who belonged to a family of Solicitors, was enrolled as a Solicitor on 25th January 1951. As a member of the Communist Party of India (Marxist), he became a member of the Rajya Sabha.

NINETEENTH CENTURY BENGALEE ATTORNEYS : THEIR RISE AND PROGRESS

Amit Roy

Professional Attorneys began under Edward I in England, but in India they arrived in the 18th century when the Mayor's Court and the Supreme Court were established in the three Presidencies. Bengalee Attorneys appeared much later – in the middle of the nineteenth century when one Baneymadhab Banerjee qualified himself for the profession in the late Supreme Court. Prior to that Bengalees were Vakeels in Sadar Dewani and Nizamat Adalats and Court of Requests (subsequently Small Causes Court).

Formerly, in the Attorney's office Portuguese, Eurasian and Bengalee Clerks used to be appointed. Pitambar Banerjee[1], father of Greesh Banerjee one of the early Bengalee Attorneys, worked as Managing Clerk in Collier & Co., an English Attorney firm. The founder of the opulent Laha family in Calcutta Pran Kissen Law[2], worked in the office of Howard, a Supreme Court Attorney, and received pension for his faithful service. Joynarayan Chunder, a law assistant to H. D. Shaw, Attorney, Supreme Court, also advised litigious public. Horochandra Lahiri of Serampore, Sheristadar in the Chief Justice's Court, Mirzapur, later Mir Moonshi in Alipore Court of Appeal acquired proficiency in law and acted as legal adviser to several wealthy estates. Records show that Rani Swarnamoyee[3] of Cossimbazar appointed him to conduct her case with a fee of Rs. 3,000/- against the East India Company.

The qualification for admission of an Attorney in the Supreme Court of Judicature at Fort William in Bengal was that the applicant had been admitted as an Attorney of one of Her Majesty's principal Courts of Record in England, Ireland or Wales or a Writer to the Signet in Scotland or a member of the Society of Solicitors practising before the Court of Sessions there, or that he had served regular clerkship for five years under contract in writing with some practising Attorney in the Calcutta Supreme Court or that he has or had been principal clerk to one of the Judges of the said Court, and in all cases the applicant needed to produce satisfactory testimonials of his good character and ability to show that he had reasonable expectation of business for advancing in the profession. In the year 1842 the qualification for the admission of Attorneys[4] was reduced to three years in place of five years. In the early years of the Supreme Court the number of Attorneys was restricted, but one exception was made in the case of the son of Sir William Blackstone, the eminent English Jurist, when his son William Blackstone (Junior)[5] was admitted as super-numerary Attorney in the Calcutta Supreme Court.

The professional scenario of the Calcutta Supreme Court was depicted by "London Jurist"[6] when the number of Attorneys swelled to 70 in the year 1832: "The Solicitors at the Calcutta Supreme Court are very numerous. We believe they exceed seventy. A few are very respectable with extensive practices." The Attorney's Chamber, as reported in the 19th June 1826 issue of Bengal Hurcara, an English newspaper, constituted Sirkars, Clerks, Banians and articled clerks or apprentices learning the profession and procedure.

The work of Attorneys was principally conducting law suits by appointing Barristers, arranging the papers and preparing briefs and advising the clients on evidence, etc. Moreover, they drafted Wills, Agreements, Sale Deeds, Deeds of Gift and all kindred documents. The conveyancing Attorneys commanded high fees and did everything from preparing a document to having it registered. In the Original Side Jurisdiction Partition Suits, Probate Proceedings, Letters of Administration, adoption cases and commercial suits by the business communities were all handled and conducted by able Attorneys. The Moktars, Managers and Gomostas of various Zamindary estates visited Attorneys' chambers to prefer appeals in the Calcutta Supreme Court and Sadar Dewani Adalat, and the Attorneys in turn briefed counsel to plead in the courts.

In the late 19th century most of the big Bengalee estates dried up. Ramdulal Dey's[7] estate of Simla, Santiram Singh's[8] estate of Jorasanko, Mutty Lal Seal's[9] estate of Colootalla witnessed declining fortunes. Some estates were spirited away by expensive litigation springing from family feuds. The smaller surviving estates, as for example Copallytolla Das's estate, lingered through continual litigation. The slow dismemberment of large estates like the Burrabazar Mallick family ended before the 1860s. Ranaghat Pal Chowdhury's estate dried up before the 1850s after protracted litigation. The English Attorneys had a full share of the spoils since at that time there was no Bengalee Attorney in the profession. In the early 19th century, Charles George Strettel acted as Attorney to Cossimbazar Raj Estate, R. M. Thomas to Neelmony Mullick's estate (Marble Palace), R. M. Thomas (Junior) to Mutty Lal Seal's estate. The only Armenian Attorney Jacob Paul[10] was the family adviser to the Pathuriaghata Ghosh Estate.

In or about the latter half of the 19th century, Shroffs, native bankers, up-country merchants, Marwari merchants started to come and settle in Calcutta and set up business. Commercial transactions gave rise to Commercial suits where Bengalee Solicitors were engaged since English Solicitors were costly. By the middle and late 19th century Jalphaline Armenians lost most of their wealth[11]. Portuguese business houses of Barretto, De Souza and Lackersteen[12] too were in the wane. The house of Barretto became bankrupt in 1824. De Souza wound up soon after and Lackersteen survived in bad shape. The Baghdadi Jews stationed in Calcutta, the two principal families being Ezra and Gubbey[13], shifted their place of business, while the Cohens, Solomon and Judas continued in reduced circumstances. The Gangulee Solicitors[14] for generations handled mostly Jewish clients but they were engaged in the real estate

conveyances. Suits were few and far between.

In England, in the year 1845 Law Society came into existence, later redesignated as Incorporated Law Society. The Colonial Calcutta Bar Library was established in the year 1825[15] followed by Attorneys Association in the year 1851[16]. The present Incorporated Law Society was founded in the year 1908[17].

The first Bengalee Attorney Baney Madhab Banerjee[18] was born in the year 1827 at Pataldanga, the eldest son of Tarachand Banerjee, a Banian. He received his early English education in Hindu College and joined an Attorney's office in the year 1842 as an assistant and later became Head Clerk in Remfry and Co. He soon entered into Articles of Agreement with William Henry Owen on 18th October 1849 at the age of 22 years after passing the Attorney's examination on 18th July 1849. On the completion of Articleship he applied for admission as Attorney before the Hon'ble Mr. Lawrence Peel, Chief Justice in the Supreme Court of Judicature at Fort William in Bengal on 22nd November 1852. The application contained various testimonials and certificates. The following letter from Prossona Coomar Tagore is worth reproducing:

To
Baboo Baney Madhab Banerjee
My dear Sir,

In reply to your letter of yesterday I have much pleasure in stating that from the frequent acquaintances I have had of ascertaining your qualification and character for the very responsible profession you intend to embrace, I can speak with confidence that you will do credit to the same.Your success will indeed accord us infinite satisfaction and it will be an occasion of deep congratulation to our countrymen that one of them has at last broken up the monopoly and enrolled himself as a member of Attorney of Her Majesty's Supreme Court.
This will be but a harbinger and I wish that the day when the Bar will be equally open to educated and respectable people from our countrymen.

Yours sincerely,
Prossona Coomar Tagore
Calcutta 2nd November, 1853.

Baney Madhab also practised as Pleader in the Sadar Dewani Adalat which is evident from the reported cases of the year 1858. As the first Bengalee Attorney he acquired sufficient fortune since he acted as attorney to two opulent estates, that of Rani Rashmoni and of the Devs of Simla. Baney Madhab did not live long and died in the year 1868. His two younger brothers, Womes and Jogendra, qualified themselves in the same profession.

The next Bengalee Attorney was Romanath Law[19] of No. 10, Gour Laha Street, Aheertola. After enrolling on 17th February 1957 he acted as partner to Swinhoe and Law, 9 Old Post Office Street, and had a considerable practice. Greesh Banerjee (1823-68)[20], father of the celebrated barrister W. C. Bonnerjee, was enrolled in the year 1859. As noted earlier, Greesh was the son of Pitamber Banerjee, Banian to Collier and Co. He served his articleship under George Rogers, later to Allan. He handled the Sobhabazar Raj family cases and amassed a large fortune in the short span of his life. Poorna Chandra Mukherjee of Janai Mukherjee family enrolled as an Attorney in the same year but for a short time he was suspended for professional misconduct. The Sen family of Colootola produced many Attorneys and Barristers. Moorali Dhar Sen (1836-79)[21], son of Ram Kamal Sen, acted as partner of Messrs Oehme and Company and later to Gray, Sen and Farr of 4 Council House Street. His nephew Narendra Nath Sen later became an Attorney.

Ashutosh Dhar,[22] belonged to the famous Dhar family of Amratola who were shipbanians for generations. He entered into Articles of agreement with Francis Jeffry Bell of Esplanade Row and later with Richard James Lyons, Attorneys of the Calcutta Supreme Court. Dhar attended law lectures delivered in Presidency College for three years and passed B. L. under special provisions made by para 3 of the statutes which regulated the confirming of the degrees in Law. He got himself enrolled as pleader in 1858 and practised in the Saddar Dewani Court. When applying for enrolment, he attached a certificate written out by Roma Prasad Roy, son of Raja Ram Mohun Roy. While undergoing articleship he attended, with the consent and approval of Richard Lyons, the Sadar Dewani Adalat and other courts of the East India Company. Furthermore, he assisted Lyons in the business and profession of Attorney. He later became the Manager of the Darbhanga Raj state.

Preceding Ashutosh Dhar there were two other Bengalee Attorneys, Woomesh Chandra Banerjee and Gocul Nath Chatterjee who were enrolled in the year 1860. Woomesh Chandra Banerjee incidentally was the younger brother of the first Bengalee Attorney Baney Madhab Banerjee. In the 1860s, more and more Bengalees were attracted to this profession. Radhanath Bose, Debendra Chandra Dutt and Greesh Mitter were admitted without examination. Sreenath Chunder, Mohendra Nath Halder, Mutty Chund Chatterjee, Girish Ghosh, Bissonath Dutt[23], father of Swami Vivekananda, all became Attorneys. Dwarkanath Banerjee practised at Allahabad. Denonath Bose, Norendra Nath Sen, who belonged to the Colootolah Sen family, Brojenath Mitter, Prionath Ghosh, Kedar Nath Mitter, Taraballav Chatterjee, Jogesh Chandra Chaudhury left their mark in the profession. Kally Nath Mitter, enrolled on 24th July, 1868, articled to Sims. He lived in Beadon Street and became a distinguished Attorney. He enjoyed a long practising career. His public spirit and closeness to various voluntary associations earned him a great name in society. Joykissen Ganguly, who hailed from Hooghly, Beloor, entered into articles of agreement with Cockerell Alfred Smith and later Greesh Chandra Banerjee of Simla. He was subsequently admitted on 24th July 1868. He was partner to Judge and Ganguly. Ganesh Chandra[24] came from a Banian family. He was the son of Kasinath

Chandra. He served his articleship under Romanath Law and founded an Attorney firm which is still existing with the fourth generation in practice.

Sitanath Doss, who enrolled on 22nd February 1869, opened a partnership firm Vertannes and Doss at 5 Old Post Office Street. Ongshu Prokash Ganguly[25] of the famous Burrabazar Ganguly family was the first person in the family to become an Attorney. Later Apurba and Ordhendra Ganguly became notable attorneys as well and some of the family members are still in the profession. Ongshu Prokash first signed his articles of Agreement with R. J. Lyons of Larkins Lane and later served successive articleship under Sandes, Stack and Morfield and was admitted on 19th February 1869 by Sir Barnes Peacock, Chief Justice.

In the 1870s more and more Bengalees joined the profession. Probode C. Mitter enrolled himself as an Attorney, as did Bhuban Mohan Das[26] of Patoldanga, father of Deshbandhu Chittaranjan Das and youngest brother of Kalimohan and Durgamohan Das who were eminent pleaders of the Appellate side Bar. Though not successful in his profession, Bhuban Mohan rendered valuable service to the Brahmo Samaj and edited Brahmo Public Opinion. Samol Dhon Dutt[27] of the Hatkhola Dutt family became a famous attorney after graduating from Presidency College. He studied medicine for some time, but later shifted to law. He commenced his articleship under Gillander, Attorney-at-law and later under Romanath Law. He passed the Attorney's examination and joined the profession as a partner in Hume and Dutt, later M/s S. D. Dutt and Ghosh Company at 82 Hastings Street.

During the years 1871 and 1872 three more Bengalees became Attorneys: they were Promotha Nath Bose, Troylika Nath Roy and Bolychand Dutt. On 10th August 1872 Nobin Chand Boral[28], son of Premchand Boral of No. 98 Champatolah Second Lane, Bowbazar became Attorney. Nobin Chand attended Presidency College law classes for 3 years, obtained Law Licenciate Diploma and practiced as Pleader and presented a petition dated 14th October 1866 to Sir Barnes Peacock, Chief Justice, to be enrolled as Attorney without examination, but the petition was disallowed. Later on, he articled to Curruthers, an English Attorney firm and passed the Attorneyship examination in 1872. Nobin Chand had extensive practice. He was connected with the wealthy Subarnabaniks of Bengal and was married to millionaire Sagar Dutta's daughter. He was a man of great fortune and engaged in philanthropic work.

The next attorney of great eminence of that period was Nemai Charan Bose[29] of No. 10 Hastings Street. He hailed from Panihati and with great perseverance completed his legal studies from Presidency College and enrolled himself as an Attorney on 17th April 1872. In his time he was a doyen of the profession, respected, loved and honoured by litigants and members of the Bar alike. His integrity, temperament and personality enabled him to enjoy the confidence of the Calcutta elites. Another gentleman, Kalidas Bhanja of Baharur Bhanja family, after taking his Masters Degree from Calcutta University, joined the profession as Attorney in 1876. He was articled to Kedarnath Mitter. Gocul Chand Dhar of Sanatan Seal Lane

married Romanath Law's daughter and enrolled himself in the year 1877. He was articled to Girish Chandra Mitra, Attorney, a partner of Swinhoe and Law. He also became a Vakil but did not practice as such.

Mohendra Nath Banerjee, after serving his articleship under Poorno Chandra Mukherjee, enrolled in the year 1877. Raja Kamal Krishna Dev of the Sovabazar Raj family was his patron. Auchkoy Chandra Chaudhury[30], a litterateur and a friend of the Tagore family, hailed from Andul and enrolled himself as Attorney in 1878. Sailendra Krishna Dev, also of the same family, got admitted as an Attorney on 14th September 1878. He served his articleship under Akhoy Charan Ghosh. Opurva Coomar Ganguly of Burrabazar had a considerable Jewish and Armenian clientele. He was articled to Arratoon Carrapiet, and was admitted by Chief Justice Richard Garth. Brojendro Nath Mullick, a wealthy Colootola Subarnabanik, started the firm Denis and Mullick in 1880. Lalit Madab Mullick[31] served his articleship under Willam Trotman and enrolled in the year 1878. He practiced in the Appellate side of the High Court as pleader.

Apurba Krishna Sen was articled to Orr and N. C. Bose and enrolled in the year 1879. Surendra Nath Das, son of eminent pleader Srinath Das, opened his office at 9 Old Post Office Street in the year 1880. He served his articleship under Romanath Law and subsequently carried on the profession in co-partnership as Attorneys and Vakeels. Upendralal Bose, after serving his articleship under Kedar Nath Mitra, was enrolled on 26th August 1876. In the year 1880 he was prosecuted for professional misconduct but was ultimately absolved. Nondo Gopal Neogi, after serving his articleship under W. C. Bonerjee, was enrolled on 12th May 1880. Juggeswar Sen after practicing as Vakeel for six years became attorney in 1882, but continued to practice as a Vakeel. Likewise, Laksmi Narain Khettry practiced as an Attorney and sometimes as a Vakeel. His successors are still in the profession as Attorneys.

Mohini Mohan Chatterjee[32], scholar, mystic and traveller, practically started his career in 1889 after his sojourn in America, and was partner of the firm Wilson and Chatterjee. He married in the Tagore family. Deva Prasad Sarbadhikari[33] and Bhupendra Nath Bose both hailed from Khanakul, Hooghly. The former, a son of the great doctor Surya Kumar Sarbadikari, enrolled himself as an Attorney in 1888. He was initiated into politics by Surendra Nath Banerjee. Bhupendra Nath Bose took his M.A. Degree in English from Calcutta University and after being enrolled as Attorney plunged into a political career. Hirendra Nath Dutt, a Vedantic scholar, came of a Banian family. Jadav Chandra Dutt, or J. C. Dutt as he was popularly known, of the Rambagan Dutt family, enrolled as an Attorney and later held a prestigious position in the Attorneys Association. Benode Bihari Banerjee was the son of the first Bengalee Attorney Baney Madhab Banerjee and became an Attorney nearly forty years after his father.

Ramesh Chandra Bose and Charu Chandra Basu were both enrolled in the year

1893. Charu Chandra picked up an extensive practice and by the turn of the century he had a large number of established business houses as his clients. The firm of Charu Chandra Basu still exists. Raj Chandra Chunder was the son of Ganesh Chundra Chunder whose firm was at 2 Old Post Office Street. Raj Chandra's son and grandson also became attorneys. In the late 1890s Sasi Sekhar Banerjee, Anil Nath Basu and Ganesh Chandra De were notable attorneys with large practice. The last named belonged to the opulent Banian family of Chintamoney De. The following Attorneys dominated the professional scene in the dying decades of the 19th century: Surendra Nath Ghose, Monilal Pyne, Banku Bihari Dutt, Promotha Charan Kar, Gokul Chandra Mondal, Panalal De, Kumud Nath Ganguly, Kamini Kumar Guho, Jatindranath Basak and Syam Charan Basak.

Organization of the legal profession faced certain disadvantages in a colonial setting. Government, Municipality and even mercantile houses favoured English Attorneys who in turn briefed English barristers. At the time when Bangalee Attorneys appeared on the scene, they endeavoured to attract both British and non-British clients, and with that end in view often entered into collaboration with English Attorneys, and thus were formed Attorney firms like Owen and Banerjee, Judge and Banerjee, Swinhoe and Law, Judge and Gangulee, Oehme and Sen, Dennis Mullick, Gangulee Carrapeit, the last named being an Armenian Attorney. Later, Bengalee Attorneys partnered with fellow Bengalees, the reason being a fair increase in the volume of work. By the end of the 19th century, the Indian Attorneys had seemingly broken the European monopoly. The great success of a small number of Bengalee Attorneys can be ascribed to their individual talent and expertise, and the successful few represented only the peak of a broad based pyramid[34].

In the late 19th century there were 7, 261 people engaged in the legal profession in Bengal (according to the 1881 Census). The statistical abstract of 1881 shows that the total number of original and appellate Civil Suits amounted to 0.5 million out of the 1.6 million for the whole of British India. The total value of the suits was Rs. 16.45 crores in British India, of which Rs. 5.18 crores or nearly a third again came from Bengal. Calcutta being the British India capital, trade and commerce flourished which gave rise to Commercial suits which were handled by the rising Bengalee Attorneys.[35]

The status of the legal profession rose with the growth in the number of litigations. In Bengal the legal profession by and large achieved a fairly high standard compared to the other two presidencies, Bombay and Madras. As Richard Temple noted in 1876, the Calcutta Bar enjoyed a high reputation for more than one generation. Income of the legal profession in Calcutta soared substantially compared to the other two presidencies.

An attempt has been made in this article to trace the transition from British and European Attorneys and to investigate the social milieu as well as the economic background of the Bengalee Attorneys, and their rise and growth in the second half of

the 19th century. The primacy of Subarnabanick attorneys in the early phase suggests their hold on mercantile houses, the Brahmins their social connection, and lastly the ascendancy of the Kayastha Attorneys after 1870s was phenomenal due to multifarious factors such as they being of a writer class, prior experience in commercial houses, control over opulent Calcutta-based kayastha estates, caste affiliation and their proneness to the trade itself.[36]

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ADVOCATE GENERAL

Evolution & Transformation

Anindya Kumar Mitra

The post of Advocate General was created by the British and continued by the people of India by framing the Constitution of India. Was it necessary? Should we have reverted to the old system of judicial administration of India as it was before its obliteration by the British? It is a matter of debate and worthy of second thought, which perhaps have already started by reintroducing and emphasising on alternative mode of redressal of grievance.

Be that as it may, let me go back to the topic allotted to me for discussion.

It was in the year 1773 that the British Raj thought of imposing their system of Administration of Justice upon the parts of India under their control through the East India Company. East India Company Regulation Act, 1773 was promulgated by the King of England. This Act was for establishment of Supreme Court of Judicature at Fort William in Bengal. The Supreme Court of Judicature at Fort William in Bengal was constituted by the Royal Charter on March 26, 1774. The first Chief Justice, Sir Elijah Impey and three puisne Judges were appointed by the Royal Charter. On October 22, 1774 the Supreme Court of Judicature was set up at the Old Court House. The post of the Advocate General was then created by the Court of Directors of the East India Company. The posts of Advocate General for Bombay and Advocate General for Madras were created much later, after the Supreme Court Judicature of Bombay and the Supreme Court Judicature of Madras were established.

The salary of the first Advocate General of Bengal was £ 3,000 a year. £ 3,000 when converted into Rupees @ of 2 shillings to the rupee, as made applicable in the case of salaries of the Supreme Court Judges, amount to 2,500 rupees a month. It was a princely sum in 1774.

Who was the first Advocate General of Bengal? There is a dispute. In Morton's Report, in 1778 Charles Newman is described as Advocate General in the case of Gawer Hurry Poder versus Tila Seal. However, H.E.A Cotton in his book "Memories of the Supreme Court of 1774-1862" mentions John Day as the first Advocate General of Bengal. John Day was knighted in September 1777. George Selwyn wittily remarked "I could not believe that the King could turn Day into Knight". John Day had difficulties. Judges refused to allow him to appear and plead. At last on 13th

July 1779, Sir Elijah Impey wrote to John Day informing him that the Judges were unanimous in admitting him to act as Advocate. But John Day did not avail of this opportunity. His name as Advocate General or otherwise is not found in the cases reported in Morton's Reports during the period 1778-1782. In Morton's Report the name of Charles Newman, described as Advocate General, appeared in various cases from April 1778 till October 1780. In November 1781, the name of Thomas Henry Davis as Advocate General is reported in the case of Caveat in the matter of Raja Nundcoomar. The name of Davis as Advocate General continued to appear in the Morton's Report till 1785. The name of John Day does not appear in the list of Advocate Generals as presently displayed in the office of the Advocate General for West Bengal. The name of Charles Newman is listed as the first Advocate General and the name of Thomas Henry Davis is listed as the second. I will be inclined to accept the list of Advocate General displayed in the office of the Advocate General for West Bengal to be more reliable than what is mentioned by H.E.A Cotton in his book.

After the Sepoy Mutiny, the British Parliament enacted the Government of India Act, 1858. All territories in possession or under control of East India Company and all powers in relation to the Government stood vested in Her Majesty, the Queen of England and were to be exercised in Her name. "Henceforth, India shall be governed by the name of Her Majesty" – (Sections I and II). Council of India was established comprising 15 members, out of whom 7 persons were to be elected by the Court of Directors of the East India Company. There is no mention of any Judiciary or any post of Advocate General in this Act of 1858, but there is a saving provision (Section LIX): All orders lawfully given by the Court of Directors shall remain in force and be deemed to be orders under this Act of 1858. Thus, William Ritchie, already appointed as the Advocate General of Bengal by the Court of Directors of East India Company, continued as the Advocate General of Bengal and he did so till 1862.

The Government of India Act, 1858 was repealed by the Government of India Act, 1915. Section 114 provides for appointment of Advocate General for each of the Presidencies of Bengal, Madras and Bombay by warrant under His Royal Sign Manual. Thus for the first time, the Advocate General of Bengal was appointed by the King of England. S. P. Sinha was the first Advocate General of Bengal to be so appointed by His Majesty the King of England in the year 1916-1917. S. P. Sinha was also the first Indian to be appointed as Advocate General of Bengal. S. P. Sinha was none other than Baron Sinha of Raipur, whose statue still adorns the corridor of the High Court.

Section 114(2) of Government of India Act, 1915 specifies the duties of Advocate General in this manner:

"The Advocate General of each of those Presidencies may take on behalf of His Majesty such proceeding as may be taken by His Majesty's Attorney General in

England." The Government of India Act, 1915, was repealed by the Government of India Act, 1935 Section 200 of the Act of 1935 provided for establishment of the Federal Court consisting of the Chief Justice of India and such number of other Judges as His Majesty might deem necessary. Every Judge was to be appointed by His Majesty by warrant under the Royal Sign Manual and to hold office until he attained the age of 65 years. Section 16 of the Act of 1935 provided for appointment of Advocate General for the Federation by the Governor General of India. The Advocate General of the Federation came to be known as Advocate General of India. His duties were clearly defined under Section 16(2) of the Act which is reproduced below:

"It shall be the duty of the Advocate General to give advice to the Federal Government upon such legal matters, and to perform such other duties of a legal character, as may be referred or assigned to him by the Governor General, and in the performance of his duties he shall have right of audience in all courts in British India and, in a case in which federal interests are concerned, in all courts in any Federated State".

Section 55 of the Government of India provides for the Post of Advocate General for all provinces of India to be appointed by the Governor of the Province. The post of Advocate General was no longer confined to the Presidency towns of Calcutta, Bombay and Madras. The duty of the Advocate General is clearly defined under sub-section (2) of Section 55 which is reproduced below:

"It shall be the duty of the Advocate General to give advice to the Provincial Government upon such legal matters and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor".

The above provision has been substantially reproduced in the Constitution of India [Article 165(2)]. On August 15, 1947 India became independent. Section 18 of Indian Independence Act, 1947 promulgated by the British Parliament provided for continuance of the existing laws, orders and other instruments. So, the Advocate General of Bengal appointed by the Governor of Bengal immediately before August 15, 1947 continued to hold the post of Advocate General. Sir S. M. Bose was then the Advocate General of Bengal and he continued to hold the post, but with a significant modification. He became the Advocate General for West Bengal. There was no Advocate General of Bengal any longer. Incidentally, Sir S. M. Bose held the post for 24 years (1942-1966), the longest tenure for any Advocate General of Bengal or West Bengal. Sir S.M. Bose was appointed Advocate General in 1942 when the provincial Government of Bengal was ruled by the Muslim League. After Independence, the Government of West Bengal was ruled by the Indian National Congress. Change of Government did not affect the position of Sir S. M. Bose as Advocate General. The Government although ruled by different political parties reposed confidence in the integrity of the Advocate General. When I joined the Bar, Sir S. M. Bose was the Advocate General for West Bengal. A gentleman of the highest order greatly

respected by all, Sir S. M. Bose had transformed the post of Advocate General into an Institution.

On January 26, 1950, the Constitution of India came into force. Indian Independence Act, 1947 and the Government of India Act, 1935 were both repealed (Article 395). Article 165 provides for Advocate General for all States. Article 165(1) and (2) are set out below for comparison:

"(1) The Governor of each State shall appoint a person who is qualified to be appointed a Judge of High Court to be Advocate General for the State;

(2) It shall be the duty of the Advocate General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force".

Thus, the post of Advocate General, created in about 1774 by the Council of Directors of the East India Company, became in 1915 a statutory post appointed by the King of England; after 1935 the Advocate General was appointed by the Governor of Bengal, and finally on January 26, 1950, it became a Constitutional Post under the Constitution of India.

This is the story of evolution and transformation of a post into an Institution – an Institution older than the High Court by more than 80 years.

Sir Charles Paul, the Advocate General, when once passing through the corridors of this court, was asked by an old client expressed the opinion that the client should win if he would file a suit. The client thereupon filed a suit and lost. He then went to Sir Charles and reminded him of his advice.

Sir Charles with a smile told the client that he should not have depended upon a 'walking opinion' (that is, an opinion given gratis.)

Advocates General

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SHERIFF OF CALCUTTA

Indrajit Roy

The Sheriff of Calcutta was created in the image of the High Sheriffs of England. It has been said that the story of the sheriffs is the story of England itself. It is a post that has developed over more than a thousand years and there are 55 High Sheriffs still serving the counties of England and Wales, though today their functions are purely ceremonial. These sheriffs are selected by the Privy Council every year and their names are pricked on a parchment with a "bodkin" (a special silver needle) by the Queen. The post is independent and strictly non-political. High sheriffs do not get paid. The oath taken by the High Sheriff gives a good idea of his functions and loyalties. It is reproduced here for the reader who wishes to peep into the minds of those who created the institution that has survived the vagaries of time and trends:

I, A.B.,of , in the county of do solemnly declare that I will well and truly serve the Queen's Majesty in the office of sheriff/under sheriff of the county of and promote Her Majesty's profit in all things that belong to my office as far as I legally can or may; I will truly preserve the Queen's rights and all that belongeth to the Crown; I will not assent to decrease, lessen, or conceal the rights of the Queen; and whenever I shall have knowledge that the rights of the Crown are concealed or withdrawn in any matter or thing I will do my utmost to make them be restored to the Crown again; and if I may not do it myself I will inform the Queen or some of Her Majesty's judges thereof; I will not respite or delay to levy the Queen's debts for any gift promise reward or favour where I may raise the same without great grievance to the debtors; I will do right as well to poor as to rich in all things belonging to my office; I will do no wrong to any man for any gift reward or promise nor for favour or hatred; I will disturb no man's right, and will truly and faithfully acquit at the Exchequer all those of whom I shall receive any debts or sums or money belonging to the Crown; I will take nothing whereby the Queen may lose or whereby her right may be disturbed injured or delayed; I will truly return and truly serve all the Queen's writs according to the best of my skill and knowledge; I will take no bailiffs into my service but such as I will answer for; I will truly set and return reasonable and due issues of them that be within my bailiwick according to their estate and circumstances, and make due pannels of persons able and sufficient and not suspected or procured as is appointed by the statutes of this realm; I have not sold or let to farm, nor contracted for, nor have I granted or promised for reward or benefit, nor will I sell or let to farm nor contract for or grant for reward or benefit by myself or any other person for me or for my use directly or indirectly my sheriffwick or any bailiwick thereof or any office belonging thereunto or the profits of the same to any person or persons whatsoever; I will truly and diligently execute the good laws and statutes of this realm, and in all things well and truly behave myself in my office for the honour of the Queen and the

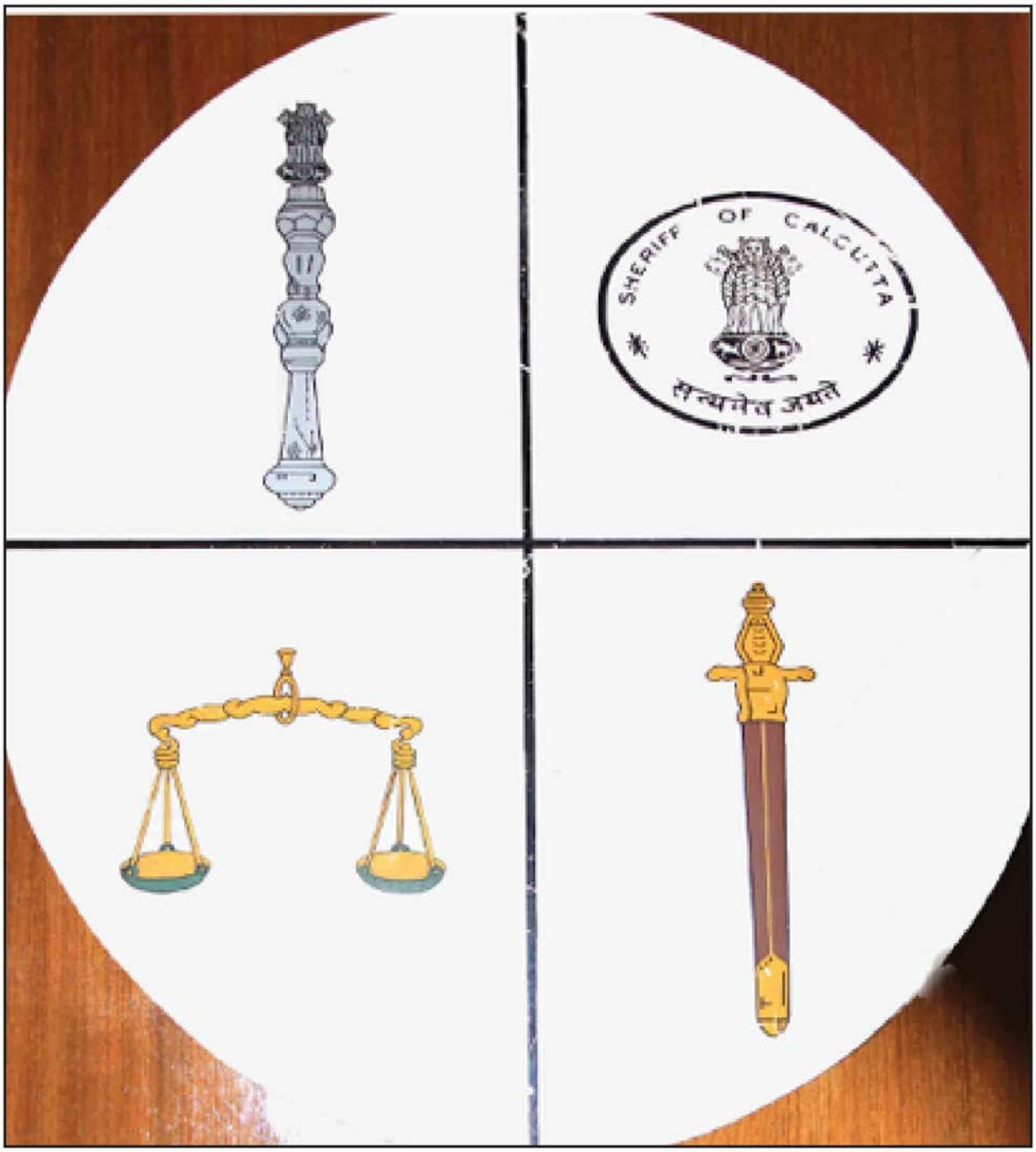

Fig. 1

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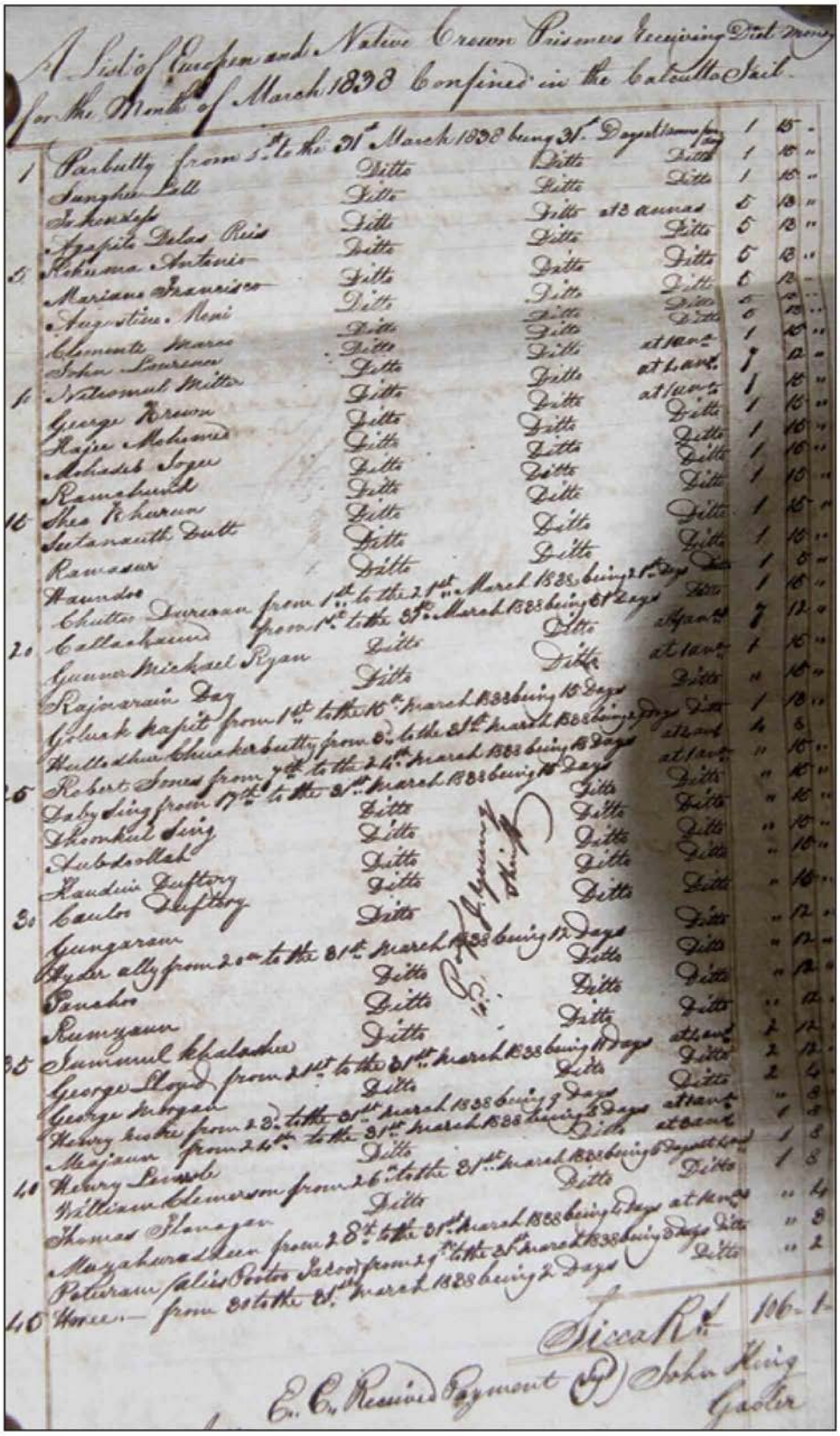


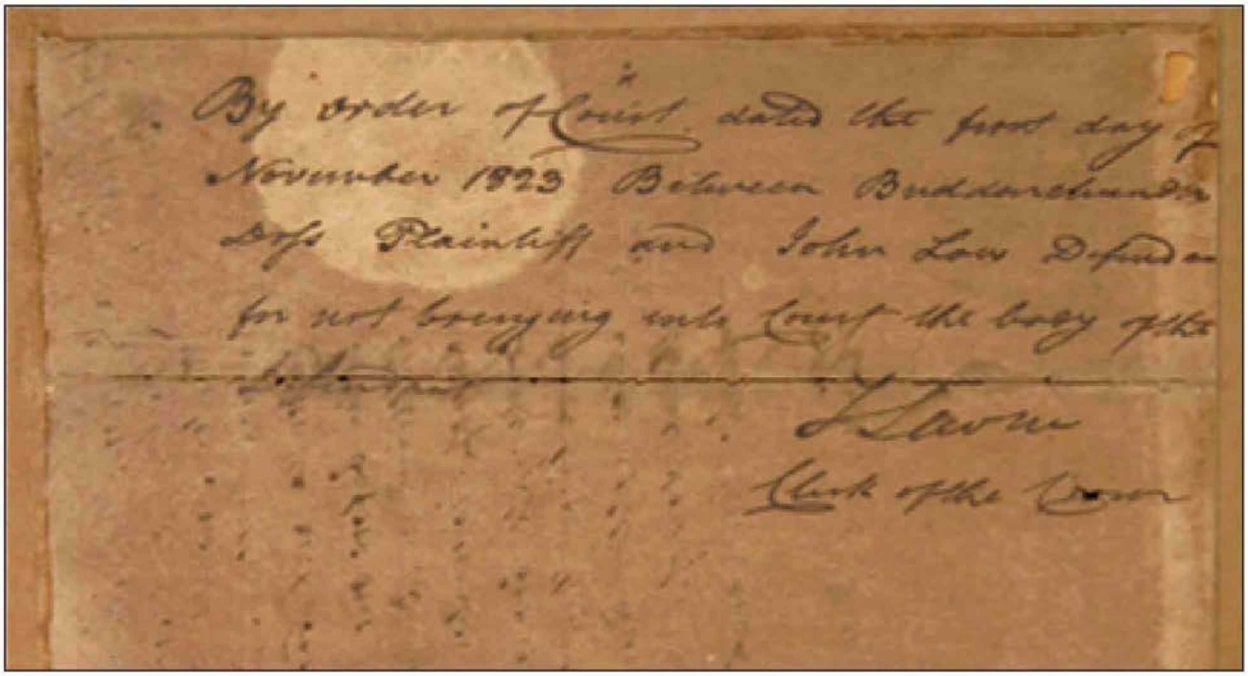
A List of European and Native Crown Prisoners receiving Diet money for the Month of March 1838 confined in the Calcutta Jail.

	Paributty	from 1st to the 31st March 1838 being 31	Days	Ditto	Ditto	1	15
1	Sanghin Lall	Ditto		Ditto	Ditto	1	15
	Jokunlall	Ditto		Ditto	at 13 annas	0	13
	Joaquim Delos Reis	Ditto		Ditto	Ditto	0	13
	Fabiano Antonio	Ditto		Ditto	Ditto	0	13
5	Mariano Francisco	Ditto		Ditto	Ditto	0	13
	Augustine Reni	Ditto		Ditto	Ditto	0	13
	Clemente Marco	Ditto		Ditto	at 1 and 2	1	15
	John Lawrence	Ditto		Ditto	at 1 and 2	1	15
	Nathaniel Mitter	Ditto		Ditto	at 1 and 2	1	15
10	George Brown	Ditto		Ditto	Ditto	1	15
	Raja Mohamed	Ditto		Ditto	Ditto	1	15
	Abdaub Sogee	Ditto		Ditto	Ditto	1	15
	Ramchundd	Ditto		Ditto	Ditto	1	15
	Shee Khurun	Ditto		Ditto	Ditto	1	15
15	Sutanauth Dutt	Ditto		Ditto	Ditto	1	15
	Ramasar	Ditto		Ditto	Ditto	1	15
	Saunder						
	Chutter Durgaun	from 1st to the 21st March 1838 being 21	Days	Ditto	Ditto	1	15
	Callachaund	from 1st to the 31st March 1838 being 31 Days		Ditto	Agra	7	12
20	Gunna Mickael Ryan	Ditto		Ditto	at 1 and 2	1	15
	Rajnarain Dey	Ditto		Ditto	Ditto	1	15
	Golauk Kapit	from 1st to the 16th March 1838 being 16 Days		Ditto	Ditto	1	12
	Hurrydhun Chuckerbutty	from 2d to the 31st March 1838 being 29 Days		Ditto	at 1 and 2	1	3
	Robert Jones	from 17th to the 31st March 1838 being 15 Days		Ditto	at 1 and 2	1	15
25	Saby Sing	Ditto		Ditto	Ditto	1	15
	Thomkul Sing	Ditto		Ditto	Ditto	1	15
	Subdoollah	Ditto		Ditto	Ditto	1	15
	Kandeia Deftory	Ditto		Ditto	Ditto	1	15
	Caulee Deftory	Ditto		Ditto	Ditto	1	15
30	Gungaram						
	Hyder ally	from 20th to the 31st March 1838 being 12 Days		Ditto	Ditto	1	12
	Fanaloo	Ditto		Ditto	Ditto	1	12
	Rumyaun	Ditto		Ditto	Ditto	1	12
	Sumsool Khalaskee	Ditto		Ditto	at 1 and 2	1	15
35	George Lloyd	from 21st to the 31st March 1838 being 11 Days		Ditto	Ditto	2	12
	George Morgan	Ditto		Ditto	Ditto	2	4
	Henry Burke	from 23d to the 31st March 1838 being 9 Days		Ditto	at 1 and 2	1	3
	Marjaun	from 24th to the 31st March 1838 being 8 Days		Ditto	at 1 and 2	1	3
40	Henry Lemole	Ditto		Ditto	Deputed Guard	1	3
	William Clemerson	from 26th to the 31st March 1838 being 6 Days		Ditto	Ditto	1	3
	Thomas Flanagan	Ditto		Ditto	at 1 and 2	0	4
	Mazahurul Hoon	from 28th to the 31st March 1838 being 4 Days		Ditto	Ditto	0	8
	Peturam alias Porter Jakoo	from 29th to the 31st March 1838 being 3 Days		Ditto	Ditto	0	2
46	Horee	from 30th to the 31st March 1838 being 2 Days					

Sicca Rs 106-4-

E. E. Receives Payment By John King Gaoler

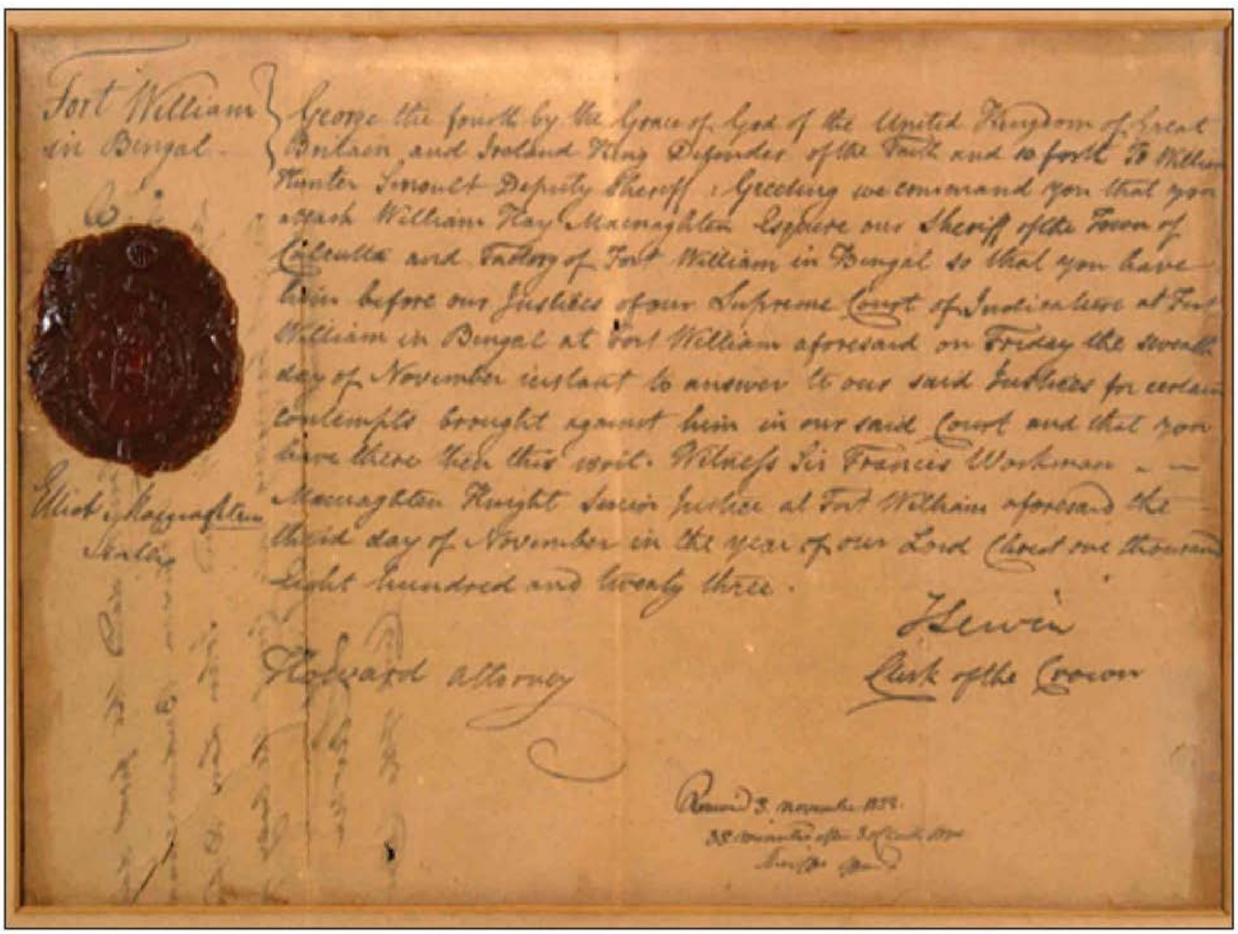
Fig. 2


By order of Court dated the first day of November 1823 Between Budderchunder Doss Plaintiff and John Low Defendant for not bringing into Court the body of the defendant

J Lewin
Clerk of the Crown

Fig. 3

Fig. 3.1


Fort William in Bengal. } George the fourth by the Grace of God of the United Kingdom of Great Britain and Ireland King Defender of the Faith and so forth To William Hunter Smoult Deputy Sheriff Greeting we command you that you attach William Hay Macnaghten Esquire our Sheriff of the Town of Calcutta and Factory of Fort William in Bengal so that you have him before our Justices of our Supreme Court of Judicature at Fort William in Bengal at Fort William aforesaid on Friday the seventh day of November instant to answer to our said Justices for certain contempts brought against him in our said Court and that you have there then this writ. Witness Sir Francis Workman Macnaghten Knight Senior Justice at Fort William aforesaid the third day of November in the year of our Lord Christ one thousand eight hundred and twenty three.

J Lewin
Clerk of the Crown

Elliot v Macnaghten

Howard attorney

Received 3. November 1823

P28

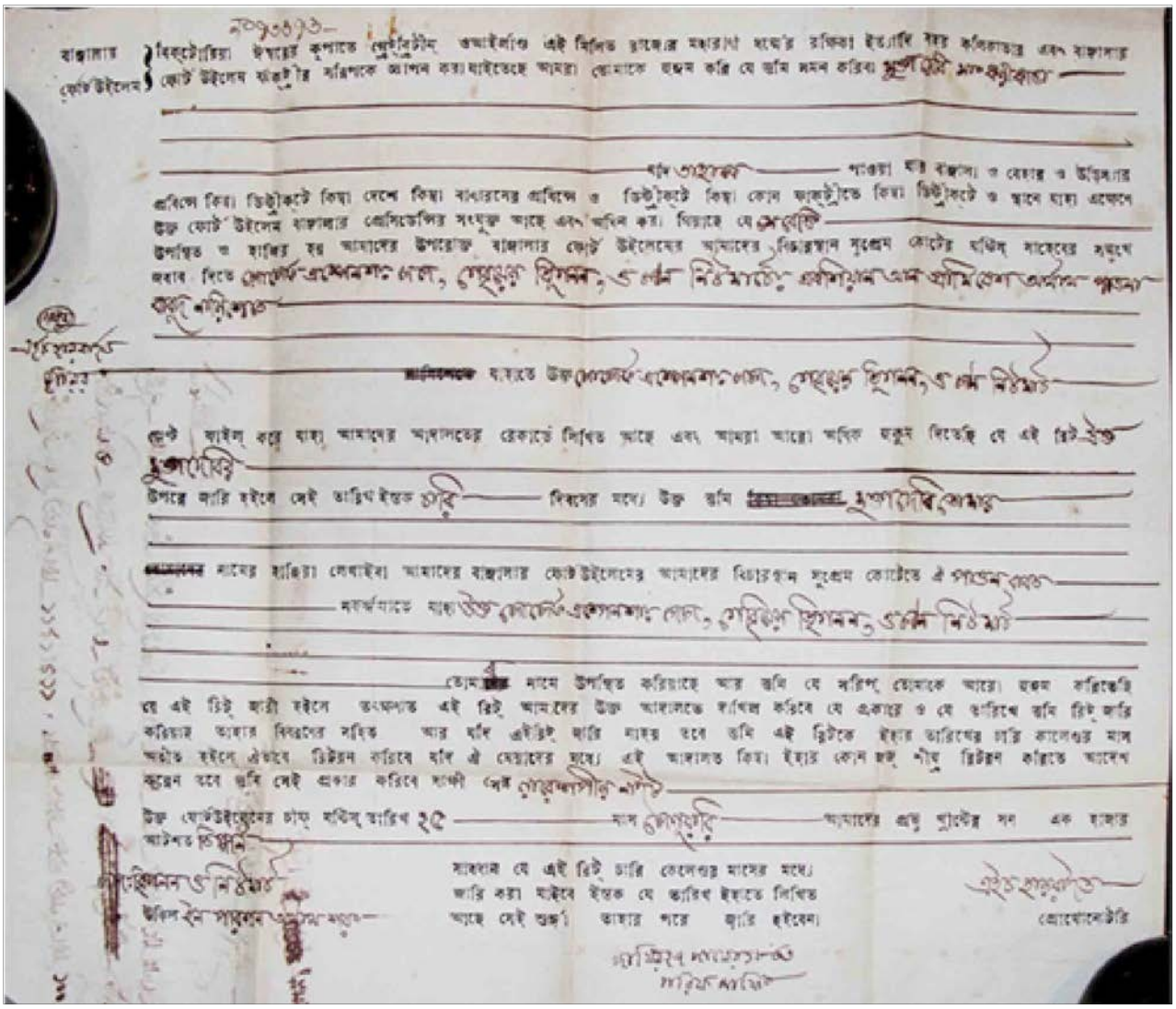


Fig. 4

Fig. 5

P30

Fig. 6

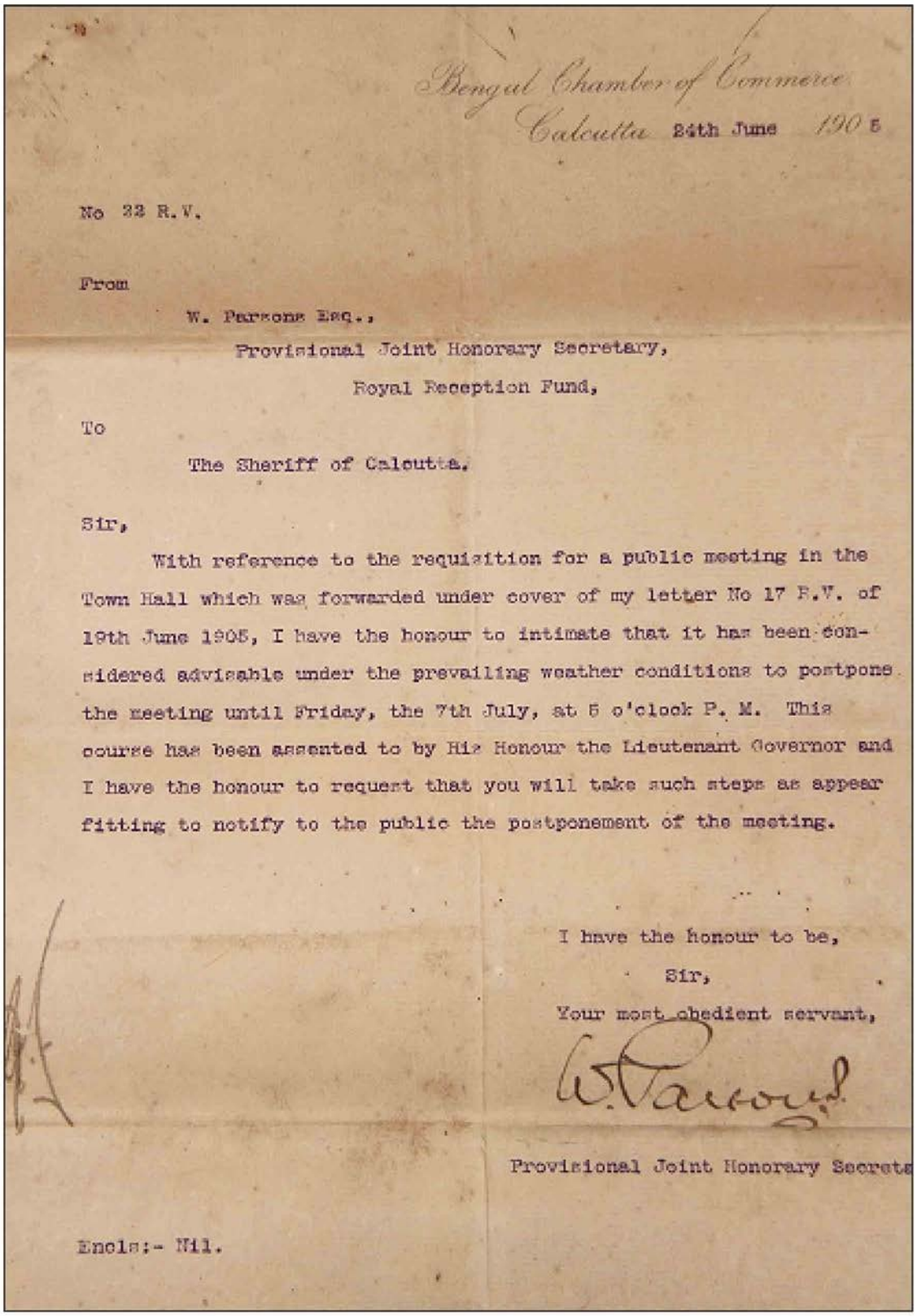
P31

Fig. 7

Fig. 8

P33

Fig. 9



Bengal Chamber of Commerce

Calcutta 24th June 1905

No 32 R.V.

From

W. Parsons Esq.,

Provisional Joint Honorary Secretary,

Royal Reception Fund,

To

The Sheriff of Calcutta.

Sir,

With reference to the requisition for a public meeting in the Town Hall which was forwarded under cover of my letter No 17 R.V. of 19th June 1905, I have the honour to intimate that it has been considered advisable under the prevailing weather conditions to postpone the meeting until Friday, the 7th July, at 5 o'clock P. M. This course has been assented to by His Honour the Lieutenant Governor and I have the honour to request that you will take such steps as appear fitting to notify to the public the postponement of the meeting.

I have the honour to be,

Sir,

Your most obedient servant,

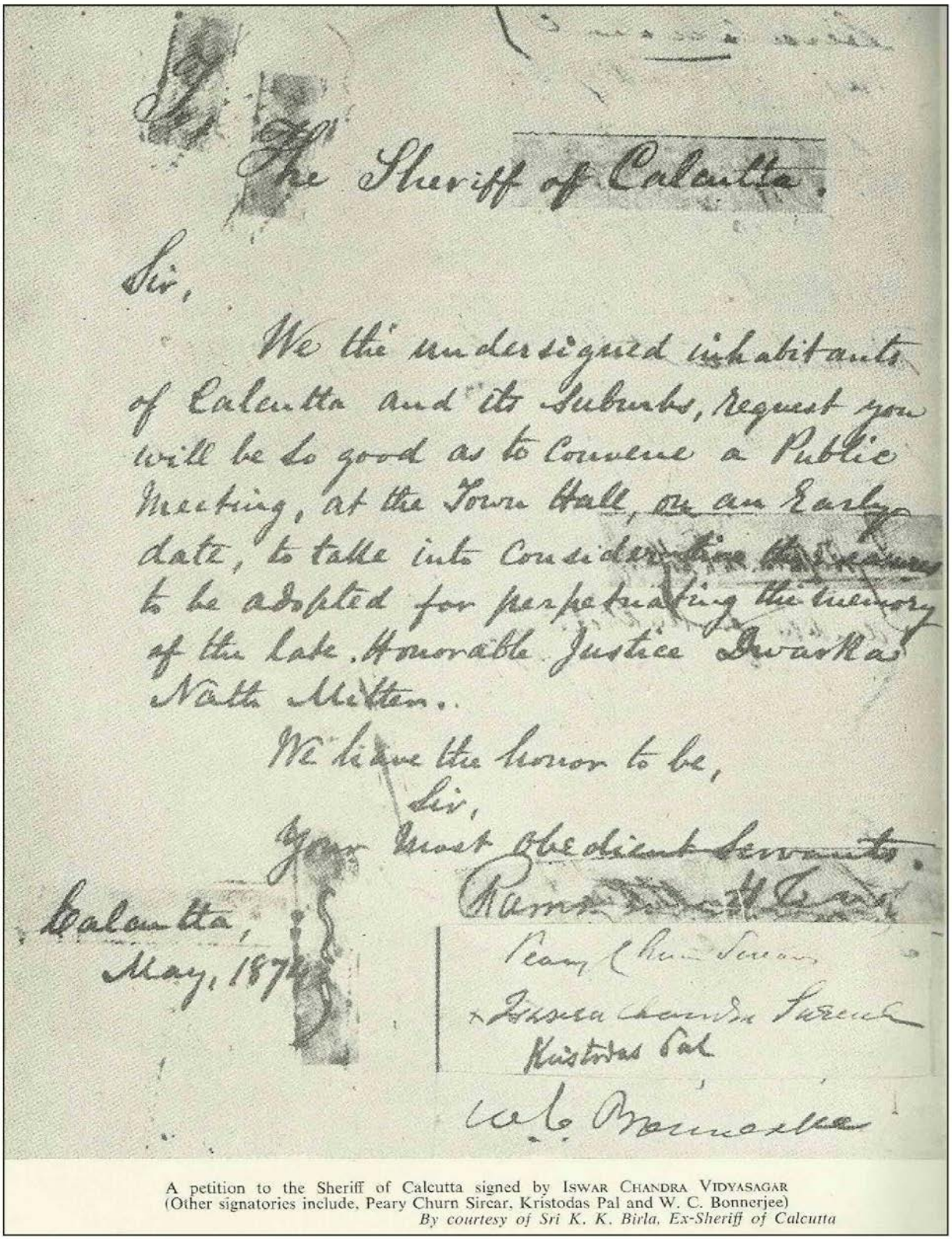
W. Parsons

Provisional Joint Honorary Secretary

Encls:- Nil.

Fig. 10

P35



To
The Sheriff of Calcutta.

Sir,

We the undersigned inhabitants of Calcutta and its Suburbs, Request you will be so good as to Convene a Public Meeting, at the Town Hall, on an Early date, to take into Consideration the Measures to be adopted for perpetuating the Memory of the late Honorable Justice Dwarka Nath Mitter.

We have the Honor to be,
Sir,
Your most Obedient Servants

Calcutta,
May, 1874

Peary Churn Sircar
Iswara Chandra Vidyasagar
Kristodas Pal
W. C. Bonnerjee

A petition to the Sheriff of Calcutta signed by ISWAR CHANDRA VIDYASAGAR
(Other signatories include, Peary Churn Sircar, Kristodas Pal and W. C. Bonnerjee)
By courtesy of Sri K. K. Birla, Ex-Sheriff of Calcutta

Fig. 11

good of her subjects, and discharge the same according to the best of my skill and power.

In the early part of the 11th century the shires of England were headed by an alderman, equal to a bishop in rank, prior to the appearance of the "scir-gerefe" (old English) or "shire-reeve". The aldermen were leaders of their shires and apart from performing judicial duties also led their men in battles during the civil commotions of the eighth century and the Mercian and Danish wars of the 9th century. The sheriffs, however, did not originate from the aldermen but from the comparatively inferior ranked King's Reeves. The post was initially equal to the Hundred but with time the latter came under the control of the sheriff. The sheriff communicated the King's orders to the shire court and gradually began to influence its working. The real authority of the province lay with the earl who overshadowed the sheriffs working within his earldom.

The power and the authority of the sheriffs along with their wealth and prestige rose dramatically after the Norman Conquest. The Normans reshaped the administrative structure and replaced the earldom with the "vicecomitatus" and the sheriff became the equivalent of the Norman viscomte as head of the government in his bailiwick. The English sheriffs were mostly replaced by Normans and were generally drawn from people close to the William the Conqueror. By 1068 Norman sheriffs were in charge of fortress cities like London and York. This was the golden age of Baronial Shrievalty when the sheriff became the most important man of the shire and was often in charge of royal castles, thus acquiring considerable military power.

By the 17th century, however, the ancient shire court was almost defunct, though it still elected the knights of the shire to serve in parliament. Apart from conducting these elections the sheriff was also responsible for execution and service of writs and processes of law and to compel attendance of men to answer to the law. Yet another century later the sheriffs of England had lost all military and discretionary powers and were performing merely ceremonial duties.

The Calcutta Shrievalty came into existence by a Royal Charter issued by King George III on March 26, 1774 establishing the Supreme Court at Fort William in Calcutta. The charter stipulated that the sheriff would be appointed by the Governor-General in Council from among a panel of three residents of Calcutta, or the precincts thereof, recommended by the Supreme Court. The appointment would be made on the first Tuesday of December every year. The sheriff's duties included serving of writs and summons and the detention of persons taken into custody by order of the Supreme Court. In December 1774 James MacRabey, brother-in-law of Sir Philip Francis became the first Sheriff of Calcutta and by the time he relinquished office on December 19, 1775, he had earned the dubious distinction of having presided over the execution of Maharaj Nanda Kumar.

Initially a copy of the Sessions calendar signed by the clerk of the Crown was sent to the sheriff, empowering him to carry out the Court's directions. The names of the accused, the charges against them, and the sentences were set forth in the Calendar and the examples below will no doubt interest the modern reader. These excerpts from the Sessions Calendars of 1793 and 1795 bear witness to the severity of the punishments that were routinely handed down by the Courts and carried out by the Sheriffs. In 1798, Warrants substituted the Sessions Calendars for capital punishments but the latter continued to be sent to the sheriff for lesser offences till 1850.

NAME	OFFENCE	SENTENCE
Chrisnamani	Larceny	Let her be burnt in the hand and let her be imprisoned in the House of Correction without bail or mainprize for the space of three months and during that time to be kept to hard labour.
Ramjoy Ghose	Guilty of stealing of the value of ten pence	Let him be imprisoned till Monday the twentieth day of this present month of January 1793 and let him on that day be carried to Burra Bazar between the hours of ten in the morning and two in the afternoon and let him be whipped from the south end to the north end and back again from the north end to the south end thereof and then be discharged at Chitpore Bridge.
John Gale	For murder	Let him be taken from here to the common Jail of Calcutta and there imprisoned until Friday next the fifteenth day of December instant and on that day let him be taken between the hours of eight in the morning and twelve at noon to the place of execution (which place of execution the Sheriff is hereby directed to prepare at the South end of Chitpore Road in

		Calcutta where the four roads meet) and let him be there hanged by the neck until he is dead.
Antonio Buafas Francisco Blanc Jaze Incil Mathew Cazanavic Ram Mohan Lall	Burglary	Let them each and every of them be taken from here to the common Jail of Calcutta and there imprisoned until Monday the tenth day of August next and on that day let each and every of them be taken from the said jail to the place of execution (which place of execution the Sheriff is hereby directed to prepare as near the house of Chaitan Seal in Calcutta as conveniently may be) and there let them the said Antonio Buafas, Francisco Blanc, Jaze Incil, Mathew Cazanavic and Ram Mohan Lall and each and every one of them be hanged by the neck until they and each and every one of them are dead.

In contrast to the harshness of the corporal punishments which included exhibition on the Pillory and branding with hot irons, prison life was relatively mild and humane especially for the debtors, European officers and rich princes. The jail was large enough to accommodate prisoners, guards and jail officials. The sheriff was responsible for the expenses of running the jail and it was later reimbursed to him by the Government. Initially, the sheriff also appointed the jailors and controlled the administration of the jail. Apart from the restrictions on moving out of the jail there were hardly any attempts to prevent the prisoners from living a life of pleasure to the extent that they could afford. Debtors were often allowed to enjoy the company of their wives, and sometimes serious quarrels broke out between the latter and the mistresses who also had full access to their imprisoned paramours! Prince Mouzud-din, son of Tipu Sultan, is fabled to have spent over Rs. 320 per month on marketing and had his rooms furnished with cut glass mirrors and chandeliers. He was waited upon by a host of servants including washermen and tailors. The supply of liquor was particularly lavish and there was no restriction to supply of food and drinks from outside. In 1852 the sheriff on the advice of the jailor, Mr. King, restricted the allowance of liquor for debtor-prisoners to: Brandy–one pint, Beer–two quarts, and wine–two bottles per day, after a certain Captain May and his friend Button (both debtors) nearly set fire to the jail accidentally during a nocturnal drinking spree.

The poorer prisoners were, however, not so lucky. In 1800 the European

prisoner had to make do on a subsistence allowance of two annas (one eighth of a rupee) per day while his Indian counterpart received half the amount. A mere six hundred rupees per year was spent for purchasing clothes and bedding for the prisoners, half the amount coming from the sheriff and the other half from a fund established by Claude Martin for this purpose. There are records of numerous petitions to the sheriff and the Governor from prisoners who were almost always naked. Occasionally some relief was provided by the government but no regular system was created to clothe the prisoners who could not afford their own clothes. Sanitation of the jail was also deplorable. As a matter of fact, it was cleaned only when the filth and the stench became humanly unbearable, and this happened once in about nine years. Scavengers from the Fort carried tons of garbage to the Tolly's Nullah and the police had to be mobilized to keep the road clear. A facsimile of an original document showing the diet expenses of the crown prisoners in 1838 can be seen in Figure 2.

For the first forty years or so of the Supreme Court at Fort William complaints resulted in the issue of warrants rather than summons. Life in the nascent city was full of adventure and commerce vied with reckless pleasure among the new residents of Calcutta. Arrests were so common that hardly any European residing in Calcutta could escape at least a casual acquaintance with the sheriff or his "catchpoles" (See Figure 3). A warrant for arrest of the sheriff himself is shown (Courtesy: Victoria Memorial) in Figure 3.1 and needs no further comment!

The introduction of trial by jury vested the sheriff with another responsibility– that of providing jurors. The qualifications of a juror were that he would have to be British by birth, Protestant by faith, and twenty one years of age. No one, not even the Judges of the Sudder Diwani Adawlut, was exempt. Piquant situations were produced when important offices of the government had to close because all the responsible officers had been summoned for Jury duty. Appeals to the sheriff to spare some officers were common, though not always effective. Anglo-Indians became eligible to serve as jurors in 1828. The sheriff also provided the Court with a list of Justices of the Peace.

The first half of the 19th century saw a rapid increase in the population of Calcutta as flourishing trade and commerce drew persons of various professions to the new city. The growth of business brought in its wake legal disputes and court action. Taverns and pubs did brisk business and borrowing and lending money became a way of life along with gambling and speculating. The keepers of the law were kept as busy as the lawyers as widely varied disputes and minor and major transgressions of the law had to be dealt with in large numbers. This was the period when the sheriffs of Calcutta functioned at their peak. Their powers were extensive and in some cases discretionary. Soon all this was going to change as the economic crash of 1840 would change an adventurous and somewhat reckless Calcutta to a staid and wary city.

Warrants and writs came in many forms to the sheriff's office for execution. Interestingly, some of these were in the Bengali language, though both the sheriff and the Judge were Englishmen. (See Figure 4)

The sheriff not only seized property as and when ordered by the court but also arranged for their sale by auction where indicated. A perusal of the records of sale will show that the sheriff sold everything from horses to hotels and from china to chutneys.

The penchant of the British for pomp and show, so that justice was seen to be done, was reflected in the ceremony of the opening of the sessions trial. The Sessions Judge in ceremonial red tunic and wig was escorted in procession by the sheriff holding a Javelin and with the mace and sword being carried behind him. A silver oar, indicating maritime jurisdiction was also placed in the court. The procession was preceded by the court crier chanting the old Norman English exhortation Oyez, Oyez. The original Mace and Oar had the crown symbol on them and were replaced after independence with the present ones (Figures 5, 6, 7).

1847 to 1890 saw the gradual decline of what had been for a century an important and an honorable office. The jurisdiction of the sheriff became restricted to the "City of Calcutta" and many of their sources of revenue were cut off and directed to other channels. Slowly and surely the importance of the post as the executive arm of the Judiciary was reduced until it became a ceremonial position conferred as an honour to eminent and distinguished citizens. The remaining statutory functions of the sheriff's office are carried out by the Deputy Sheriff who has to be a salaried, fulltime officer of the Government. The Deputy Sheriff is also the Marshal of the Court with reference to the admiralty jurisdiction of the High Court at Calcutta.

Transportation as a felon to New South Wales (Australia) and Von Damien's island (Tasmania) was another punishment meted out to offenders, especially those from the military service. A number of ships regularly carried convicts to these penal colonies and it was the sheriff's responsibility to hold in custody and safely transfer the prisoners to the ships whenever the latter set sail. The sheriffs of Calcutta could hardly have guessed their own role as midwives in the birth of a new nation. (See Figure 9)

Apart from acting as the executive arm of the Judiciary, the sheriff was also responsible for calling public meetings and organizing conferences. Members of the public often wrote mass petitions requesting him to call a meeting to discuss issues of public importance. Illustrious citizens as Iswar Chandra Vidyasagar, Peary Churn Sircar, W. C. Bonnerjee, Dwarka Nath Tagore, David Hare, Surendranath Bannerjee and Rabindranath Tagore appended their signatures to requisition meetings on such widely varied subjects as measures to be adopted for perpetuating the memory of the late Hon'ble Justice Dwarka Nath Mitter, Jury trial in civil cases, or steps to welcome the Prince of Wales to Calcutta. Civil organizations and chambers of commerce also

petitioned the sheriff on behalf of their members to hold (or sometimes postpone) public meetings (See Figures 10 and 11).

The sheriffs of Calcutta were originally chosen from the ranks of the officials of the East India Company. Sir John Richardson, the fourth sheriff, was not only a knight but also a man of letters whose Dictionary of Persian, Arabic and English went into many editions. He was succeeded by Sir J. H. D' Oyly, a baronet. Soon merchants and other professions were to be found to be occupying this chair which was doubtlessly one of great importance and responsibility at that time. All sheriffs of Calcutta until the year 1865 were of European origin. Seth Aratoon Apcar (1866) was the first non-European sheriff and Manakjee Rustomjee (1874) was the first Indian sheriff of Calcutta. Raja Degumbar Mitter succeeded Rustomjee in 1875 to earn the distinction of becoming the first Bengali sheriff. Dr. Mahendralal Sircar M. D.(1888) was the first physician to occupy the sheriff's chair. His other claim to fame was that he was Shri Ramakrishna Paramhansa's physician. Till date only one lady, the legendary singer Sm. Suchitra Mitra, has graced the chair of the sheriff of Calcutta (2001).

The office of the Sheriff of Calcutta could well have been a veritable treasure house of old records and documents that would have provided invaluable data about the history of Kolkata, and indeed of British India. Unfortunately in 1896 Patrick Playfair CIE, the then sheriff of Calcutta appointed a Eurasian clerk at Rs. 50/- per month to separate all records prior to 1800 and had these records transported to the Maidan where they were burnt. Of what remained, apathy and disinterest compounded by lack of space, manpower and funds, have taken a heavy toll. The authorities have been constrained to allot space to a more practical and useful police station at the cost of the sheriff's office with the result that many old and valuable records were shifted to the verandah and left to the tender care of the elements, vermin and thieves. A concerted move by the government with the permission and help of the Hon'ble High Court may still save what has not been irretrievably damaged and unearth treasures that any museum will be proud to possess.

[The author is deeply indebted to Shri Ashoke Roy of ASA Art and Heritage Pvt. Ltd. for taking great pains and using valuable time and equipment to illustrate this article. Prof Panda, Curator of the Victoria Memorial, has given permission to use the document in Fig. 2, and Mr. Gulam Nabi of the documentation department has provided the photograph. A large amount of information has been sourced from the book "Shrievalty–Glimpses of Sheriffdom in Calcutta" by Shri Subimal Ghosh, ex-sheriff of Calcutta. The publishers and editors of the present volume have been extremely kind and indulgent and I shall remain grateful to them.]

And do as adversaries do in law–

Strive mightily, but eat and drink as friends.

– Shakespeare

The Taming of the Shrew, 1, 2, 1593 – 1594

GENTLEMEN OF THE JURY

Dilip Sengupta

—The Jury, passing on the prisoner's life
May in the sworn twelve have a thief or two
Guiltier than him they try.

—Shakespeare

Have you read the newspaper today? Asked my friend and colleague.
No, I said.
He took the paper out and showed me a small piece of news item in The Telegraph dated 15th June 2011:

Juror faces jail

London, June 14 (Reuters) :
A juror accused of contacting
a defendant through social
networking site Facebook is
being prosecuted for contempt
in a London court, in what is
being seen as a British legal
first.
A judge told Joanne Fraill
she faces jail for exchanging
messages on the site with the
female defendant, Jamie Sewart,
causing a multi-million
pound drugs trial to collapse
picking up a bill of $10 million
after the judge was forced to
discharge the jury.
The use of internet by
jurors has already derailed
several cases in the US.

Suddenly, my mind flashed back half a century to a situation I had faced. I was born and brought up in the riverine district of Barisal, hundreds of miles away from Calcutta. Calcutta beckoned. I came over in the early forties and got a job in a multi-

national company. In the sixties, I was transferred to the company's Calcutta Head Office.

One fine morning, the Law Officer of the company, a distinguished solicitor coming from a reputable family of original Calcuttans, walked into my chamber and told me that I had been summoned by the Hon'ble High Court at Calcutta for a possible selection as a jury member in a sessions court for a murder trial. I was taken aback. I was scared and at the same time fascinated by the prospect. I had never seen the High Court before.

But then, what is a jury trial? How many members constitute a jury? How is a jury member selected? What is the function that a jury is supposed to discharge? I did not know. I became interested to find out as much as I could. And this is what I could gather in the days when searching a topic or subject by clicking a mouse was unknown.

A jury trial (or trial by jury) is a legal proceeding in which a jury either makes a decision or makes findings of fact which are then applied by a judge. It is distinguished from a bench trial, in which a Judge or panel of judges make all decisions.

The word jury derives from (Norman) French, 'juré'- sworn. The historical roots of the jury date back to the eighth century. Long before becoming an impartial body, during the reign of Charlemagne juries interrogated prisoners. In the twelfth century, the Normans brought the jury system to England where its accusatory function remained. Citizens acting as jurors were required to come forward as witnesses and give evidence before the monarch's judges. Not until the fourteenth century did jurors cease to be witnesses and begin to assume their modern role as triers of facts. This role was well established in British common law when settlers brought the tradition to America and, after the United States declared its independence, all its state constitutions guaranteed the right of jury trial in criminal cases.[1]

"Over 200 years ago when Sir William Blackstone gave his lectures in Oxford he said in 1758: "Trial by jury ever has been, and I trust ever will be, looked upon as the glory of the English law ... it is the most transcendent privilege which any subject can enjoy, or wish for, that he cannot be affected either in his property, his liberty, or his person, but by the unanimous consent of twelve of his neighbours and equals."[2]

However, the origin of the word jury is disputed. It may have been indigenous to England or taken there by the Norman invaders in 1066. Originally, the jurors were neighbourhood witnesses who passed judgement on the basis of what they themselves knew. The breakdown of medieval society and the growth of towns changed the role of the jury, which came to be called upon to determine the facts of a case on the basis of the evidence presented in the court.[3]

The head juror is called the "foreman". The foreman is generally chosen before the trial begins. His role is to ask questions, if any, and declare the verdict of "guilty" or "not guilty" on behalf of the jurors.

Some scholars feel that the jury system, in some respects, had a similarity with the panchayat system prevalent in Indian villages, but some disagree.

The growth of British power in India saw the gradual transformation of trade into sovereignty. This transformation determined the manner and evolution of the judicial administration in this country. The idea of administering justice for the British subjects, born out of necessity, was gradually extended with the growth of power to Indians through a circuitous channel.[4]

At first the British accepted the criminal law of the country as they found it, namely Muslim law. But as they multiplied in numbers, the English people in Bengal started clamouring for the application of English law on them.

The Charter establishing the Supreme Court at Fort William was issued in 1774 in pursuance of the Regulating Act of 1773. The first Chief Justice of the Supreme Court was the Hon'ble Sir Elijah Impey, Kt., and the first puisne Judges were the Hon'ble Mr. Justice Robert Chambers, the Hon'ble Mr. Justice Stephen Caesar Lemaistre and the Hon'ble Mr. Justice John Hyde. Within less than six months of the establishment of the Supreme Court, Impey and his brother Judges, with twelve other Englishmen as the Jury panel, tried Maharaja Nandkumar, found him guilty of felony, sentenced him to death and had him hanged. This was probably the first jury trial in India.

This historical case created such a furore even in England that it led to the unsuccessful attempts of impeachment of both Warren Hastings and Sir Elijah Impey and found a place in The Oxford History of India by Vincent A. Smith, C.I.E., edited by Percival Spear, an excerpt from which is given below:

"He (Nand Kumar) was tried before the new Supreme Court, found guilty, and executed. The one thing which seems certain is that there was a miscarriage of justice for which the blame cannot be fastened on any one man.... Forgery was not a crime punishable with death in the current criminal law of Bengal derived from the Muslim Code, and the English penalties in Indian cases was opposed to a well established Indian legal tradition. The Supreme Court had not been six months in the country and possibly acted in ignorance of the prevalent opinion; thus far Nand Kumar was unfortunate . . . There the matter must rest, a mystery to be solved only when the hidden motives of the chief actors are laid bare. Historically the incident is the supreme example of the absurdity and injustice of attempting to apply English legal methods to Indian conditions."

But one question remains: Would the Jury's verdict have been the same had

there been Indians among its members?

More than a century later in 1895 W. C. Bonnerjee, a highly regarded Barrister-at-Law and the first President of the Indian National Congress, argued in favour of the jury system as follows:

"A Judge translating in his mind the vernacular of a rustic witness, was too engrossed with the language to attend properly to the witness. Indian jurymen understanding the language would watch the demeanour of witnesses and would distinguish truthful speech from false".[5]

Another famous trial by jury that comes to mind readily was the Tilak trial. "The trial of Bal Gangadhar Tilak, the Editor of Kesari, for publishing seditious articles in his newspaper has ended after a prolonged and impartial hearing in a verdict of "Guilty" and a sentence of six years' transportation. The accused himself declared his confidence in the independence of the jury."[6]

Coming back to my tryst with jury trial, I proceeded to the High Court on the date fixed in the summons accompanied by our Law Officer. This was my first visit to the High Court. We were led to Court No.11 on the 1st floor which was the Criminal Sessions Court. It was fairly crowded when we entered. The judge was yet to come. There were benches on either side of the room in the form of galleries. On the backside of the room, there was a wooden enclosure. Inside that enclosure there was an opening with a trap door. This I had noticed. From the whispers of the people around I gathered that there was a prisoner's room on the ground floor below this court room. The accused, the prisoner, would be brought up a spiral staircase on to the dock through the trap door, guarded by the police.

While I was looking around in awe and wonder, a court officer appeared with a bunch of cards in his hand and read out the names written on the cards. My name was also called. Those whose names had been called were requested to go and sit on the benches on the gallery on the southern side of the room. I think there were nine of us selected as the jury panel.

Suddenly I heard someone saying "All arise", and I saw a person holding a "silver mace" on his shoulder entering the court with measured steps, and at the same time I heard a grave voice from above shouting, "Oyez! Oyez! Oyez! All persons that have anything to do before my Lord the Justice presiding over the Criminal Sessions, draw near and give your attendance." By and by the Hon'ble Judge in his scarlet robe and white wig entered the court and took his seat. Before the trial began, we were asked by the judge to select a foreman to represent us, which we did. The judge briefed us about our role. The lawyer appearing for the State started addressing the Court and then us, outlining the facts of the case. It appeared that the prisoner was accused of murdering two persons, a woman and an aged man, in a red-light locality. The prosecuting lawyer led evidence which included a knife and a bloodstained shirt.

This went on for a day and a half.

After the first lawyer concluded his address, the defence lawyer started to address us. The case continued for nearly four days. When their submissions were concluded, the judge addressed us, once again explaining that we were required to weigh and consider the facts and give our verdict of "Guilty" or '"Not Guilty". A while later, we were led into an ante-room to discuss among ourselves and come to a decision. After we entered, the room was locked from the outside. We put our heads together, but even after nearly two hours we were unable to come to a unanimous decision. Six of us were of the opinion "Not Guilty" against three of us holding the young man "Guilty".

We knocked at the door to indicate that we had arrived at a final decision. The door was opened. We took our seats on the benches in the court room. The judge asked the foreman about our decision. The foreman said that our verdict was "Not Guilty" by six to three. The Judge was visibly annoyed and remained silent for about 3-4 minutes. After the pregnant pause, he finally declared "Not Guilty". The prisoner took a big jump from the dock and sped away. I was in doubt as to whether the accused was guilty or not guilty. But the very thought of a possible death sentence had given me goose pimples, and I had thrown the dice in favour of "Not Guilty". Even today, as I look back, I feel happy for my decision.

The Judge's frown, by the way, reminded me of a most celebrated case in 1670 in England that I had read about. It is known as 'The Trial of the Quakers'. William Penn and William Mead were the Quakers charged with causing an unlawful and tumultuous assembly. "All that William Penn and William Mead had done was to preach in Gracechurch Street in the city of London on a Sunday afternoon in 1670. The Recorder directed the jury to find the Quakers guilty, but they refused. The jury said Penn was "guilty of preaching in Gracechurch Street", but not of an unlawful assembly. The Recorder refused to accept this verdict. He threatened them with all sorts of pains and punishments. He kept them 'all night without meat, drink, fire or other accommodation: they had not so much as a chamberpot, though desired'. They still refused to find the Quakers guilty of an unlawful assembly. He kept them another night, and still they refused. He then commanded each to answer to his name and give his verdict separately. Each gave his verdict 'Not Guilty'. For this the Recorder fined them 40 marks apiece and cast them in prison until it was paid. One of them, Edward Bushell, thereupon brought his habeas corpus before the Court of King's Bench. It was there held that no judge had any right to imprison a juryman for finding against his direction in point of law; for the judge could never direct what the law was without knowing the facts, and of the facts the Jury were the sole judges. The jury were thereupon set free. By their conduct they had established the right of a jury to give a general verdict of 'Not Guilty'; and once this is given, the accused man is free. The prosecution cannot appeal from their verdict. It was useless for them to say that it was wrong in law.

No one in the land be he statesman or judge can go behind their decision of "Not Guilty".[7]

Hardly a couple of months had gone by after my maiden experience as a juror when another summons came in my name for jury selection. This time I went to our Law Officer and begged of him to find a way for omitting my name from the High Court's list, which he did.

At about the same time, a significant jury trial took place in what was then Bombay. It was a high profile crime of passion. Kawas Manekshaw Nanavati was a high profile naval commandant. He was second in command of the Indian Naval Ship "Mysore". He married Sylvia, an English-born lady, in 1949 in the registry office at Portsmouth. They had three children, two boys aged 9½ and 3 years and a girl aged 5½ years. They settled down in Bombay. Prem Bhagwandas Ahuja, aged about 34 years and a bachelor was a family friend of the Nanavatis. Duty called Nanavati frequently away from Bombay in his ship, leaving his wife and children behind. Gradually, a friendship developed between Ahuja and Sylvia culminating in an illicit relationship. Nanavati was away with his ship from April 6, 1959 to April 18, 1959. On April 27, 1959, during a post-lunch conversation, Nanavati found Sylvia tense and unresponsive. When he questioned her about her fidelity, she shook her head to indicate that she had been unfaithful to him and confessed of her illicit intimacy with Ahuja. Enraged at the conduct of Ahuja, Nanavati went to his ship, took a semi-automatic revolver and six cartridges from the ship store on a false pretext, loaded the firearm, went to the flat of Ahuja, entered his bedroom and asked him if he would marry Sylvia and accept her children. Ahuja's brazen reply was: "Am I to marry every woman I sleep with?" That set the trigger on him. Nanavati shot him dead. Thereafter he surrendered himself to the police.

A jury trial in the Greater Bombay Sessions court followed. The Jury proclaimed Nanavati 'Not Guilty' with a verdict of 8:1. The Sessions Judge was dissatisfied and referred the case to the High Court, which thought that the presiding judge had misled the jury. The High Court sentenced Nanavati to life imprisonment and the Supreme Court upheld the verdict.[8]

There was a huge public outcry. The incident both shocked and riveted the country and the system of trial by jury was virtually discontinued in India. As for Nanavati, he spent three years in prison, after which he was pardoned by the then Governor of Maharashtra, Vijay Lakshmi Pandit. Thus, jury trial that had begun in India with the trial of Maharaj Nandkumar in 1775 at the Supreme Court at Fort William in Bengal at which a person was deliberately and wrongfully found guilty by the jury and which was described by some as "judicial murder" ended, with an exception or two, with the trial of Nanavati in Bombay in 1961 where a guilty person was proclaimed not guilty by the Jury.

Postscript

As for myself, I consider myself lucky to have once been a party to a system that is now extinct in our country. Records[9] show that: "From 1774 till after 1862 the Jurors, twelve in number, were kept in the custody of the Sheriff and the constables and from the sample of a Bill submitted by one W. J. Summers in 1814 to the Sheriff, being the amount expended for the accommodation of the Jury, indicates the lavish manner in which those gentlemen dined and wined. On the first day, besides dinner for twelve Jurors, they were provided with six bottles of Madeira, three bottles of Port Wine, two bottles of Brandy, six bottles of Claret, one bottle of Gin and eight bottles of Beer. On the next morning at Breakfast, they had one bottle of Brandy and one bottle of Gin." Alas, we were not so lucky. Had these delicacies still been on offer in the 1960s, may be I would have given it a second thought before turning down the second summons.

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1 Online Law Dictionary

2 'What Next In The Law, page 33, by Lord Denning

3 Encyclopaedia Britannica (online)

4 Origin of growth of High Court by Sri Swami Dayal

5 Language Use and Jury Trial by M. S.Thimmalai, Ph.D., Language in India, Vol. 3,7th July 2003.

6 The Statesman, An Anthology. July 24, 1908

7 'What Next In The Law' by Lord Denning, page 39.

8 Nanavati v State of Maharashtra. AIR 1962 SC 605.

9 The Sheriff of Calcutta by Raja B. N. Roy Chowdhury in the Centenary Souvenir of the High Court at Calcutta, 1962, page 109.

The Dock

The Trap Door

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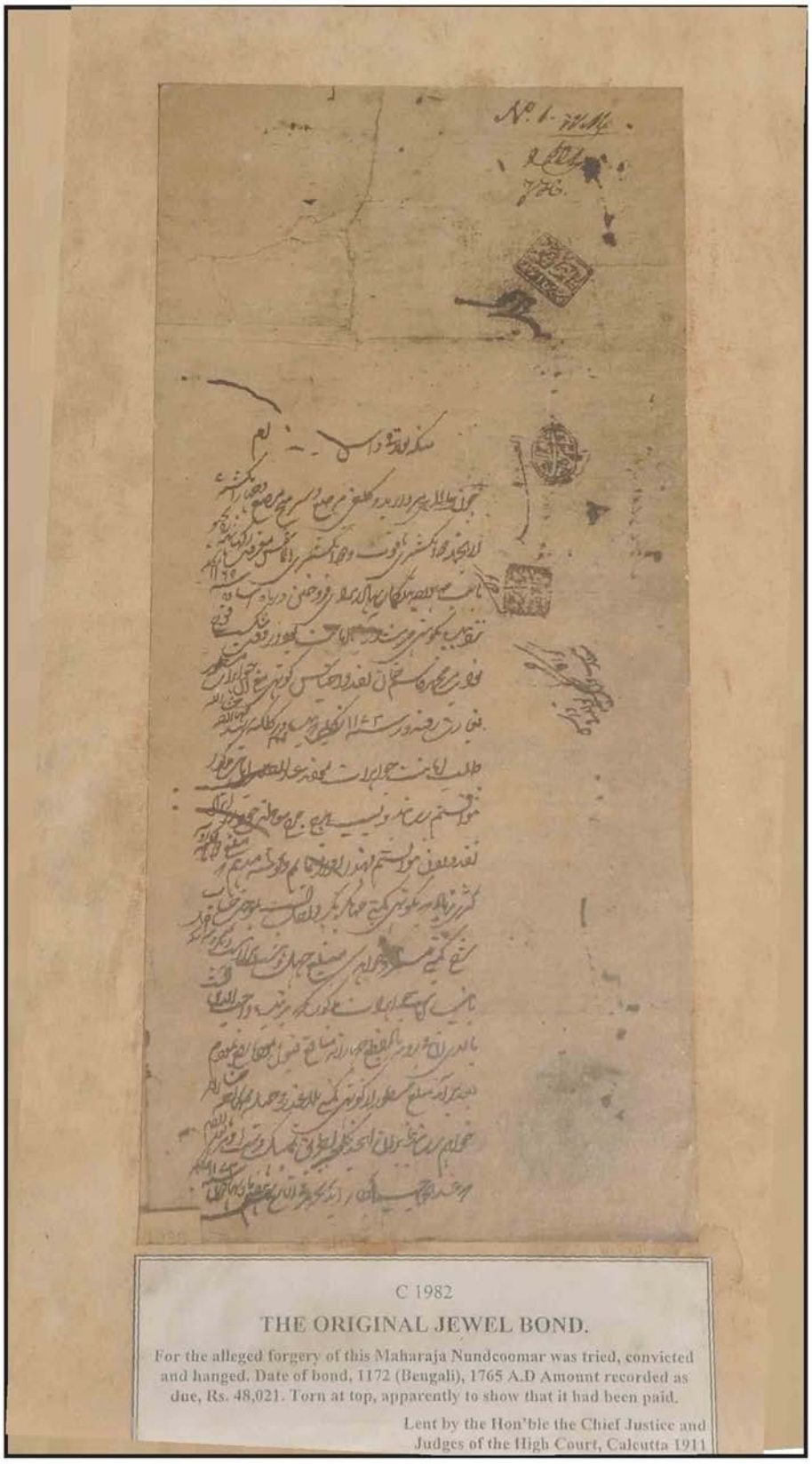
Marshal's Podium

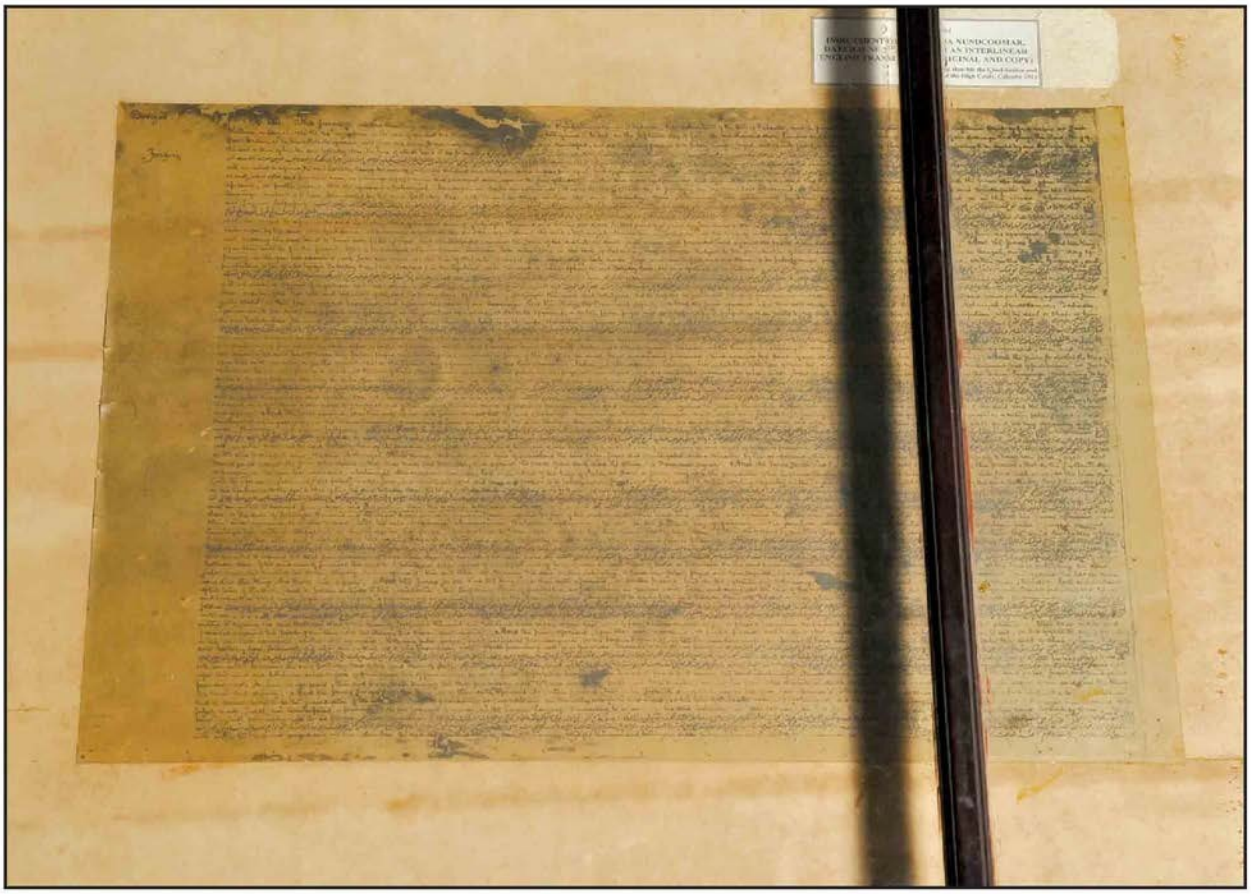
Jury Chairs

P38



Nundcoomar's Jewel Bond

P39



Nundcoomar's indictment

P40

WE THE INTERPRETERS

Arunabha Ghosh

Risking a somewhat risqué joke let me quote a well-known adage on translation: translations are like women; they are either beautiful or faithful. Since sauce for the gander cannot be any different from that for the goose, the same applies to interpretation as well. Being trained to interpret from the vernacular to English in toto, our interpretation is necessarily more faithful than beautiful. And if you think of it, it ought to be so. Simply because the High Court is the court of records and not an arena for transcreation. But the challenge is to add a touch of beauty to the faithful. Difficult, yes, but not impossible. We have heard of the story of some of our predecessors who used to create the drama of examination and particularly cross-examination through enacting the tone, texture and attitude of the counsel and the witness. Must have been highly engrossing and entertaining for the audience. But we now prefer a more prosaic and dispassionate approach to interpretation where the emphasis is on the verbatim reproduction of the deposition of the witness rather than on any histrionics. Are we less competent than our predecessors? The jury will always be out on that.

But we think it is not a matter of competence. It is only a reflection of the times we live in. It was possible to recreate the drama in the late sixties or early seventies when sessions trials were held in this High Court. The human content of a criminal trial cannot be discounted and this content could shape the accompanying drama that was reflected in the interpretation. Not so now. The human content in a commercial suit is hopelessly inadequate to be transformed into any drama. Testamentary suits and partition suits may at times provide some excitement but then that is quite rare. The people involved with such suits might have become less emotionally charged, the counsels might have become more matter of fact unwilling to invest much emotion in the suit at hand, who knows? Since the 1980s drama has virtually evaporated from the courtrooms. Only when such habeas corpus writs like the celebrated Bhikhari Paswan case comes up and those in power are subjected to thorough grilling for their alleged violation of human rights that the atmosphere in the courtroom becomes electrified. Every word of the hapless interpreter is then under the scanner of the bench and the bar as well as the media. As we have pointed out before, this is because such writs are in the nature of a criminal trial and hence emotionally charged. But such cases come up only once in a blue moon.

Let us take a snapshot view of the perspective. When the High Court of Judicature at Fort William was formally inaugurated on the 1st of July 1862, the Original Side was as large as the city of Calcutta itself as its territorial jurisdiction was more or less the physical limit of the city. Picture this: Sir Barnes Peacock, the

first Chief Justice, and his brother Judges hearing matters in an alien country where the natives speak in vernaculars unknown to them. And you immediately understand the role of the interpreters in that scenario. Mr. Amit Roy, advocate and an authority on the history of Calcutta, has painstakingly unearthed names like William Coats Blacquiere, William Chambers, John Leclere, Thomas Muffin, W. D. S. Smith, and others who worked at the Supreme Court as Interpreters and Translators between 1774 and 1856. What emerges from his findings is that those venerable interpreters were all Englishmen and most of them were versed in Persian. Not surprising, since Persian was the court language until English replaced it in 1837. Blacquiere, a colourful character, deserves a few words here (and perhaps a biography someday). A scholar and a linguist associated with the Asiatic Society, he acted as an honorary Justice of Peace (police magistrate) and developed a network of spies linked to the underworld (see Kolkata Police on Wikipedia). Blacquiere Square Park in north Calcutta was named after him (now renamed Sadhak Ramprasad Udyan). But even Mr. Roy, who – as his friends good-humouredly point out – prefers to breathe in the air of the centuries before the 20th, has not been able to furnish information about the interpreters at the time of the inception of the High Court. As the saying goes, even our bad luck is rotten.

Our departmental legend has it that Michael Madhusudan Dutt, the great poet of Bengal, had once been an interpreter at the High Court. However, investigations into his authoritative biography by Ghulam Murshid (Ashar Chholone Bhuli, Muktadhara, 1995) do not support the hearsay. He had, it appears, worked very briefly as an interpreter at the police court sometime in 1856 long before the High Court was founded. In fact, Michael was enrolled as an advocate after he came back as a barrister from England in 1867. A couple of old semicircular chairs which have a distinctly Victorian aura about them could have sparked the myth. They really look like seats where Madhusudan could have lounged. The pay was another factor that could have tempted the ever impecunious poet to have worked as an interpreter. According to a government almanac of 1896 (which I have seen but cannot trace any more in the department) the Chief Interpreter drew a consolidated salary of Rs. 600 and an Interpreter Rs. 400. A tidy sum for those times! That Michael Madhusudan Dutt chose not to succumb to such temptation is our loss; but certainly a blessing to Bengali literature.

With the coming of the new century (well, 20th century was new 100 years ago), the interpreters came to be known as Interpreters and Translators. Some years later the Chief Interpreter was redesignated Senior Interpreter and the rest Interpreters. When exactly these changes came about is lost in the mist of time. But it was certainly prior to 1931. That was a calamitous year because the Government of India effected pay cut across the board because of the Great Depression that had engulfed the world since 1929. The Rules for the Regulation of Appointments in the Ministerial Establishment of the High Court, Original Side, 1936, said: 'No one shall be confirmed in the post of an Interpreter unless he is a graduate and has passed a test in interpreting and translating from three vernacular languages (one of which

should be Bengali) into English and from English into these languages'. For long years the Interpreting Officers were the only class of employees who – apart from those few who join as Assistant Registrars in the Original Side from the legal profession – needed to be graduates. Even the other members of the department like the Wholetime Translator, Bengali Mohurur, Nagri Munshi, Persian Reader and Arabic Reader hold 'special' posts. They, again like the officers, are required to take an oath to read and transcribe documents correctly. In this age and time they sound a little archaic perhaps but 50 years ago and even sometime later they had distinct roles when documents in Nagri script or in Persian coming for translation was not a rarity. Borrowing from the present day IT lexicon we might say that the department was, and still is, 'knowledge-driven' (exaggeration intended).

After independence, the High Court Service Rules were framed in 1960. The post of the Interpreter, among others, was classified as 'special post' as it required 'special qualifications'. In or about March 1967 the Interpreters were conferred gazetted status. That must have made them glad then and perhaps a wee bit proud. It was only natural in a social set up where opportunities were restricted and such trifles mattered; such status then was neighbour's envy, owner's pride. In 1973 another change occurred – the Interpreters were redesignated Interpreting Officers (Court). And that is where they stand till date although their short-hand knowing colleagues who were in the same boat till the other day have been given the nomenclature of Assistant Registrars (Court, Recording). What's in a name, you might ask. Nothing, except that it has sown the seeds of discrimination among officers of equal rank. And it rankles.

It rankles all the more because there is little appreciation of the intricate nature of the job that we do. Interpreting in an open court where every person present knows the language can be unnerving. Keenly watched by the Bench and the Bar and the public in general the interpreter has not only to know the languages well but must also possess a wide range of vocabulary commensurate with the language register that a witness might use. A professor is unlikely to use the kind of language that a shopkeeper uses. The interpreter has to be prepared for both, there is no choice. Besides language skills, presence of mind, power of retention, alertness, confidence and stamina are necessary qualifications. The interpreter works unaided at a stretch at times over a number of days in succession. Add to this the tension of mentally hunting around for words and expressions which might elude one on a particularly bad day. Zareer Masani (Indian Tales of the Raj, University of California Press, 1990) narrates an anecdote about an interpreter of the Madras High Court in the 1940s. The presiding judge sternly asks the witness not to tell unnecessary lies. The warning, when interpreted, comes to mean – tell a lie only when it is necessary. The interpreter, here or anywhere, is likely to make a faux pas anytime. Take for example the first Pepsi ad in Chinese. 'Pepsi gives you zest for life' translated literally into Chinese read: 'Pepsi brings your ancestors back from the grave' (!!). How to avoid such pitfalls? Simply by brushing up your language skills and your general knowledge on myriad subjects. To be a jack of all trades is the key. But then the

court, like life, is a stage and one never knows what might be in store tomorrow for the actor who does not know (and can never know) his script in advance.

The Interpreting Officers also function as translators. They have to translate documents into English and certify the same as a document not in English is non-admissible under Chapter VII Rule 3 of the Original Side Rules. Another of their assignments is to explain documents to deponents not knowing English and one of the more challenging ones is to plead cases of litigants appearing in person who are not conversant with the English language. In recent times they have performed duties quite frequently in the Appellate Side, although there being no Rule to that effect. Some of them have had the opportunity to go to the Presidency Jail and Alipore Central Jail to assist in the proceedings in high profile and high security cases like the attack on the American Embassy or in the case which is better known as the Khadim case. Walking into a high security prison without being incarcerated is certainly an experience worth repeating to anybody who might care to listen. But then who does?

It is therefore futile to compare the Interpreting Officers with any other class of employees of the High Court even though they might belong to the same category i.e. 'special' and/or 'technical'. It is a unique post and comparison, if at all, can only be done with the interpreters in the Lok Sabha and the Rajya Sabha. Though the parliamentary interpreters are required to be post-graduates in any of the specified languages, they have a more comfortable life because they get the printed answers to the queries in advance during question hour. They may, of course, have to weather the storm during zero hour when pandemonium in the House is par for the course. But let us not forget the primary difference: a Sabha or House interpreter is engaged in unidirectional single language transference while an interpreter of this Hon'ble Court is equipped to handle three languages besides English and the process is to and fro. It is like 'buy one, get three free'!

With the establishment of the City Civil Court in 1957 and the setting up of various tribunals and law boards, the Original Side of this Hon'ble Court has lost much of its sheen post-independence. It may still be some years away from riding into the sunset but the fact remains that it has hardly been in its zenith of glory since the 1970s. The times have changed and so has the fate of the interpreters. The present crop of officers was recruited between 1982 and 1994. Although tests have been held twice, there has not been any recruitment for the last 17 years! The number of Interpreting Officers has dwindled from 19 to 9 since 1990. The only consolation: an aesthetic row of 9s.

Almost 30 years ago a young woman had walked into the portal of the High Court as the first ever lady interpreter. She was the object of curiosity (and more) then. Indrani Ganguli is now the first ever lady Senior Interpreting Officer of this department and no one bats an eyelid anymore. We are firmly into the 21st century, keeping pace with its ethos.

We the Interpreting Officers refuse to be atrophied. We shall take our final bow when it's time but not without a sense of being part of a proud and glorious legacy.

Legitimate Issues

Mr. X for the plaintiff landlord

B. K. Ghosh (For the Defendant tenant) – My Lord, I have raised the following issues.

Mukharji J. – Are they all legitimate, Mr Ghose?

B. K. Ghosh – My Lord, when I raise them they are always legitimate.

INTERNATIONAL LAW IN DOMESTIC JURISPRUDENCE[1]

Ruma Pal

We who have been or are part of the legal system have normally limited our knowledge to aspects of the law. Rarely, if ever, has any lawyer, let alone a judge, combined in himself or herself so many facets of learning and gathered as many distinctions as the person whom I shall simply refer to as the late Durga Das Basu has. I refer to him without any designation because I could not choose between the different appellations of Doctor, Justice, Professor or Acharya before his name (and these are only four of the numerous distinctions) that he was entitled to, apart from the many that were conferred on him in recognition of his work not only in the field of law but also in political science and Sanskrit – including the Padmabhushan and doctorates honoris causa from 6 universities. I am not given to over praise, but it is a truly humbling experience to be asked to speak on the occasion of his hundredth birthday organized today by the Calcutta Chapter of The Indian Law Institute and the Ramakrishna Institute of Culture.

I have chosen to speak on the subject of today's title because of its increasing relevance in an economically and socially globalised world. Recently the Supreme Court of India has said "Globalisation has brought a radical change in the economic and social landscape of the country. Its impact on the Constitution and constitutionalism is significant. As and when the interface between globalization and constitutionalism arises whether from the economic perspective or human rights perspective the Court will have to take a realistic view in interpretation of the Constitution having regard to the changing economic scenario[2]."

A few questions arose in my mind when I came across this passage. The first– what exactly did the court mean by globalization? Second–what was the interface that the court anticipated? And finally how is a court to arrive at the "realistic view" required by the Supreme Court? What would be the legal criterion or criteria which the courts could use to resolve the problems thrown up by the impact of globalisation?

Some scholars have defined globalization purely in economic terms as "the worldwide trend toward privatization, and deregulation, together with a liberalisation of trade and investment[3]". Others taking a more holistic view have disagreed saying that "the dominant perspective on globalization must shift more from a narrow preoccupation with markets to a broader preoccupation with people... The social dimension of globalization is about jobs, health and education". For today I assume that globalization means what has been called a "fair globalization" in which there is

a "focus on people... [since]... [t]he cornerstone of a fairer globalization lies in meeting the demands of all people for: respect for their rights, cultural identity and autonomy; decent work; and the empowerment of the local communities they live in ... [and in which] gender equality is essential"[4].

The 'interface' between globalization and the Constitution in my opinion takes place when a nation's single-minded pursuit of material prosperity which economic globalization has come to mean, is required to be balanced by, and not at the cost of, Constitutional imperatives such as the fundamental rights to equality, personal liberty, freedom of association and the right to live a life of dignity of the individuals.

As far as the requirement of "legal criteria" is concerned it will be my endeavour to show that international conventions meet the requirement of objective criteria for judges to take the "realistic view" which the Supreme Court has enjoined judges to take. In fact globalization and the consequent increasing need for universally acceptable responses to universal issues ranging from human rights to trade, has seen domestic courts, throughout the common law system, moving towards the incorporation of the principles of international law into domestic law, particularly when those conventions have been ratified by a country. This is resulting in a growing and new body of domestic jurisprudence which some critics of this phenomena have described as "international norms in domestic clothing" metaphorically implying that international norms represent the wolf which will destroy the sheep of domestic law and thereby ultimately the sovereignty of nations. To understand this relatively new trend one will have to first consider the traditional approach of domestic courts to international law, then trace the development to the present attitudes and finally consider whether the critics are justified in their fears that judges are somehow by a feat of judicial adventurism compromising this country's constitutional order and in that sense its complete sovereignty.

Although the sources of International law include treaties both bilateral and multilateral, Conventions, Resolutions and Declarations, decisions of International Tribunals and customary law, I intend to deal primarily with conventions as a relevant source of international law in the decision-making process of courts.

Traditionally, international law scholars have differentiated between "monist" and "dualist" countries on the basis of their approach to International law. Monists view international and national law as part of a single legal order so that international law is immediately applicable within national legal systems without domestic legislation. This is commonly known as the doctrine of incorporation. The Civil Law or "Code" countries such as Germany, France and other European and ex-French colonial countries, have traditionally followed the Monist approach. "Dualist" countries have traditionally been the "common law" countries – England, US, Canada, Australia, New Zealand, India, Sri Lanka, Pakistan, Bangladesh, Botswana, Namibia, Nigeria, South Africa, Tanzania, Zambia, Zimbabwe, etc. For dualists the systems of international law and municipal law exist separately so that before any

rule or principle of international law can have any effect within the domestic jurisdiction, it must be expressly and specifically 'transformed' into municipal law by the use of the appropriate constitutional machinery. The distinction in theory at least between the doctrines of incorporation and transformation is clear. However, in practice, there is a growing similarity of approach or what has been described as "creeping monism" in dualist jurisdictions.

The trend to incorporate the principles of international law into domestic law blurring the distinction between transformation and incorporation in dualist countries has manifested itself mainly in the fields of human rights law, environmental law, and commercial law; areas where there is an increasing interaction between the national and international norms. Each country has developed and is continuing to add to its own jurisprudence on the subject depending on the political, cultural and traditional situations prevailing.

Traditional dualists draw their arguments from positivist theories based upon the 'sovereignty' of the State or the separation of powers between the Legislature or Parliament and the Executive and the Judiciary, or, in countries like England, the supremacy of Parliament. In other words, Parliament has the ultimate say in enacting laws. In India and in many other of the 'newer' countries with written constitutions, while the Constitution provides for a separation of powers between the Executive, Legislature or Parliament and the Judiciary, the separation is not absolute[5] and it is the Constitution not Parliament which is supreme. Indeed the Bangladesh Constitution expressly says so.[6] Therefore Parliaments' powers to legislate are not untrammelled but subject to Constitutional restrictions. The Constitutions of some dualist countries have gone a step further and have further curtailed parliamentary powers by making international law directly or automatically applicable within the domestic legal system. For example, Article 144 of the Constitution of Namibia 1990 states: "Unless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution shall form part of the law of Namibia."[7] India's approach is more complex and provides in one of the Directive Principles that the "State shall endeavour to foster respect for international law and treaty obligations in the dealings of organized people with one another". Apart from equivocal language, this principle like other Directive Principles is not enforceable although it is, under the Constitution itself, fundamental in the governance of the country and it is the duty of the State to apply these principles in making law.

As far as the common law courts are concerned, in fact, they have had a long tradition of not only relying on principles of international customary law but, in theory at least, incorporating such law. International norms that have attained the status of "international customary law" are considered to be part of municipal law under both the monist and dualist theories. The exception identified in dualist countries is that customary international law will not be applied by courts if it is in conflict with domestic legislation (a logical result of the doctrine of parliamentary

sovereignty) or a domestic precedent.

The words of Lord Atkin in 1939 when India was still part of the British Empire, sum up the position pithily: "International law has no validity except in so far as its principles are accepted and adopted by our own domestic law... The courts acknowledge the existence of a body of rules which nations accept among themselves. On any judicial issue they seek to ascertain what the relevant rule is, and having found it they will treat it as incorporated into the domestic law, so far as it is not inconsistent with rules enacted by statutes or finally declared by their tribunals[8]." What has changed over the years is the extent of such incorporation.

Customary international law has been the basis of some decisions of the Supreme Court of India. In People's Union for Civil Liberties v. Union of India[9]: in deciding whether telephone tapping by the Government infringed the right to privacy the Court held it did, saying: "It is almost an accepted proposition of law that the rules of customary international law which are not contrary to the municipal law shall be deemed to be incorporated in the domestic law."[10]

International treaties and conventions in a sense also reflect norms of international customary law, because they are primarily based upon the consent of the members of the concerned international body and represent what Lord Atkin described as "a body of rules which nations accept among themselves." For example the International Labour Organization, which was founded in 1919 immediately after the First World War, has at present 183 member countries. The highest body in the ILO is the International Labour Conference in which each country has four delegates: two from the governments, one from the trade unions and one from the employers' organization which meets once every year inter alia to adopt Conventions. The Governing Body is the executive body of the International Labour Office which decides the agenda of the International Labour Conference. During the period between the Governing Body's decision to include an item concerning the adoption of a Convention on the agenda of the International Labour Conference and the actual adoption of a convention, a procedure in which the elements of consultation and consensus takes place.

The first is the preparatory stage, in which the office holds consultations with all the ILO members on the form and content of the future instruments. Reports on the subject are then sent to each of the Governments accompanied by a questionnaire intended to gather Members' views on the form and content of the future instruments. Governments are invited to reply and to communicate their views and the views of the most representative organizations of employers and workers. On the basis of the replies received and after several sessions of discussion between governments and representatives of the workers and employers organizations where amendments proposed by the countries are considered and discussed, the Office prepares proposed conclusions or a draft instrument for submission to the Conference.

The second stage takes place at the plenary session of the International Labour conference. A majority of two-thirds of the votes cast by the delegates present at the conference is necessary on the final vote for the adoption of the Convention by the Conference.

The Convention is then communicated to all Members for ratification. A member has the option of ratifying or not. Once the convention is consented to or ratified, the Member State is obliged to take steps to implement its terms domestically either by framing a national policy or through legislation. Ideally, ratifying countries should start the process a year after ratification of the Convention[11].

Conventions, therefore, may logically fall into three categories:

– Conventions that have been ratified and incorporated into the domestic laws

Conventions that have been ratified but unincorporated by domestic legislation; and

– Conventions that are not ratified and not so incorporated.

Thus after India ratified the two ILO Conventions on equality, namely C. No. 100 which is the Equal Remuneration Convention, 1951 on 25th September 1958 and C. No 111 Discrimination (Employment & Occupation) Convention, 1958 on 3rd of June 1960 the terms of the conventions were incorporated substantially in The Equal Remuneration Act, 1976. Similarly the Narcotic Drugs and Psychotropic Substances Act, 1985 was enacted to implement the provisions of the United Nations Convention on Narcotic Drugs and Psychotropic Substances[12]. If the Convention is implemented by domestic legislation, generally speaking, courts are concerned not with interpreting the language of the Convention but with the language used in the statute enacted pursuant to the States' obligation to give effect to the Convention. But in interpreting the provisions of the domestic statute, courts in dualist systems have done so in conformity with the international law.[13]

As far as India is concerned, the Central Executive is competent to represent the State in all matters international and may, by agreement, convention or treaties incur obligations which in international law are binding on the Country[14]. Even though India has a Federal structure and there is an allocation of legislative fields under Article 246 and the Seventh Schedule of the Constitution, Parliament has an overriding power to make any law for the whole or any part of India for implementing a convention[15].

The "interface" between economic globalization and Constitutional norms as well as the overriding power of Parliament under Article 253 is illustrated in the case of the farming of shrimps. The traditional system of shrimp farming produced 140

kgs of shrimp per hectare of land. From the 1980s a large number of private companies and multinational corporations started investing in shrimp farms using intensive methods of shrimp culture which could produce thousands of kilograms per hectare. Significantly, a number of these shrimp farming projects were being funded by the World Bank clearly as a supporter of increased globalisation. Yet a UN Report[16] said that, after a production cycle of about four or five months, shrimp ponds under intensive use were no longer productive because entrepreneurs were inadequately treating the damage caused by pollution and disinfection and then moving on to other areas because of pollution and disease–a mode of production which has been called 'rape and run'.

India participated in the United Nations' Conference on Human Environments in Stockholm (1972) which had expressed serious concern about the noticeable increase in marine pollution and the consequential decline in marine resources especially in coastal waters and had called for urgent remedial actions. India then duly enacted Environment Protection Act, 1986 and framed Coastal Zone Regulations (CRZ). Unfortunately, this was, as is the case with most such laws, inadequately enforced.

A public interest petition was filed against the setting up of prawn farms on the coastal areas of Andhra Pradesh, Tamil Nadu and other coastal States including West Bengal to stop such indiscriminate shrimp farming, to enforce the CRZ and the provisions of the Environment (Protection) Act, 1986[17]. The petition was opposed by the entrepreneurs who – putting forward the classic argument of economic globalization – said that such aquaculture was a potential saviour of developing countries like India because it is a short-duration crop that provides a high investment return and enjoys an expanding market. They said that India's marine export which weighed in at 70,000 tonnes in 1993, was projected to reach 200 thousand metric tonnes by 2000 and that the industry had achieved singular distinction by earning maximum foreign exchange in the country. The States opposed the petition saying that the subject was a state subject and that the State laws had, therefore, overriding effect over the Central legislation. The court rejected both arguments and laid down stringent guidelines for the supervision of the shrimp farming industry. While I do not intend to suggest that in doing so the Court merely relied on India's participation in the Stockholm Conference, but it noted that, and said that, in keeping with India's international commitments, the Government of India and the coastal States are under a legal obligation to control marine pollution and protect the coastal environment. It also said the Act had an overriding effect and prevailed over the law made by the legislatures of the States under Entry 13 of List I, Schedule VII[18], read with Article 253 of the Constitution of India[19].

But sometimes an obligation internationally accepted by India has not been followed by legislation on the ostensible ground that the matter was within the States' legislative powers.[20] On other occasions India, like other countries, has failed to implement its obligations even after ratification usually because of lack of political

will or, perhaps, a lack of legislative capacity, and this is when the judiciary has sometimes more obviously followed a monistic approach to international law.

In this background, a series of judicial colloquia were held from 1988 to 2001, when judges from thirty-seven countries, including India, met to discuss, inter alia, the "role of the domestic judge in encouraging and using international human rights law to shape domestic legal rules" and how judges can utilize treaties that have not been legislatively incorporated into the domestic legal system. The common conclusions are known as the "Bangalore Principles" as the principles were formulated principally at Bangalore. One of the principles states that "It is the vital duty of...[the] judiciary... to interpret and apply national constitutions and... legislation in harmony with international human rights codes and customary international law, and to develop the common law in the light of the values and principles enshrined in international human rights law."

The Bangalore Principles served as both the spearhead and a catalyst in the internationalization of strictly dualist traditions. The impact of the Bangalore colloquia on common law judges has been profound. Justice Michael Kirby of the Australian High Court described his experience at the Bangalore colloquia as something akin to a spiritual awakening:

"In the course of the Bangalore meeting, the scales were lifted from my eyes by the discovery of the growing role that international law was playing, and could play, in the municipal legal systems of the Commonwealth of Nations."

The Bangalore Principles have been cited by Judges in various judicial decisions around the world to justify resort to international instruments while dealing with domestic laws. The Supreme Court of India did so in Chairman, Railway Board v. Chandrima Das[21] in directing payment of compensation to a Bangladeshi national who claimed to have been gang-raped at Howrah Station. The Nigerian Federal High Court relied on the Bangalore Principles in a case dealing with the rights of journalists during national states of emergency.[22] The Tanzanian High Court cited the Bangalore Principles in holding that attorneys cannot be required to take legal aid cases[23]. In Botswana the learned judge of the Court of Appeal quoted passages from the Bangalore Principles calling for the greater domestic use of international norms saying "I am prepared to accept and embrace the views of these great judges and hold them as the light to guide my feet through the dark path to the ultimate construction of the provisions of our Constitution now in dispute".[24]

But as I have said before, India has been incorporating provisions in International Conventions even before the Bangalore Principles. Thus principles of international law were referred to construe provisions of the Indian Penal Code as far back as 1957[25] and provisions of the Constitution itself[26] but enforceability of international obligations by municipal courts was prohibited[27]. However, towards the end of the last century, the trend towards a monistic approach by domestic courts in

India was not only for the purposes of mere interpretation of existing legal provisions and to pour content into the 'great generalizations' that exist in the chapter on Fundamental Rights in our Constitution particularly Article 21 but was also sometimes by outright incorporation of the terms of an international convention in judgments thereby making the provisions of the international convention domestically enforceable without the intervention of Parliament. Examples of "wholesale" incorporation or "accommodation" are many.[28]

When in 1984 the Supreme Court found that children below the age of 14 were being employed in construction work of various projects in connection with the Asian Games, the court rejected the defence of the employers that the Constitution prohibits the employment of children below 14 years in any factory or mine or in any other hazardous employment and that the Children's Act, 1938 did not list construction work as a hazardous employment. The court rejected the argument and said that it was a "sad and deplorable omission which must be set right by the State Government" because "that would be in consonance with Convention No. 59 adopted by the International Labour Organization and ratified by India."[29] Incidentally, when the Children's Act, 1938 was repealed and re-enacted as The Child Labour (Prohibition & Regulation) Act, 1986, the construction industry was included as a process in which children cannot be employed.

Since then there has been a spate of decisions of the Supreme Court virtually incorporating provisions of ratified conventions to give content to constitutional and statutory provisions. For example, the Court has referred to India's international commitment when it accepted the Convention on the Rights of the Child in 1992, to lay down stringent conditions to protect the child[30]. Again, in justifying the grant of compensation to the mother of a victim of custodial death,[31] it referred to Article 9(5) of the International Covenant on Civil and Political Rights, 1966 which gives the victim of unlawful arrest or detention an enforceable right to compensation. And then of course came Visakha's case[32] on sexual harassment. International instruments like the Convention for Elimination of Discrimination against Women (commonly known by its acronym CEDAW)[33] categorically state that equality in employment can be seriously impaired when women are subjected to sexual harassment in the workplace.[34] CEDAW was ratified by India on 9th July 1993. Nevertheless India has not enacted any law to prevent and prohibit sexual harassment till today.

Again, on a public interest petition, the Supreme Court held that India was obliged to take the necessary measures to give effect to the provisions of CEDAW because of its ratification of the Convention and its subsequent official commitment at the Fourth World Conference on Women in Beijing. The court relied on the relevant provisions of CEDAW to hold that sexual harassment at the place of work violates the fundamental right to gender equality guaranteed under the Constitution and laid down, with the consent of the Union of India, guidelines to provide for the effective enforcement of gender equality and guarantee against sexual harassment at workplaces. These guidelines which are to operate until legislation is enacted for the

purpose substantially incorporate the provisions of CEDAW and are enforceable. In a later case[35], disciplinary action against an officer found guilty of sexually harassing a female employee was upheld. The court followed the guidelines and the provisions of CEDAW saying, "The courts are under an obligation to give due regard to international conventions and norms for construing domestic laws, more so, when there is no inconsistency between them and (this is of significance) there is a void in domestic law."[36]

Ultimately, after this repeated judicial prodding, a lot of public pressure and discussion, on 4th November of 2010, the Union Cabinet finally approved the introduction in Parliament of the Protection of Women against Sexual Harassment at Workplace Bill, 2010, which instead of being aimed at preventing sexual harassment, aims at providing protection to women against it.

However, the case of judicial incorporation of the provisions of ratified conventions has been overstated recently by the Supreme Court when it said: "We must also bear in mind that India has ratified the Convention on the Rights of Persons with Disabilities (CRPD) on 1-10-2007 and the contents of the same are binding on our legal system".[37] If this is taken to be the law, and in my opinion it should not be, then legislation implementing ratified conventions will no longer be necessary and Parliament will not be in the picture at any stage. This is contrary to the trend set by earlier precedents and certainly a long way to have come from the dictum of Lord Atkin.

The approach of courts to Conventions not ratified and not incorporated is different. These Conventions are treated in a manner similar to any other foreign material – like foreign cases, foreign texts, and opinions as being only of persuasive value. Their use, therefore, is no different from the use of other foreign scholarly material. Recently the Supreme Court had occasion to refer to the U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 which has not been ratified by India to hold that the involuntary administration of certain scientific techniques, namely, narcoanalysis, polygraph examination and the Brain Electrical Activation Profile (BEAP) test for the purpose of improving investigation efforts in criminal cases are constitutionally impermissible. The court noted that India does not have a national legislation which has provisions analogous to those of the Torture Convention but went on to say that "these materials do hold significant persuasive value since they represent an evolving international consensus on the nature and specific contents of human rights norms."[38]

What if the International Principle does not create any obligation on the State —for example Declarations or Resolutions like The Universal Declaration of Human Rights which is a declaration of principles and aspirations and does not have the legal status of a Convention?

As far as India is concerned, its impact on domestic jurisprudence from the

construction of Constitutional provisions to the interpretation of ordinary statutes has been the greatest. It has been relied upon to give content to the fundamental rights normally guaranteed in Constitutions. While deciding that Parliament does not have the right to alter the basic structure of the Constitution by amending it, Sikri. J in Kesavananda Bharati v. State of Kerala [39] said: "...this court must interpret language of the Constitution, if not intractable, which is after all a municipal law, in the light of the United Nations Charter and the solemn declaration subscribed to by India".

In fact, the Supreme Court of India has relied on the Universal Declaration of Human Rights to construe the fundamental right to life and liberty[40]; to hold that an accused has a right to a fair trial[41], to issue directions for the proper running of Observation Homes for children;[42] to compel the State to pay salaries of the employees of several Government Companies and Corporations which were in liquidation[43] and to direct the State to provide shelter to the backward classes and tribes displaced by the acquisition of land[44]. According to the Supreme Court[45]: "The applicability of the Universal Declaration of Human Rights and the principles thereof may have to be read, if need be, into the domestic jurisprudence."

Thus, by and large, ratified conventions continue to be incorporated and enforced in domestic jurisprudence as developed by decisions of the higher courts in India[46]. Judges have primarily used different interpretative techniques to implement international principles in domestic law. By developing a wide variety of so-called interpretive/incorporation techniques, "judges are entrenching international treaty obligations into domestic law, thus becoming powerful mediators between the domestic and international legal regimes"[47]. Their efforts have been applauded by some who see the judges as playing "a pivotal role in developing a normative climate... for the grassroots development of a human rights culture (given) the conscious self-restraint of other branches of government in complying with human rights obligations."[48]

Others have advised judges to exercise caution in what may be described as a headlong rush to internationalization. The perception of these critics is that the judges are taking over the reins of the legislative bodies who are the elected representatives of the people in any nation. The advice is that "courts should conceive of their roles as fundamentally dualist in orientation: that courts should view themselves as deeply rooted, first and foremost, in the domestic legal regime and that they should remember that 'It is from domestic constitutional texts—not from vague notions of a "global judicial community"—that domestic courts obtain their legitimacy' and 'it is to these domestic legal sources, and not to international human rights treaties, that they owe their final allegiance'. However, even such critics have had to concede that "The emergence of an ever-stronger mediating role for domestic courts is... inevitable". "But" they caution, "the mediating role must be developed with great care and sensitivity to democratic legitimacy concerns"[49].

Similar views were expressed by another critic of decisions of the High Court

in Australia who said: "...the treaty has either been made part of the law of the land or it has not. For the High Court to insist that it is maintaining this position while, nevertheless, finding that the treaty could have some indirect effect may be construed as subversion of the separation of powers doctrine".[50]

This criticism is inapposite to Indian jurisprudence since, and as I have said earlier, the separation of powers does not obtain with full force in this country. I reiterate only to emphasize that – having regard to the unamendability of the basic structure of the Constitution as established by the Supreme Court in Keshavananda Bharati[51], the Constitution and not Parliament is supreme. Separation of powers under Constitution is not rigid but flexible allowing as it does in many ways, for a functional overlap of powers in the three limbs of government[52].

Although Articles 32 and 226 do not in terms envisage a measure of legislative exercise, over the years the Courts have, through a process of interpretation, read in the power to evolve rules in the absence of any statutory provision. However, this quasi-legislation, if one may call it that, should in my view, operate only till such time as the legislature enacts appropriate legislation to cover the field[53]. In incorporating international law in domestic jurisprudence, whether through a process of interpretation or by way of "incorporation", the Court's role should not be confrontational but mediatory. It should in effect mediate between the Executive which has undertaken an obligation internationally on behalf of the country and Parliament which ought to back the executive by implementing that obligation and ensuring that the country fulfils such obligation.

The country cannot speak with two voices. A Convention if ratified by the Executive cannot be ignored by the legislature which cannot or at least should not insist that domestically there is no obligation on the part of the ratifying country to enforce its terms without further scrutiny by Parliament. I can do no better than quote the scholar who said[54] "the idea that a government could assume an obligation at the international level but remain free to breach it at the national level seems legally unattractive, and morally reprehensible; it paints a picture of an irresponsible government. By relying on unincorporated treaties, the judiciary brings the government onto the path of responsibility".

To conclude – incorporation or accommodation of the provisions of ratified conventions in the absence of legislation has been and I am sure will continue to be done by Indian courts – to bring about greater cohesiveness and harmony between the different limbs of Government and to ensure greater executive accountability and far from upsetting the constitutional order of this country will give it moral content. The procedure may not be perfect in all cases and the reasoning of a judge may be flawed, but the object is to hold the scales evenly in the growing pressures of globalization for every citizen in this country. As Swami Vivekananda, after whom this hall has been named, said: "It is very easy to point out the defects of institutions, on being more or less imperfect, but he is the real benefactor of humanity who helps the individual to overcome this imperfection under whatever institutions he may live.

The individuals being raised, the nation and its institutions are bound to rise".

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1 The Indian Law Institute, The Durga Das Basu Centenary Memorial Lecture, 5th March 2011. Based on lecture delivered at the ILO centre for Training Judges, Turin, Italy (2007); Portions also extracted from Judicial Oversight Or Overreach: The Role of The Judiciary in Contemporary India [Distinguished Lecture Series, Center for the Advanced Study of India, University of Pennsylvania [2008], as well as a lecture in the Law College, Burdwan University [2010]

2 State of Punjab and Anr. v. Devans Modem Breweries Ltd. and Anr. (2004) 11 SCC 2

3 Randy Hayes: The 2002 Johns Hopkins Symposium on Foreign Affairs series, Paragon or Paradox? Capitalism in the Contemporary World

4 Report of The World Commission on the Social Dimension of Globalization

5 Ram Jawaya Kapur v. State of Punjab (1955) 2 SCR 225; Minerva Mills Ltd. v. Union of India (1980) 3 SCC 625, at page 678; A. K. Roy v. Union of India (1982) 1 SCC 271

6 Article 7

7 Section 233 of the South African Constitution, 1996, for example, expressly provides that in interpreting any legislation, every court "must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law." Article 1l(2)(c) of the Malawian Constitution of 1994 also provides that, in interpreting the provisions of this Constitution, a court of law shall, where applicable, have regard to current norms of public international law and comparable foreign case law

8 Chung Chi Cheung v. R [1939] AC 160

9 (1997)1 SCC 301

10 See also (2002) 1 SCR 3 ;[2000] 2 F.C. (Fed. C.A.) 592 per Robertson J. A. at para. 32 [Canada]; [1997] 1 A11.E.R 881 (C.A.), per Denning L.J[UK]

11 See Constitution of the International Labour Organisation

12 Karnail Singh v. State of Haryana, (2009) 8 SCC 539, at page 543

13 See Frederick Mwenye v. Textile Investment Company, Harare 8 May, 2001, no. LRT/MT/11/01 [Zimbabwe]; Baker v. Canada (Minister of Citizenship and Immigration) [Canada]; Minister for Immigration and EthnicAffairs v Teoh [1999] 2 SCR 817; (1995) 128 A.L.R. 353 [Australia]; Abacha v. Fawehinmi [2001] AHRLR 172 (S.C. Nig; 2000) [Nigeria]; Noor Aga v. State of Punjab, (2008) 16 SCC 417, at page 449

14 See Items 10 to 14, List I, Seventh Schedule, Constitution of India

15 Article 253 of the Constitution of India

16 (Annex III/12)

17 S. Jagannath v. Union of India, (1997) 2 SCC 87

18 (which envisages participation in international conferences, assessment and other bodies and implementing of decisions made thereat)

19 Incidentally, despite the enforcement of the law by the Supreme Court, the marine products export

from India has been rising over the years, and the export at least till 2008 is worth about US$ 1478 million. Frozen shrimp is the largest export item in terms of value, contributing 64 percent of the total export earnings: Development of sea farming in India – an export perspective by B. Vishnu Bhat and P. N.Vinod. The Marine Products Export Development Authority, Ministry of Commerce and Industry, Cochin, India

20 For example, the practice of manual scavenging due to social origin is in contravention of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ratified by India in 1960. According to the Government's report to the ILO, the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, so far had been adopted by only 20 states and all Union Territories

21 (2000) 2 SCC 465, 481

22 Punch Nig. Ltd. v. Attorney-General & Ors: [July 29, 1994] (Nig.F.H.C.) available at http:// www. interrights.org

23 N.I.N. Munuo Ng'uni v. Judge in Charge High Court, Arusha: [March 17, 1998] H. C. Civil Case No 3 of 1993(Tanz)

24 Dow v. Attorney-General: (1992) 103 1LR 128 (Bots.Ct.Appeal)

25 Mobarik Ali Ahmed v. State of Bombay, 1958 SCR 328, 348; See also Nawab Usmanali Khan v. Sagar Mal, (1965)3 SCR 201

26 N Masthan Sahib v. Chief Commr., Pondicherry,1962 Supp (1) SCR 981

27 Promod Chandra Deb v. State of Orissa,1962 Supp (1) SCR 405

28 Gramophone Co. of India Ltd. v. Birendra Bahadur Pandey, (1984) 2 SCC 534, at page 540. Interestingly Chinnappa Reddy, J. referred to and relied on Lauterpacht's commentary on the law applicable in monist countries

29 People's Union for Democratic Rights v. Union of India: AIR 1982 SC 1473. Incidentally it does not appear that India has in fact ratified Convention No. 59 (Minimum Age (Industry) Convention (Revd), 1937

30 M. C. Mehta v. State of Tamil Nadu: AIR 1997 SC 699

31 Nilabati Behera v. State of Orissa: AIR 1993 SC I960

32 Vishaka v. State of Rajasthan, (1997) 6 SCC 241

33 CEDAW entered into force on 3rd September 1981

34 Similarly, lLO's The Discrimination (Employment and Occupation) Convention, 1958 prohibiting discrimination in employment which includes sexual harassment was ratified by India on 3rd June 1960

35 Apparel Export Promotion Council v. A. K. Chopra: (1999) 1 SCC 759

36 The provisions of CEDAW were again relied on by the Supreme Court in the field of industrial disputes, to extend the Maternity Benefits Act, 1961 to female muster roll employees of the Municipal Corporation of Delhi although the Act had not been extended to cover municipal corporations: Municipal Corporation of Delhi v. Female Workers (Muster Roll) (AIR 2000 SC1274)

37 Suchita Srivastava v. Chandigarh Admn., (2009) 9 SCC 1

38 Selvi v. State of Karnataka, (2010) 7 SCC 263, at page 373

39 (1973) 4 SCC 225, 333. But see People's Union for Civil Liberties v. Union of India: (2005) 5 SCC 363

40 Art. 21

41 Noor Aga v. State of Punjab, (2008) 16 SCC 417, at page 455

42 Sheila Barse v. Secretary, Children's Aid Society, (1987) 3 SCC 50

43 Kapila Hingorani v. State of Bihar: (2003) 6 SCC 1

44 Chameli Singh v. State of UP: (1996) 2 SCC 549

45 Kuldip Nayar v. Union of India, (2006) 7 SCC 1 at page 131 paragraph 396

46 Art 141; See Intellectuals Forum v. State of A. P., (2006) 3 SCC 549, at page 572; T. N. Godavarman Thirumalpad v. Union of lndia, (2002) 10 SCC 606, at page 629

47 See Waters: Creeping Monism (supra)

48 Mirna E. Adjami :AFRICAN COURTS, INTERNATIONAL LAW AND COMPARATIVE CASE LAW: CHIMERA OR EMERGING HUMAN RIGHTS JURISPRUDENCE? Africa:Michigan Journal of International Law (2002)

49 Waters: Creeping Monism (supra)

50 Ryszard W. Piotrowicz: UNINCORPORATED TREATIES IN AUSTRALIAN LAW: Public Law: Case Comment: 1996

51 Keshavananda Bharati v. Union of India: (1973) 4 SCC 225

52 See further Ruma Pal: Judicial Oversight Or Overreach: The Role Of The Judiciary In Contemporary India [Distinguished Lecture Series, Center for the Advanced Study of India, University of Pennsylvania] [2008]

53 Articles 32 and 226: Vineet Narain and Ors. v. Union of India: (1998)1SCC226, "to fill the void in the absence of suitable legislation to cover the field...[i]t is the duty of the executive to fill the vacuum by executive orders... and where there is inaction even by the executive, for whatever reason, the judiciary must step in, in exercise of its constitutional obligations...to provide a solution till such time as the legislature acts to perform its role by enacting proper legislation to cover the field"

54 Richard Frimpong Oppong – RE-IMAGINING INTERNATIONAL LAW: AN EXAMINATION OF RECENT TRENDS IN THE RECEPTION OF INTERNATIONAL LAW INTO NATIONAL LEGAL SYSTEMS IN AFRICA: Fordham International Law Journal, January 2007

CONTRIBUTION OF CALCUTTA HIGH COURT TO THE DEVELOPMENT OF PUBLIC LAW REMEDIES

Asok Kumar Ganguly

To appreciate the contribution of Calcutta High Court to the development of public law remedies in this country, one has to trace its development from the pre-Constitution days. This is inevitable as Dr. Rash Behari Ghosh, the doyen of the Calcutta Bar, unerringly commented in his Tagore Law Lecture that ... "all human institutions in which the leafage, the blossom and the fruits may often be traced to the humble roots out of which they have grown."[1]

There is always a fundamental difference in the development of laws when the judiciary is functioning under a Written Constitution with a chapter on Fundamental Rights and within the parameters of a limited government and embedded provisions for judicial review (Article 13 of our Constitution) and when judiciary functioned under a colonial government without the concept of a Bill of Right or of a National Charter.

A legislature which is omnipotent becomes limited as soon as a written Constitution is adopted. The reason for the same is that Constitution voices the supreme will of the people and the legislature, which is the creature of the Constitution, owes its strength from and is subject to the Constitution. That is why the Constitution limits the authority of the legislature. Every act of the legislature, repugnant to the Constitution is, thus, void.

However, our Constitution, which is the culmination of Indian struggle for freedom, witnesses a remarkable transition. The British Parliament which governed our country for more than a century abdicated its governance by enacting Indian Independence Act, 1947 and created a new Dominion. 'Thus in a sense Indian Constitution of 1950, springs out of the parliamentary statute of 1947'[2].

In this context if we may remember the augural words of Lord Macaulay:

"The destinies of our Indian Empire are covered with thick darkness .... It may be that the public mind of India may expand under our system till it has outgrown that system; that by good government we may educate our subjects into a capacity for better government; that having become instructed in European knowledge they may, in some future age, demand European institutions. Whether such a day will ever come, I know not. But never will I attempt to avert or retard it. Whenever it comes, it will be the proudest day in English history[3]".

The proudest day of English history, according to Lord Macaulay, seems to be 26th January, 1950 when our Constitution came into force.

Therefore, there are certain connecting areas of universal interest between the developmental process under the two regimes. "The law", if we may remember the prophetic words of Justice Homes "embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics. In order to know what it is, we must know what it has been and what it tends to become.[4]"

It is impossible to traverse, within the arch of an article, all these areas of development. But I will strive, if possible, to pick up a few common threads.

It is well known that the traditions of English Common Law first struck roots in three Presidencies in British India. These towns were called Presidencies as Britishers established for the first time their factories in these towns and these factories had a President and a Council.

In 1773 Chatham wrote "India teems with indignities so rank as to smell to earth and heaven" and the British Parliament intervened with the Regulating Act of 1773 and the Supreme Court was established for the first time in Calcutta with the primary object of protecting the inhabitants of Bengal, Bihar and Orissa from the oppression of the servants of the East India Company. The functioning of the Supreme Court came in conflict with the collection of revenue by the Executive Government. Prior to the establishment of the Supreme Court in 1773 East India Company had set up in 1772, a Board of Revenue and a system of Civil and Criminal Courts, known as Dewani and Faujdari Adalats. These Courts derived their authority from the native government for whom the Company was acting as administrators of revenue. These were the Company's Court and not the King's Courts.

This explains why there was dual system of judicial institutions in British India. Sections 7 and 14 of the Regulating Act of 1773 gave wide-ranging jurisdiction to the Supreme Court and Clause 4 of the Charter made the judges of the Supreme Court:

"Justices and conservators of the peace and coroners within and throughout the said provinces, districts and countries of Bengal, Bihar and Orissa, and every part thereof, and to have such jurisdiction and authority as our justices of our Court of King's Bench may lawfully exercise within the part of Great Britain called England by the common law thereof".

Stephen's Commentary on Clause 4 of the Charter is that this provision has been…

"so construed as to enable the Court to issue writs of Mandamus, Prohibition,

and Certiorari to every Court in Bengal and to issue a habeas corpus to any native to bring up the women in his zenana".

This gave rise to a conflict and the Supreme Court of Bengal in the famous Patna case (1777-1779) awarded heavy damages to a plaintiff in his action against the Patna Provincial Council.[5]

Therefore in a conflict between rendering justice to an alien people and the needs of preserving the empire by collection of revenue, the latter prevailed and the jurisdiction of the Supreme Court was restricted to the town of Calcutta by the British Parliament by its Act of 1781, known as the Act of Settlement wherein the Sadder Diwani Adalat and the Sadder Nizamut Adalat were statutorily recognized. Similarly when by the Indian High Courts' Act of 1861, the Supreme Court of Bengal was abolished, the Sadder Diwani Adalat and the Sadder Nizamut Adalat in Calcutta Presidency were also abolished and their places were taken over by Letters Patent. The prerogative jurisdiction of the erstwhile the Supreme Court was confined within the Original jurisdiction of the High Court. This dichotomy has been very felicitously expressed by Acting Chief Justice Ameer Ali in In re Banwarilal Roy.[6]

As a result of the dual system, concepts of English public law guided the development of public law in these Presidencies. This has been acknowledged in In re Maharani of Lahore.[7]

Outside the Presidencies, it was clarified by Sir Elijah Impey in 1781, while interpreting the 27th Article of Regulation of 1772, that where no specific directions existed for disposal of any legal proceeding, the tribunals of East India Company should act "according to justice, equity and good conscience" – the time honoured traditions of English Common Laws. Bengal Regulation VII of 1832 also provided for application of the same principles.

In the opinion of Alan Gledhill[8] this is obvious as when an inferior legal system contacts a superior one, the former automatically borrows from the latter.

The first reported decision on Mandamus in India was in the case of Rex vs Warren Hastings[9] wherein the Supreme Court at Calcutta decided that it had no general power to issue Mandamus apart from the power given to it under Clause 21 of the Charter. This view prevailed in the case of Warren Hastings on the basis of a casting vote of the Chief Justice. Clause 4 of the 1774 Charter provided that when the Court was equally divided, the Chief Justice had a double vote. In the case of Warren Hastings, Hyde and Lemaistre JJ held that the Court had jurisdiction, but Chief Justice Impey and Chamber J held to the contrary. It was the casting vote of the Chief Justice which became decisive.

However this narrow view was studiously ignored by later writ cases of Mandamus which came for decision prior to passing of the Specific Relief Act. This

truncated view of Mandamus in Rex vs Warren Hastings was expressly disapproved by the Judicial Committee of the Privy Council in Ryots of Gorabandhu vs Zaminder of Parlakimedi.[10] A very broad view of Mandamus was taken in the case of Justices of the Peace for the Town of Calcutta vs Oriental Gas Company.[11] In that case, it was held that a proceeding for Mandamus is a proceeding in a civil case. The facts of the case would show that the Justices of Peace had a duty under the Bengal Act 6 of 1863 to refer any question regarding compensation for damages resulting from a sewage scheme to the Judge of the Small Causes Court, Calcutta. The Oriental Gas Company demanded such a reference but the same was refused by the Justices in view of disagreement on the question whether there were any damage. The High Court issued a Mandamus directing the Justices to refer the matter. Thus, the parameters of a Mandamus remedy were laid down by Calcutta High Court as early as more than two centuries ago. Similarly in the case of In re Toolsi Das Seal[12], the Small Causes Court refused to permit a vakil to appear before it in violation of its duty. In that case Sir Barnes Peacock, Chief Justice of Calcutta High Court held that the judge of the Small Causes Court need not be summoned but gave a declaration that the act of the Small Causes Court was illegal and, according to the learned Chief Justice, that declaration was sufficient answer to a writ of Mandamus.

I will refer to three early decisions of the Calcutta High Court on Mandamus under the Specific Relief Act to show that they outline the framework of this great ÿþremedy so clearly as to guide the Supreme Court in the early stages of development of law on Mandamus in our jurisprudence.

In Kesho Prasad Singh vs The Board of Revenue[13], Justice Asutosh Mookherjee speaking for the Bench held:

"A mandamus will never be granted to enforce the general law of the land which may be enforced by action".

And the Bench also held:

"Unless the Court was satisfied that the doing of or forbearing from an act was consonant to right and justices, and such doing and forbearing was under any law for the time being in force clearly incumbent on the person against whom the order was sought, no Mandamus ought to be granted; and that title to property would not be tried in Mandamus proceedings and the writ would not issue when it was necessary to try or decide complicated or extended questions of fact".

In Manindra Chandra Nandi vs Pravash Chandra Mitter and Others[14] the appellant, Maharaja of Cossimbazar, whose petition was dismissed by Page J, appealed before the Division Bench, presided over by Chief Justice Sanderson, for an order on the Returning Officer for the Presidency Landholders Constituency to accept as valid his nomination. Dismissing the appeal, the learned Chief Justice held:

"If the tribunal has exercised the discretion entrusted to it bona fide not influenced by extraneous or irrelevant considerations and not arbitrarily or illegally, the Courts cannot interfere; they are not a Court of Appeal from the tribunal but they have power to prevent the intentional usurpation or mistaken assumption of a jurisdiction beyond that given to the tribunal by law, also the refusal of their true jurisdiction by the adoption of extraneous considerations in arriving at their conclusion or deciding a point other than brought before them, in which cases the Courts have regarded them as declining jurisdiction. It is idle to ask for a Mandamus when there has been no refusal to perform a statutory duty and the question whether in point of law it was properly performed is in doubt. The High Court has to consider whether it would accord with such discretion to exercise the extraordinary jurisdiction of the Court to make an order in the nature of a Mandamus, a jurisdiction intended to be the last resort".

In re Jatindra Mohan Sengupta[15] the petitioner sought a Mandamus directing Hon'ble E. A. Cotton, President of the Bengal Legislative Council to decide on the admissibility of a motion in the list of Business of the Council. Dismissing the prayer C. C. Ghosh J, in an erudite exposition of the Law of Mandamus, held:

"The Writ of Mandamus, being a high prerogative writ, it follows that it cannot be demanded ex debito justitiae but that it issues only in the discretion of the Court: see the observations of Cockburn, C. J., in R.v. Garland (3) and also of Lord Chelmsford in R.v., All Saints Wigan (4). It follows from the discretionary character of the process that the rights to be enforced must be of a public nature, affecting the public at large, and also those which although of a public nature, specially affect the rights of individuals. The person applying must show that he has a real and special interest in the subject-matter and a specific legal right to enforce: See R.v. Guardians of Lewisham Union (5). In addition to these conditions precedent to this issue of the writ, it has been laid down from very early times that there must be a sufficient demand to perform the act sought to be enforced and a refusal to perform it. It is not indeed necessary that the word "refuse" or any equivalent to it should be used, but that there should be enough to show that the party withholds compliance and distinctly determines not to do what is required of him. There must also be the possibility of effective enforcement of the writ and the writ will not issue if alternative remedies or remedy are or is open to the applicant".

These principles on the Writ of Mandamus laid down by Calcutta High Court, more than a century ago, have been accepted and elaborated by the Hon'ble Supreme Court in subsequent years.

In Dorman Long and Co. Ltd. vs Jagadish Chandra Mahindra and Another[16] the Calcutta High Court very succinctly distinguished the scope of the writs of Certiorari and Prohibition while dealing with proceedings before Controller of Patents and Drugs. Delivering the judgment of the Division Bench, Justice Lort-Williams while quoting Lord Justice Atkin in R v Electricity Commissions[17] explained the nature of

the writs of certiorari and prohibition, stating that, "both are of great antiquity, forming part of the process by which the King's Courts restrained Courts of inferior jurisdiction from exceeding their powers. Prohibition restrains the tribunal from proceeding further in excess of jurisdiction, while Certiorari requires the record or the order of the Court to be sent up. Both the writs deal with questions of excessive jurisdiction, and doubtless in their original dealt almost exclusively with the jurisdiction of what is described in ordinary parlance as a Court of Justice. But the operation of the writs was extended to control the proceedings of bodies which do not claim to be Courts of Justice. Whenever any body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of these writs. There is no difference in principle between certiorari and prohibition, except that the latter may be invoked at an earlier stage. If the proceedings establish that the body complained of is exceeding its jurisdiction by entertaining matters which would result in its final decision being subject to being brought up on certiorari, prohibition will lie to restrain it from so exceeding its jurisdiction."

These are still the basic principles followed by the Supreme Court governing the issue of these writs under our Constitutional jurisprudence.

In Ashgar Ally vs Dr Birendra Nath Dey[18] the Calcutta High Court speaking through Gentle J explained the basic principles of a writ of Quo Warranto and held:

"Where a person is purporting to hold an office of a public nature and, in fact, is functioning in that office without any right or authority, the position can properly be the subject, at the instance of the relator, against the person of an enquiry of the nature of quo warranto proceedings. The absence of the Government and of the corporation cannot prevent relief being accorded if otherwise it should be granted. If the officer has carried out the functions of an office which he has no right to hold and the functions of an office which he has no authority to perform and further shows an intention to pursue the same course which he has followed, unless he is prevented by orders of the Court there is no doubt he will continue to hold the office. The relator should not be refused relief on the ground that he has been guilty of unreasonable delay".

These principles have not been watered down even after so many decades.

In upholding the liberty of the subject, the Calcutta High Court has always taken a leading role. In the matter of Ameer Khan[19] is the first major decision on personal liberty decided in 1870. Ameer Khan complained of non-communication of the charges for which he was detained except that he was detained under Bengal Regulation III of 1818. Norman J pronouncing the judgment disapproved the State's argument in support of detention and held:

"that a Governor acting by virtue of Letters Patent, under the Great Seal, is accountable only to God and his own conscience; that he is absolutely despotic, and can spoil, plunder, and affect His Majesty's subjects, both in their liberty and property, with impunity, is a doctrine that cannot be maintained".

Defence of India Act, 1939, read with rule 26 of the rules mandate that every detention order can be made only upon the satisfaction of the Provincial Government. When the detention of Shibnath Banerjee and others was made in contravention of the same, that was challenged before the High Court of Calcutta. The High Court held in Shibnath Banerjee versus Porter[20] that the recommendation of the Police cannot be a substitute for the satisfaction of the Governor and the detention order was quashed. In the penultimate paragraph Calcutta High Court accepted the law laid down by Lord Atkin and quoted the following opinion of His Lordship in Eshugbayi Eleko vs Officer administering the Government of Nigeria.[21]

"In accordance with British Jurisprudence no member of the executive can interfere with the liberty or property of a British subject except on condition that he can support the legality of his action before a Court of Justice and it is the tradition of British Justice that Judges should not shrink from deciding such issues in the face of the executive."

The same jurisprudence was followed much later by a three-Judge Bench of Supreme Court in a Habeas Corpus proceeding in State of Bihar vs Kameshwar Prasad Verma[22], wherein Justice J.L. Kapur of Supreme Court, delivering the judgment quoted the very same paragraph of Lord Atkin in Eshugbayi Eleko.

Just after independence, a question came up before the Special Bench of Calcutta High Court in the case of Sunil Kumar Bose and Others vs The Chief Secretary, Government of West Bengal[23], whether certain existing laws permitting detention without trial was constitutionally valid.

After the Special Bench issued rules in about 381 cases of detention orders passed order under the Bengal Criminal Law Amendment Act, 1930, as amended by Ordinance of 1949, the Constitution of India came into force. The Special Bench held the detention orders to be invalid. The Special Bench formulated the principles in a language which has the echo of the famous dissent of Lord Atkin in Liversidge vs Anderson[24]. The unanimous Special Bench spoke in such glowing words that one should do well to quote them and to remember them even now:

"It has always been the proud traditions of this Court to stand between the subject and any encroachment on his liberty by the executive or any other authority however high. It is a great tradition which we inherited and we believe that this Court will be worthy of this inheritance. Amidst the strident clamour of political strife and the tumult of the clash of conflicting classes we must remain impartial. This Court is no respecter of persons and its endeavour must be to ensure that above this clamour

and tumult the strong, calm voice of justice shall always be heard".

Calcutta High Court strove very hard to create traditions of vigilant solicitude for the personal liberty of the common man. This Court always took pride in that the use of Habeas Corpus in India was closely related to England and this fostered the conviction that the remedy should be worthy of its English counterpart.

In developing the law of Contempt, which is also a public law remedy and is closely associated with the Rule of Law and Administration of Justice, Calcutta High Court displayed the visionary zeal of a crusader in In re William Taylor[25]. Speaking through Chief Justice Barnes Peacock, Calcutta High Court upheld the dignity of the Court and the liberty of the press in In re Taylor.

Mr. Taylor, an Englishman and a former member of the Bengal Civil Service, later on enrolled as a Vakil of High Court, was involved in a dispute the Ranee of Ticaree, who retained his services. When the matter came up before the Division Bench of Calcutta High Court, the Division Bench reached a finding of fraud against Mr. Taylor. Instead of appealing to the Privy Council, Mr. Taylor went to the Press by writing three letters in 'Englishman' carrying a vituperative attack against Mitter J., one of the judges of the Division Bench.

Though Mr. Taylor happened to be a friend of Chief Justice Barnes Peacock, the dignity of the High Court was upheld by the Chief Justice by directing the arrest of Taylor when he was about to leave the country by clandestinely boarding a ship. The Chief Justice found Mr. Taylor guilty of contempt and sentenced him for one month in jail and he was also fined for Rs.500/-, despite an apology tendered by Mr. Taylor which was found inadequate. He was given a chance to tender unqualified apology. By the time, the unqualified apology was published in 'Englishman' and Mr. Taylor was already in prison for two weeks with failing health. This unconditional apology of Mr. Taylor was then accepted and he was discharged from prison.

This decision paves the way for the future development of the law in India against slanderous attack on the judiciary by disgruntled litigants and the role played by media in that. This possibly explains that while preserving the fundamental freedom of expression under our Constitution [Article 19(1)(a)] the framers visualized that law relating to contempt is one of the reasonable restrictions on such freedom [Article 19(2)].

Again on the criminal proceedings in the Barisal Conspiracy case the editorial comments in 'Amrita Bazar Patrika' led to a contempt proceeding[26] which came up for consideration before a Bench of Chief Justice Jenkins, Sir Harry Stephen and Sir Asutosh Mookerjee.

The Advocate General moved the contempt proceedings against Mr. Motilal

Ghosh, editor, and Mr. Tushar Kanti Ghosh, printer and publisher. Against Mr. Motilal Ghosh, the contempt petition was dismissed with costs in view of defective affidavit. Against Mr. Tushar Kanti Ghosh, the matter was heard on merits, but ultimately was dismissed with costs.

The articles criticized the harsh treatment given to those arrested and the denial of ordinary facilities to them to put up a defence and the deployment of Gurkha soldiers to create panic. The articles appealed to the government for a fair treatment. The three-judge Bench unanimously returned a verdict of no contempt. This judgment shows the restraint the Court must display in hearing sensitive contempt cases. The seeds of the Mulgaokar guidelines[27] formulated by the Supreme Court almost a century later were possibly sown in this judgment.

In the case of Niherendu Dutta Majumder[28], a three-judge Bench of Calcutta High Court presided over by Chief Justice Derbyshire held that a person under custody, and who is directed to be released while in Court room or in its precincts, until he reaches home, is immune from arrest under a civil process. However, he is not immune from arrest under a bona fide criminal process. Such arrest when the Court is not sitting may not by itself constitute contempt. However, it will constitute contempt if the arrest is made in the face of the Court or else in the Court premises so as to disturb its proceeding or if the arrest is made in a fraudulent proceeding to evade and frustrate the order of release.

It is, thus, clear that even though the law of Contempt was not codified in those days, the Calcutta High Court in Niherendu Dutta Majumder's decision formulated the principles of what would constitute criminal contempt in the face of the Court in a manner which throws considerable light on the development of law after the enactment of the Contempt of Court Act, 1970.

In the field of administrative law there are many landmark judgments of Calcutta High Court paving the way for development of the law on this point, but three of them deserve to be specially mentioned. The first one was rendered in the case of Deepa Paul vs University of Calcutta[29]. In a Single Bench decision by Bose, J. (as His Lordship then was) the High Court held that the question of whether a particular power is to be exercised judicially or quasi-judicially or merely in an administrative capacity depends on the nature, scope and effect of the particular power. In this context the provision for enquiry of notice does not furnish the decisive test. The Court held even when there was no provision for enquiry or notice in relation to discharge of certain statutory duties, the Courts have spelt out an obligation to act judicially or quasi-judicially in the discharge of its duties. Thus, the requirement of an administrative body acting in a quasi-judicial capacity by observing principles of 'audi alteram partem' which was later on developed by the Supreme Court, appears to be an inherent content of the principle formulated in the Deepa Paul case. These propositions laid down in Deepa Paul were expressly approved by the Constitution Bench of Supreme Court in Board of High School and

Intermediate Education vs Ghanshyam Das Gupta[30] (see para 11).

Again in the case of Golam Mainuddin vs State of West Bengal[31] Justice Binayak Nath Banerjee, sitting singly, laid down the duties of an administrative tribunal by holding that an administrative tribunal must act in good faith with a regard to relevant considerations and disregarding all irrelevant considerations, and must not promote a purpose which is alien to the purpose and spirit of the legislation that gives it the power to act. It must not act arbitrarily or capriciously. The Court further laid down that the finding of the tribunal must show that every fact for and against the person proceeded against must have been duly considered and the conclusions of the tribunal should not be coloured by any irrelevant consideration or matters of prejudice. The tribunal should not base its finding on suspicion, and conjectures and surmises should not be a substitute for evidence. If the tribunal acts partly on evidence and partly on suspicion and conjectures, its findings will be vulnerable. Virtually these concepts were later on developed by the Supreme Court in the case of Maneka Gandhi[32] to hold that any arbitrary action by the Executive Authority falls foul of Article 14.

A Division Bench of Calcutta High Court presided over by Chittatosh Mookerjee, J. (as His Lordship then was) in Mrinal Kanti Das Burman[33] interpreted an order of the Governor dismissing a police officer by invoking the provisions under Article 311(2)(b) of the Constitution whereby enquiry against such officer was dispensed with. The said order was passed when Proclamation of Emergency under Article 356 of the Constitution was in force. The Learned Advocate General of the State of West Bengal wanted to justify the exercise of such power by referring to the contents of a file which was disclosed to Court but not to the other side. The Division Bench of Calcutta High Court speaking through Justice Mookerjee refused to peruse the contents of the aforesaid file and laid down certain propositions of great value, which I would better quote:

"We declined to peruse the files behind the back of the petitioners as it would be a flagrant disregard of judicial principles to decide these two Rules on the basis of our personal knowledge about the contents of these files without affording any opportunity to the petitioners to meet the allegations that might have been contained in the files".

The germ of 'open government' concept developed by the Supreme Court in the case of S. P. Gupta vs Union of India[34] can be found in those propositions enunciated by the Division Bench of the Calcutta High Court.

The Special Bench judgment of Calcutta High Court in the case of Jay Engineering Works Ltd.[35] for the first time gave a new dimension to trade union and industrial laws by defining what is meant by 'gherao' – a word which then found its way in English dictionary. It has also laid down sufficient guidelines about the duty of Court in a situation where liberty, property and even life of law abiding citizens are

threatened as a result of militant trade unionism encouraged by the executive organs of the state. This is a landmark judgment in carrying forward the message of the rule of law.

The interpretation of Article 21 by Justice P. B. Mukharji (as His Lordship then was) while delivering in 1965 the Ramanand Lecturers on Civil Liberties in Calcutta University[36] was much ahead of his time. His Lordship's interpretation of Article 21 was later on accepted and developed by the Supreme Court in Maneka Gandhi in 1978. At least more than a decade before the decision of Maneka Gandhi case, Justice Mukharji said:

"The exact connotation of the word "procedure" in Article 21 of the Constitution remains yet to be established. It will be odd indeed for civil liberty of life and personal freedom to conclude that the guarantee is only in respect of procedure. For the concept of this great civil liberty demands that life and personal liberty should have a wider basis of protection than that of mere procedure" (P.58).

Again the learned judge said:

"It is suggested that "life" in Article 21 of the Constitution means life in all its expressions, physical, intellectual, moral, spiritual and cultural, and included in the constitutional guarantee and they can only be "deprived" partially or totally by procedure established by law and by no other means" (P.62).

Traditions of a Court are not built in a day. The traditions of a Court assimilate and articulate the conscience of a Nation which is shaped on the crucible of struggles and conflicts of various cross-sections of society. These traditions of fairness and liberty are the very stuff out of which are erected the jurisprudential principles for common men to have confidence in. And, it is axiomatic that justice is rooted in confidence. Here it may be very pertinent to remind ourselves of what was written by Sir Harold Derbyshire, a distinguished Chief Justice of this Court, in his reminiscences[37], about the traditions of this Court. The learned Chief Justice wrote:

"I was very interested, soon after coming to England in 1947, to hear one Member of the Judicial Committee of the Privy Council say to another lawyer, 'You must remember that the Calcutta High Court is terribly independent.'"

The learned Chief Justice also expressed a fond hope that the same traditions of the Calcutta High Court may continue in future.

During the dark days of that phony Emergency, these traditions of independence and fearlessness must have inspired Justice Khanna to voice his monumental dissent in A.D.M. Jabalpur v. S. Shukla[38] to uphold the torch of liberty in the midst of the gathering clouds of tyranny and oppression.

In maintaining the lofty traditions of the Court, the members of the Bar have the most effective role to play. And, I am confident that it was because of the able assistance of members of the Bar that the Calcutta High court could make a mark in the past, in both developing the law and in maintaining the confidence of the common man in the efficacy of the justice delivery system.

In view of the huge development in science and technology the current economic scenario of the country is undergoing rapid transformation and the justice delivery system is now on a trial and is challenged by rapidly changing ground realities.

Being at the crossroads of old tradition and new challenges, the judiciary must not lose its focus on the core constitutional values of upholding the common man's right. It must ensure that Court is no longer a "sealed book". It should instead be converted into a "living letter". The justice delivery system must not remain the "patrimony of the rich", but must become an "inheritance of the poor". The law and the Courts cannot remain a "two-edged sword of craft and oppression". Rather it must be vibrant enough to become the "staff of honesty and shield of innocence".

I, therefore, humbly call upon the members of the Bar to rise to the occasion and assist the judges of this great institution to reach the goals which the Constitution has assigned to them.

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PROTECTION OF WOMEN'S RIGHTS AND THE CALCUTTA HIGH COURT

Nadira Patherya

Introduction

I need no warrant for being; I need no sanction upon my being. I am the warrant and I am the sanction.[1]

The importance attributed to women's rights today is only a reflection of the blatant contraventions it has met with through the ages. Women have evidently occupied a secondary position in a male-dominated society and been victimized by male chauvinist elements therein. Their activities have been confined to the household and seldom has history witnessed women creating it. Yet, one notices a change in the trend.

Today women constitute 48.2% of the Indian population. Female participation in the workforce increased from 23% in 1991 to 25.6% in 2011; yet it is important to note that much of women's economic activity is not reflected in statistics. The literacy rate climbed from 64.83 per cent in 2001 to 74.04 per cent in 2011. While literacy among males rose from 75.26 per cent to 82.14 per cent, an increase of 6.9 points, it rose among females from 53.67 per cent to 65.46 per cent, an increase of 11.8 points. The overall sex ratio (number of females for every 1,000 males) has also shown improvement, from 932.91 in 2001 to 940.27 in 2011; a good part of this can be explained by the greater natural longevity of women and improvements in health care over the years. But a steep fall in the child sex ratio (number of girls for every 1,000 boys in the 0-6 age group) is indeed shocking. The sex ratio in the 0-6 age group has been continually declining since 1961 but the fall from 927.31 in 2001 to 914.23 in 2011 is the worst since Independence.[2]

One may be witnessing a rapid metamorphosis in Indian society, yet India ranks rather low in the world with regard to women empowerment. Hence, there is no place for complacency.

The Hon'ble High Court of Calcutta over these years has pronounced important judgments in this sphere. It has adjudged numerous cases of women's rights violation as well as interpreted the law relating to the issue. These interpretations are crucial not only as they stand as precedents for the Court but also

are paradigms for the country at large.

Women's Rights

Part III of the Constitution of India which deals with Fundamental Rights guarantees equality before law and equal protection before law[3], prohibits discrimination on the ground of sex[4] and also guarantees equality of opportunity in matters of public employment[5]. Part IV deals with Directive Principles of State Policy and the State is directed to work towards securing for all its citizens–men and women equally–a right to adequate means of livelihood.[6] Further, Part IV A which deals with Fundamental Duties encourages the citizen to renounce practices derogatory to the dignity of women.[7]

The aforementioned provisions in the Constitution, inter alia champion the cause of gender equality and protection of women's rights. There are a number of women-specific and women-related legislations which have been enacted for the purpose of women's justice and empowerment. They are:

WOMEN-SPECIFIC LEGISLATIONS

1. The Immoral Traffic (Prevention) Act, 1956
2. The Dowry Prohibition Act, 1961
3. The Indecent Representation of Women (Prohibition) Act, 1986
4. The Commission of Sati (Prevention) Act, 1987
5. Protection of Women from Domestic Violence Act, 2005

WOMEN-RELATED LEGISLATIONS

1. The Guardians and Wards Act, 1890
2. Indian Penal Code, 1860
3. The Indian Christian Marriage Act, 1872
4. The Married Women's Property Act, 1874
5. The Child Marriage Restraint Act, 1929
6. The Muslim Personal Law (Shariat) Application Act, 1937
7. The Minimum Wages Act, 1948
8. The Special Marriage Act, 1954
9. The Hindu Marriage Act, 1955
10. The Indian Divorce Act, 1969
11. The Medical Termination of Pregnancy Act, 1971

12. Code of Criminal Procedure, 1973
13. The Pre-Natal Diagnostic Techniques (Regulation and Prevention of misuse) Act, 1994
14. The Muslim Women Protection of Rights on Dowry Act, 1986

Offences against Women

1. Marriage related offences

Chapter XX of the Indian Penal Code exhaustively deals with offences relating to marriage. Sections 493 to 498 prescribe the punishment, inter alia, for the offences of fraudulent cohabitation[8], bigamy[9], fraudulent marriage ceremony[10] and adultery[11]. Section 498A defines 'cruelty' and lays down punishment for the same. Cruelty towards a woman by the husband or his relatives is a valid ground for seeking divorce under the Indian divorce laws, namely in the Indian Divorce Act, Special Marriage Act, Hindu Marriage Act, and so on and so forth. This aspect has invited a large spectrum of interpretations and opinions and is often coupled with problems related to dowry. The IPC defines 'cruelty' as "(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

Dowry means any property or valuable security given or agreed to be given either directly or indirectly –

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person; at or before or any time after the marriage in connection with the marriage of said parties but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.[12]

The practice of giving or receiving dowry is punishable, yet it is a ubiquitous phenomenon in Indian urban as well as rural society. This pernicious custom continues to haunt and claim the lives of many young women. 'Dowry death' is any unnatural death of a woman within 7 years of marriage caused due to cruelty or harassment in connection with demand for dowry.[13] Thus, while proving dowry death one may invoke not only s.304B but also s.306 (abetment to suicide) along with s.498A of the Penal Code as well as provisions prescribing punitive relief under the Dowry Prohibition Act. The Court should be extremely careful in assessing the facts

and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide.[14]

In State of West Bengal v. Orilal Jaiswal and Anr.[15] the deceased, Usha Jaiswal, who was only 20 years old had been treated cruelly and had been tortured both mentally and physically by the accused. The Sessions Judge, 12th Bench of the City Sessions Court, Calcutta convicted the accused under s. 306 read with s. 34 of the I.P.C. A sentence of 5 years' rigorous imprisonment and under s. 498 a sentence of 1 year rigorous imprisonment and fine. The Calcutta High Court set aside the aforesaid judgment and acquitted the accused on grounds of lack of evidence. An appeal was preferred by the State of West Bengal against the judgment of acquittal. Subsequently, the Supreme Court set aside the judgment of the Calcutta High Court and convicted the accused.

In Samir Samanta and Anr. v. State of West Bengal[16] it was alleged that the accused, Samir Samanta subjected the deceased, Shantana (his wife) to cruelty and also to harassment over outstanding demand of dowry as a result of which she committed suicide by setting fire to her body. The Assistant Sessions Judge, Kalna convicted the accused under Sections 306 and 498A of the Indian Penal Code and sentenced them to rigorous imprisonment for 8 years 6 months and also to a fine of Rs. 2,000/- each. An appeal was directed against the judgement. The Calcutta High Court convicted the appellants under s. 423-A IPC but set aside the conviction under s. 306 IPC. Its findings showed that the deceased was subjected to cruelty yet there wasn't enough evidence to prove abetment to suicide. It observed 'where death is a logical culmination of a continuous drama long in process, each step directly connected to the end may be admissible as valuable evidence'[17] yet the Court 'assumes a greater importance – it is expected that it would deal with such cases in a more realistic manner. The Court has to discriminate between a procedural technicality and a reasonable doubt.'[18]

It is important to note that when hearing cases of alleged dowry death the Court may invoke s. 113 B of the Indian Evidence Act[19], i.e. the Court may presume certain facts. If a woman prior to her death is subjected to cruelty in connection with demand for dowry, the Court may presume the cause of such death. This provision helps convicting the accused as the burden of proof is shifted from the prosecution to the accused and the onus is upon him to show he did not cause the death.

2. Sexual Offences

A woman treasures her sanctity and chastity over any other possession. Thus, any sexual offence against her is absolutely horrific and abominable. Sexual offences range from harassment and sexual banter at workplace to uninvited sexual advances; and from child sexual abuse to the most reprehensible of all atrocities – rape. Rape constitutes over half of all crimes against women in India and it is crucial to note that

because rape attaches a social stigma against the victim, a prodigious number of rapes remain unreported. There is a tendency to suppress such incident.[20]

Rape is forced sexual intercourse.[21] It is not merely a physical assault; it is often destructive of the whole personality of the victim. Rape is the highest form of torture inflicted upon the dignity of a woman.[22]

Among all the cases of rape that have come up before the Calcutta High Court, the landmark judgment in the case Dhananjoy Chatterjee alias Dhana v. State of West Bengal[23] stands out. The deceased was an 18 year old school-going girl who was brutally raped and murdered by the accused Dhananjoy Chatterjee, the watchman in her building. The Calcutta Sessions Court pronounced him guilty (i) for an offence under Section 302 IPC and sentenced him to death, (ii) for an offence under Section 376 IPC and sentenced him to imprisonment for life, and (iii) for the offence under Section 380 IPC, he was sentenced to undergo rigorous imprisonment for five years. An appeal was made in the Calcutta High Court; but it dismissed the appeal and confirmed the death sentence. Finally an appeal was rendered in the Supreme Court wherein he was held guilty and his execution was confirmed.

In rape cases, the Court may presume certain facts in favour of the rape victim. Section 114A of the Indian Evidence Act endows that power upon the Courts in order to ensure conviction for the guilty.[24] Evidence in rape cases is to be weighed and not counted.[25]

Sexual offences are on the rise in India[26] and hence, the crime requires attention urgently. Rape cases are extremely sensitive wherein proceedings are conducted in camera.[27] First, women who have been subjected to such a heinous crime should seek redressal rather than conceal such incident. Second, in cases where the accused is a man of power and influence or son of any important government servant, the accused tends to get away with such offence. Here, the Court is in a position of extreme importance and has to ensure justice in the odds of rampant corruption and use of influence.

3. Domestic Violence

Violence against women is a manifestation of historically unequal power ratio between men and women, which have led to the domination over and discrimination against women by men to the prevention of the full advancement of women.[28] In India, a sizable number of women and girls are subjected to physical, sexual and psychological abuse that cuts across line of income, class and culture. Domestic violence is often connected with hefty dowry demands.

Violence against women is punishable under the Protection of Women from Domestic Violence Act, 2005. It protects women who are subjected to violence in a domestic relationship. A ‘domestic relationship’ is defined in s. 2 (f) of the said 2005

Act as, "a relationship between 2 persons who live or have, at any point of time lived together in a shared household, when they are related by consanguinity, marriage, or a relationship in the nature of marriage, adoption or are family members living together as a joint family." This definition indeed has great room for interpretation and has recently invited a range of opinions on the matter. The Act states exhaustively what may constitute domestic violence and what are the reliefs available to such aggrieved party.

In a recent case, Nazirul Sk. v. State of West Bengal[29] the deceased, Dolly Bibi (wife of the appellant) died an unnatural death at the house belonging to her in-laws. The learned Additional District and Sessions Judge, Fast Track Court, Jangipur, Mursidabad found the death was homicidal in nature according to medical evidence. Chief accused, Nazirul was held guilty of the offence; however, the other four accused (in-laws) were acquitted and set at liberty. An appeal was directed to the Calcutta High Court which upheld the findings of the Trial Court and dismissed the appeals.

In another case Jhantu Sardar and Anr v. State of West Bengal[30] the deceased Batasi (wife of the accused) was subjected to torture by her in-laws due to insufficient dowry. The Calcutta Sessions Court Judge held the accused guilty under s. 498A and s. 306 of the Indian Penal Code. An appeal to the Calcutta High Court was dismissed and the sentence pronounced by the Sessions Court was upheld. It observed that violence against women violates, impairs and nullifies the enjoyment of human rights and fundamental freedom by women. In an appeal challenging the judgment before the Supreme Court the accused was found guilty of cruelty under s. 498A but was acquitted on charges of abetment to suicide under s. 306.

Discrimination against Women

Discrimination against women is an age-old defect in society at large. It was in 1979 that the UN General Assembly passed the Convention on Elimination of all forms of Discrimination Against Women (CEDAW).[31] India signed the Convention in 1980 and ratified it in 1993. Discrimination on the grounds of sex may occur in various fields; be it in the workplace in matters of promotion, in matters of appointment to any office, admission to an educational institution, so on and so forth. It is many a times done in a clandestine fashion and it is often difficult to show covert discrimination.

In Sm. Anjali Roy v. State of West Bengal[32] the petitioner challenged the admission procedure in Hoogly Mohsin College. She contended that she was not chosen only on the basis that she was a woman. However this charge was not proved and the Calcutta High Court subsequently dismissed the petition.

In Chairman, West Bengal School Service Commission And Ors. v. Shobhit Kumar Singh And Ors[33] the practice of appointment of male teachers in boys' schools

and female teachers in girls' schools was held valid and non-discriminatory.

Also, discrimination occurs within the house and often women are unaware of their rights and reliefs available to them. Due to poverty and ignorance the woman in the house is subjected to great discrimination and violence.[34] As rightly put – Prejudice is the child of ignorance.[35]

Legal Aid

Society may be apprehended now with an education wave among women; yet violation of women's rights is a continual phenomenon in India. Most of it happens behind closed doors and the woman never receives justice either due to lack of awareness or the paucity of means of legal redressal. As per the Legal Services Authorities Act, 1987 a woman is entitled to free legal aid.[36] Nowadays, Public Interest Litigation (PIL) allows volunteer lawyers or citizen petitioners to bring a case on behalf of a victimized group that does not have sufficient means or access to legal services. Also, Non-Governmental Organizations (NGOs) and other social women-help groups often go a long way in seeking justice on behalf of women.

Conclusion

There is no doubt that legal remedies exist for protection of women's rights, yet converting these de jure rights to de facto rights is the need of the hour. This can only be achieved through education. Awakening of collective consciousness and change of heart and attitude is required. If women were to receive education and economic independence the possibility of this pernicious social evil dying a natural death may not remain an unfulfilled dream.[37] After all: No one can make you feel inferior without your consent.[38]

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1. Ayn Rand, Atlas Shrugged (50th Anniversary Edition), 237.

2. Census of India, 2011: Office of Registrar General and Census Commissioner, India. (www.censusindia.gov.in/Census-Data-2001/India-at-glance)

3. Constitution of India, art.14 "Equality before Law–The state shall not deny to any person the equality before law or the equal protection of the laws within the territory of India".

4. Constitution of India, art.15 "Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth–(1) The state shall not discriminate on grounds of religion, race, caste, sex or place of birth or any of them. (2) No citizen shall, on the grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition".

5. Constitution of India, art.16 "Equality of opportunity in matters of public employment–(1) There shall be equality of opportunity in matters relating to appointment or employment to any office under the state. (2) No citizen shall on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for, or discriminated against in respect of any employment or office unde the state.

6. Consitution of India, art. 39 “Certain principles of policy are to be followed by the State. The State shall, in particular, direct its policy towards securing –(a) that the citizens, men and women equally, have the right to an adequate means of livelihood; (d) that there is equal pay for equal work for both men and women.”

7. Consitutution of India, art. 51A “It shall be the duty of every citizen of India–(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practises derogatory to the dignity of women.”

8. Indian Penal Code, 1860 s. 493 “Cohabitation caused by a man deceitfully inducing a belief of lawful marriage—Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

9. Indian Penal Code, 1860 s. 494 “Marrying again during lifetime of husband or wife–Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

10. Indian Penal Code, 1860 s. 496 “Marriage ceremony fraudulently gone through without lawful marriage.– Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

11. Indian Penal Code, 1860 s. 497 “Adultery.–Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both”.

12. The Dowry Prohibition Act, 1961, s. 2.

13. Indian Penal Code, 1860, s. 304B. “Dowry death.—(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death”.

14. Gurbachan Singh v. Satpal Singh and Ors. AIR 1990 SC 209.

15. AIR 1994 SC 1418, 1994 (1) ALT Cri 193, 1994 (1) BLJR 267.

16. 1993 CriLJ 134, II (1992) DMC 233.

17. AIR 1984 SC 1622: 1985 SCR (I) 88.

18. Kundula Bala Subramanyam v. State of Andhra Pradesh, 1993 (2) SCC 684: 1993 CriLJ 1635.

19. Indian Evidence Act, 1872 s.113-B “Presumption as to dowry death.–When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with any demand for dowry the Court shall presume that such person had caused the dowry death”.

20. Delhi Domestic Working Women's Forum v. Union of India, (1995) SCC 14.

21. Indian Penal Code, s. 375 "A man is said to commit rape who has sexual intercourse with a woman against her will or without her consent".

22. Khwaja Abdul Muntaqim, Protection of Human Rights (8th ed.) 110.

23. 1994 (2) SCC 220: 1994 (I) ALT Cri 388: 1994 (2) BLJR 1231.

24. Indian Penal Code, s. 114A– "Presumption as to absence of consent in certain prosecutions for rape.–In a prosecution for rape under Section 376 of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent."

25. State of Himachal Pradesh v. Raghuvir Singh, 1993 (I) CCR 87 SC: 1993 (2) SCC 622.

26. National Crime Record Bureau (NCRB), 20, 737 rape cases were registered in 2010 against 19,384 in 2009, while the figure was 18, 359 in 2005 and 18, 233 in 2004 against 15, 847 in 2003.

27. The Code of Criminal Procedure, 1973 s. 327 (2) "The inquiry into and trial of rape or an offence under s. 376, s. 376A, s. 376B, s. 376C or s. 376D of the Indian Penal Code shall be conducted in camera."

28. UN Declaration on the Elimination of Violence Against Women, Dec 1993, A/RES/48/104.

29. Calcutta High Court, W.P. No. 14925 (w) of 2010: (2002) 1 CALLT 412 HC.

30. 2009 AIR (SCW) 7070: (2010) 1 SCC 707.

31. UN GA RES/34/180

32. AIR 1952 Cal 825, 56 CWN 801

33. 2008 (1) CHN 194

34. Gour's Empowerment of Women in India (3rd ed.) 467.

35. William Hazlitt, 'The Plain Speaker'.

36. Chapter IV–Entitlement to Legal Services, s.12 (c): "Every person who has to file or defend a case shall be entitled to legal services under this Act: A woman or child." The Legal Services Authorities Act, 1987.

37. Ibid, footnote 18.

38. Eleanor Roosevelt (1880-1962).

TRIAL BY MEDIA

Joymalya Bagchi

INTRODUCTION

The subject of "trial by media" is discussed by civil rights activists, constitutional lawyers, judges and academics almost everyday in recent times. Trial by media describes the impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in a court of law. During high-publicity court cases, the media are often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only makes a fair trial nearly impossible but means that regardless of the result of the trial the accused will not be able to live the rest of their life without intense public scrutiny. Innocents may be condemned for no reason or those who are guilty may not get a fair trial or may get a higher sentence after trial than they deserved. There appears to be very little restraint in the media in so far as the administration of criminal justice is concerned.

In recent times, with the advent of a plethora of 24/7 news channels and the rise of news reporting in the form of internet media, trial by media has assumed significant proportions and presents a host of new issues surrounding media coverage of high profile trials. The advent of blogs and their growing influence on the public have further complicated the issue. It has had both positive and negative results. However, many would think that the overall impact is for the betterment of the society. Some famous criminal cases that would have gone unpunished but for the intervention of the media are the Priyadarshini Mattoo case, the Jessica Lall case, the Nitish Katara murder case and the Bijal Joshi rape case. In such cases, the efforts of the media are indeed commendable to the extent that they prodded the criminal justice system to right the wrong.

Nevertheless, the media can also go horribly wrong at times. One such case popularized by the media between 1980 and 1982 was the murder trial of Lindy Chamberlain in Australia who was convicted of killing her baby, but later released in 1986 on new evidence showing that a dingo had, in fact, committed the act as was originally claimed by Chamberlain.

Nearer home, the media, however, drew flak in the reporting of the murder of Aarushi Talwar, when it preempted the court and reported that her own father Dr. Rajesh Talwar, and possibly her mother Nupur Talwar, were involved in her murder, prompting the police to arrest Dr. Rajesh Talwar and subjecting him as well as his

wife to a battery of interrogatory methods including lie detector tests. Presently, Dr. Rajesh Talwar and his wife have approached the Hon'ble Supreme Court of India and have obtained an order of stay against this patently harassive CBI prosecution.

FREEDOM OF THE PRESS:

Media is regarded as one of the pillars of democracy. It plays a vital role in moulding the opinion of the society and it is capable of changing the whole viewpoint through which people perceive various events. The media can be commended for starting a trend where it plays an active role in bringing the accused to hook.

Freedom of media is the freedom of people as they should be informed of public matters. It is thus needless to emphasise that a free and a healthy press is indispensable to the functioning of democracy. In a democratic set-up there has to be active participation of people in all affairs of their community and the state. It is their right to be kept informed about the current political, social, economic and cultural life as well as the burning topics and important issues of the day. To achieve this objective people need a clear and truthful account of events, so that they may form their own opinion and offer their own comments and viewpoints on such matters and issues and select their future course of action.

Hence, proponents of unfettered media coverage forcefully argue that freedom of speech and freedom of the press justify the disclosure of names and background details of people involved in the subject incident by the press. In a democratic society the press has a fundamental role of ensuring open justice by shining light on the government's activities including its prosecutions and provides an external check on police, prosecutorial, and judicial authorities and guards against miscarriages of justice. Lord Chief Justice Hewart's quote on open justice describes the role of the media well:

"It is not merely of some importance but is of fundamental importance, that justice should not only be done, but should manifestly and undoubtedly be seen to be done."[1]

Freedom of expression incorporated in the Constitution of India under Article 19(1)(a) remains an important facilitator for widespread engagement within a democratic atmosphere. The media has been provided with many freedoms and immunities so that the Fourth Estate stands tall and strong. But what Lord Atkin relates with power is also well-placed with the notion of liberty. Liberty does corrupt into license and is prone to be abused. Every institution is liable to be abused, and every liberty, if left unbridled, has the tendency to become a license which would lead to disorder and anarchy. It has to be remembered that freedom of expression is not absolute, unlimited or unfettered and in all circumstances, as giving on an unrestricted freedom of the speech and expression, would amount to uncontrolled license. In Express Newspapers v. Union of India[2], the Supreme Court exhaustively

dealt with freedom of the press but stated that it cannot be unbridled. Like other freedoms, it can also suffer reasonable restrictions.

Media coverage helps to educate and foster public confidence in the judicial process, in turn holding governmental institutions accountable. The press exposes people to the process who would not otherwise experience it. In addition, media coverage can sometimes assist law enforcement officers in solving crimes.

In reality, educating the public often becomes secondary to satisfying the public's hunger for scintillating, scandalous and sordid stories. These novelette type stories appeal to the public's voyeuristic interests as opposed to serving any legitimate goal of a democratic society. Profit-driven, the media knows what sells and appears reluctant to engage in self-restraint which might result in decreased profits. These commercial interests often replace the socially useful functions press coverage should have.

As has been held in Smt. Archana Guha v. Sri Ranjit Guha Neogi[3]:

"Free press does not mean and imply an authority to make aspersions on the judiciary. It must use proper restraint so as to be able to be ascribed to be a fair comment…Society in order to prosper will have to have a free press, but free press does not imply without limitations and without restraint. The press has a responsibility towards the society at large and that responsibility can only be discharged in the event the press comes out with a fair and proper comment and attitude..."

Again, it has been rightly pointed out by the Punjab High Court in Rao Harnarain v. Gumori Ram[4]:

"Liberty of the press is subordinate to the administration of justice. The plain duty of a journalist is the reporting and not the adjudication of cases."

Hence, it is the duty of the media to report news, i.e. bare information without any frills of opinions or bias. The credibility of the media rests on unbiased, objective reporting. It must resist the temptation to sell stories, and report "what is in public interest" and not what "public is interested in".

PROS & CONS OF INVESTIGATIVE JOURNALISM – STING OPERATIONS

The recent phenomenon of "sting operations" is the current public favourite with the couch potato population positively salivating at the prospect of yet another famous personality shown "caught red handed" at some compromising position, regardless of the means used by the media to attain such "evidence", most of which are unethical bordering on illegal. It is also of no concern to the public that much of

the "evidence" thus collected may very well be inadmissible in a court of law.

We have a rich tradition of fiercely independent journalism. In fact, all the "big scams" were busted by the press. The law enforcers merely followed them up. The investigative acumen of some journalist or the other must be credited for extracting those information which looked inaccessible for the top vigilance teams of the country. That is how HDW (Howaldswerske) marine case and Bofors hit the headlines. That is how we found out that Narasimha Rao had bribed the Jharkhand Mukti Morcha MPs and Satish Sharma and Buta Singh had brokered the deal. In recent times, the unravelling of the Commonwealth Games scam and the 2G scam are new feathers added to the cap of investigative journalists. The media did us proud at every juncture when our politicians let the nation down.

Looking beyond our borders, the infamous Watergate scandal in the US hit the headlines thanks to the aggressive investigative journalistic skills and intense background work of two journalists and their famous informant "Deep Throat".

Thus it seems that the role of the media in bringing into light the otherwise dark under-the-table dealings and illegal activities of many of our political stalwarts and other famous persons by these "sting operations" has eclipsed the very real prospect that the same may be prejudicial to the interests of the unsuspecting individual whose privacy has been breached in the worst way possible. Furthermore, the ensuing media trial of the person would ensure that any hope of a future fair trial in a court of law is extinguished.

In recent times, the legal foundation of a sting operation was considered by the Supreme Court in the case of R. K. Anand v. Registrar of Delhi High Court[5]. In this case, the Supreme Court approved the fundamental right of the media to conduct a sting operation on the ground that the same may be conducted in "greater public interest" and bring out unfairness in trial procedure e.g. attempts to suborn a witness to fool public gaze. The Supreme Court turned down the contention that a sting operation conducted during a pending trial must be with the prior permission of the court. The Supreme Court observed that to accept such contention would be tantamount to pre-censorship of reporting of court proceedings and would be an infraction of the fundamental rights of speech and expression guaranteed under Article 19(1) of the Constitution of India. On the other hand, the Supreme Court sounded a warning bell and observed that a sting operation in respect of a subjudice matter must be subjected to stricter regulations and legal scrutiny. It observed:

"Compared to normal reporting, a sting operation is an incalculably more risky and dangerous thing to do. A sting is based on deception and, therefore, it would attract the legal restrictions with far greater stringency and any infraction would invite more severe punishment."

The Supreme Court also cautioned the media about the evil impact of over

sensationalizing reportings in pending matters and the irresistible desire to hike TRPs through biased and motivated reporting in the following words:

"A private TV channel which is also a vast business venture has the inherent dilemma to reconcile its business interests with the higher standards of professionalism/demands of profession. The two may not always converge and then the TV channel would find its professional options getting limited as a result of conflict of priorities. The media trips mostly on TRPs (television rating points), when commercial considerations assume dominance over higher standards of professionalism."

Although there is now legal sanction to conduct a sting operation during a pending trial in India, no concrete rules or guidelines have been laid down by legislation to regulate the role of media in sting operations or conducting traps against an individual. It is left to the subjective decision in the facts of each case to conclude whether such action on the part of the media amounts to an interference or obstruction to the administration of justice.

THE FLIP SIDE OF THE COIN – RIGHT TO FAIR TRIAL

In the case of Solicitor General v. Wellington Newspapers Ltd. [6], it was observed as follows:

"In the event of conflict between the concept of freedom of speech and the requirements of a fair trial, all other things being equal, the latter should prevail…In pre-trial publicity situations, the loss of freedom involved is not absolute. It is merely a delay. The loss is an immediacy; that is precious to any journalist, but is as nothing compared to the need for fair trial…"

The right to a fair trial is at the heart of the Indian criminal justice system. It encompasses several other rights including the right to be presumed innocent until proven guilty, the right not to be compelled to be a witness against oneself, the right to a public trial, the right to legal representation, the right to speedy trial, the right to be present during trial and cross-examine witnesses, etc. Fair trial is not purely for the private benefit for an accused the public's confidence in the integrity of the justice system is also crucial.

While journalists are distinctive facilitators for the democratic process, to function without hindrance the media has to follow the virtues of "accuracy, honesty, truth, objectivity, fairness, balanced reporting, respect or autonomy of ordinary people". These are all part of the democratic process. However, in recent times, in the temptation to sell stories, what is presented is what "public is interested in" rather than "what is in public interest". Earlier, journalism was not under pressure to push up TRP ratings or sales and the journalists did their work with serious intent and conviction, with courage and integrity. That is why people trusted them. But now we

are seeing a different self-appointed role of media. The "media trial" has now moved on to "media verdict" and "media punishment" which is no doubt an illegitimate use of freedom and transgressing the prudent demarcation of legal boundaries. It has now become necessary to check prejudicial publicity of the subjectmatter pending before a court and there is a need to pass a restraint order or injunction on the media in such cases.

If excessive publicity in the media about a suspect or an accused before trial prejudices a fair trial or results in characterizing him as a person who had indeed committed the crime, it amounts to undue interference with the "administration of justice", calling for proceedings for contempt of court against the media. Other issues about the privacy rights of individuals or defendants may also arise. Public figures, with slender rights against defamation, are more in danger and more vulnerable in the hands of the media. Sometimes, the media conducts parallel investigations and points its finger at persons who may indeed be innocent. It tries to find fault with the investigation process even before it is completed and this raises suspicions in the minds of the public about the efficiency of the official investigation machinery.

Rules of evidence exclude opinion evidence, allegations as to the general character or credibility of an accused, confessions which are not established as voluntary, prior conviction or prior conduct. Such inadmissible evidence cannot be introduced through the back-door, which is essentially what excessive pre-trial media coverage actually results in.

If the media repeatedly accuses people of crimes without producing any evidence against them, they create such certainty of their guilt in the minds of the public that, if these persons are even actually charged and tried, they have no hope of obtaining a fair trial. When such trials collapse, the victims of the crime are left without redress. Equally, defendants may be acquitted but they have lost their good name.

In M. P. Lohia v. State of West Bengal[7], the Supreme Court was dealing with an anticipatory bail application of an accused husband who was alleged to have abetted the suicide of his newly-wed bride. The husband's claim was that the lady was a schizophrenic psychotic patient and had committed suicide due to depression. The said case at its investigational stage received wide publicity and articles were published in newspapers indicating the complicity of the husband and the in-laws even before the investigation could be concluded and a charge sheet filed against them in an appropriate court of law. Deprecating such wanton and recklessly biased publication during pending investigation, the Supreme Court observed:

"Having gone through the records, we find one disturbing factor which we feel is necessary to comment upon in the interest of justice. The death of Chandni took place on 28-10-2003 and the complaint in this regard was registered and the investigation was in progress. The application for grant of anticipatory bail was

disposed of by the High Court of Calcutta on 13-2-2004 and special leave petition was pending before this Court. Even then an article has appeared in a magazine called "Saga" titled "Doomed by Dowry" written by one Kakoli Poddar based on her interview of the family of the deceased, giving version of the tragedy and extensively quoting the father of the deceased as to his version of the case. The facts narrated therein are all materials that may be used in the forthcoming trial in this case and we have no hesitation that these type of articles appearing in the media would certainly interfere with the administration of justice. We deprecate this practice and caution the publisher, editor and the journalist who were responsible for the said article against indulging in such trial by media when the issue is sub judice. However, to prevent any further issue being raised in this regard, we treat this matter as closed and hope that the others concerned in journalism would take note of this displeasure expressed for interfering with the administration of justice."

In the case of Labour Liberation Front v. State of Andhra Pradesh & Ors.[8], where the petitioner brought a writ against the supposed misdoings of the seer on the sole basis of newspaper publications. The Supreme Court came down heavily on the same.

"In the recent past, the freedom of the prosecuting agency, and that of the Courts, to deal with the cases before them freely and objectively, is substantially eroded, on account of the overactive or proactive stances taken in the presentations made by the print and electronic media. Once an incident involving prominent person or institution takes place, the media is winging into action and virtually leaving very little for the prosecution or the Courts to examine the matter. Recently, it has assumed dangerous proportions, to the extent of intruding into the very privacy of individuals. Gross misuse of technological advancements, and the unhealthy competition in the field of journalism resulted in obliteration of norms or commitment to the noble profession. The freedom of speech and expression which is the bedrock of journalism, is subjected to gross misuse. It must not be forgotten that only those who maintain restraint can exercise rights and freedoms effectively."

It is clear that although the courts have consistently upheld the right of the press to make fair reporting and comments on pending investigation and legal proceedings, yet they have imposed "reasonable restrictions" on such freedom of speech and expression so as to ensure that a cool, composed and objective atmosphere which is the bedrock of fair trial is not sacrificed at the altar of irresponsible, reckless and biased reporting.

STRIKING A BALANCE – FREEDOM OF SPEECH AND EXPRESSION V/S RIGHT TO FAIR TRIAL

Jurisprudentially speaking, the debate between freedom of the press on the one hand and the right to fair trial on the other is an apparent clash of two fundamental freedoms, namely freedom of speech and expression enshrined under Article 19 of

the Constitution of India and right to life enshrined under Article 21 of the said Constitution. The sobriety and maturity of an evolved and civilized society is reflected in its ability to harmonise the two and reconcile with such apparent conflict.

In Freedom of Expression with Particular Reference to Freedom of the Media[9], Justice H. R. Khanna, former Judge of the Supreme Court of India, observed:

"Certain aspects of a case are so much highlighted by the press that the publicity gives rise to strong public emotions. The inevitable effect of that is to prejudice the case of one party or the other for a fair trial. We must consider the question as to what extent are restraints necessary and have to be exercised by the press with a view to preserving the purity of judicial process. At the same time, we have to guard against another danger. A person cannot, as I said speaking for a Full Bench of the Delhi High Court in 1969, by starting some kind of judicial proceedings in respect of matter of vital public importance stifle all public discussions of that matter on pain of contempt of court. A line to balance the whole thing has to be drawn at some point. It also seems necessary in exercising the power of contempt of court or legislature vis-à-vis the press that no hyper-sensitivity is shown and due account is taken of the proper functioning of a free press in a democratic society. This is vital for ensuring the health of democracy. At the same time the press must also keep in view its responsibility and see that nothing is done as may bring the courts or the legislature into disrepute and make the people lose faith in these institutions."

The subject of trial by media or prejudice due to pre-trial publications by the media is closely linked with Article 19(1)(a) which guarantees the fundamental right of freedom of speech and expression, and the extent to which that right can be reasonably restricted under Article 19(2) by law and for maintaining the due process to protect liberty. In accordance with Article 19(2), this right can be restricted by law only in the "interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence." The basic issue is about balancing the freedom of speech and expression on the one hand and undue interference with administration of justice within the framework as permitted by Article 19(2). That should be done without unduly restricting the rights of suspects/accused under Article 21 of the Constitution of India for a fair trial.

There is no difficulty in stating that under our Constitution, the fundamental right of freedom of speech and expression can, by law, be restricted for purposes of contempt of Court. However, this can be done only by law passed by the Legislature and the restrictions that can be imposed on the freedom must be "reasonable". If the restriction imposed by any law relating to contempt of Court is unreasonable, it is liable to be struck down by the Courts on the ground that the restriction is not proportionate to the object sought to be achieved by the restriction.

Undeniably, finding an acceptable balance among free press, fair trials, and the interests of the accused is a difficult task.

NEUTRALITY OF JUDGES

Justice Cardozo, one of the greatest Judges of the American Supreme Court, in his 'Nature of the Judicial Process'[10] referred to the "forces which enter into the conclusions of Judges" and observed that "the great tides and currents which engulf the rest of men, do not turn aside in their course and pass the Judges by".

Another worrying factor and one of the major allegations upon media trials is that of prejudicing the judges presiding over a particular case. Judges, being human beings after all, are not immune from the influences of the media and even if not consciously, they are subconsciously affected by the imputations of guilt or innocence as imparted by the media. Furthermore, the media presents the case in such a manner to the public that if a judge passes an order against the "media verdict", he or she is deemed either as corrupt or biased. The same creates immense pressure on a judge.

Though the American view appears to be that Jurors and Judges are not liable to be influenced by media publications, the Anglo-Saxon view is that Judges, at any rate may still be subconsciously (though not consciously) influenced and members of the public may think that Judges are influenced by such publications and such a situation, it has been held, attracts the principle that "justice must not only be done but must be seen to be done". The Anglo-Saxon view appears to have been accepted by the Supreme Court of India.

While delivering the judgment in the trial court proceedings in the Priyadarshini Mattoo rape and murder case, the Additional Sessions Judge J. P. Thareja has been famously quoted as saying about the accused, Santosh Kumar Singh, that though he knew that "he is the man who committed the crime, he was forced to acquit him, giving him the benefit of doubt." Regardless of the fact that the accused was later convicted on both charges of rape and murder by the High Court, it does not grant a Judge the power to pronounce sweeping statements to the effect that one was "forced to acquit" a person even though he "knew" him to be the perpetrator. It just begs the question that if the Judge "knew" that the accused had committed the crime – an opinion which can only be based on some form of actual evidence – what prevented the Judge from convicting him; and if the reason was a lack of evidence against the accused, then that surely pointed to the fact that the accused was innocent. In actuality, the only basis that the Judge had for "knowing" that the accused was the perpetrator of the crime was the earlier media frenzy and media trial that had convicted the accused and also effectively resulted in planting the seed of bias in the mind of the Trial Judge.

The Supreme Court has held in the case of State of Maharashtra v. Rajendra Jawanmal Gandhi[11] that a trial by press, electronic media or by way of a public

agitation is the very anti-thesis of rule of law and can lead to miscarriage of justice. A Judge is to guard himself against such pressure.

In P. C. Sen (In Re)[12] the Supreme Court observed:

"No distinction is, in our judgment, warranted that comment on a pending case or abuse of a party may amount to contempt when the case is triable with the aid of a Jury and not when it is triable by a Judge or Judges."

With these words, the Supreme Court set at naught the argument that judges, being trained professional, are completely immune and in no way influenced by adverse public opinion in media in sub-judice matters.

In the case of Attorney General v. BBC[13], Lord Dilhorne stated:

"It is sometimes asserted that no Judge will be influenced in his Judgment by anything said by the media and consequently that the need to prevent the publication of matter prejudicial to the hearing of a case only exists where the decision rests with laymen. This claim to judicial superiority over human frailty is one that I find some difficulty in accepting. Every holder of a Judicial Office does his utmost not to let his mind be affected by what he has seen or heard or read outside the Court and he will not knowingly let himself be influenced in any way by the media, nor in my view will any layman experienced in the discharge of Judicial duties. Nevertheless, it should, I think, be recognized that a man may not be able to put that which he has seen, heard or read entirely out of his mind and that he may be subconsciously affected by it. It is the law, and it remains the law until it is changed by Parliament, that the publications of matter likely to prejudice the hearing of a case before a court of law will constitute contempt of court punishable by fine or imprisonment or both".

Similarly, Justice Frankfurter opined in the case of John D. Pennekamp v. State of Florida[14]:

"No Judge fit to be one is likely to be influenced consciously, except by what he sees or hears in Court and by what is judicially appropriate for his deliberations. However, Judges are also human and we know better than did our forbears how powerful is the pull of the unconscious and how treacherous the rational process… and since Judges, however stalwart, are human, the delicate task of administering justice ought not to be made unduly difficult by irresponsible print. The power to punish for contempt of court is a safeguard not for Judges as persons but for the functions which they exercise. It is a condition of that function – indispensable in a free society – that in a particular controversy pending before a court and awaiting judgment, human beings, however strong, should not be torn from their moorings of impartiality by the undertone of extraneous influence. In securing freedom of speech, the Constitution hardly meant to create the right to influence Judges and Jurors."

It appears that the overwhelming judicial opinion is that although judges, being trained adjudicators, are less immune to adverse publicity in media than lay persons, e.g. jurors, in sub-judice matters but they are undeniably also human beings who, in all likelihood, may suffer from the impact of adverse public opinion. More so the concept of natural justice and fair proceedings demands that justice should not only be done but it must be seen to be done. Hence, the apprehension of bias in the mind of an accused with regard to a judge who is exposed to adverse media opinion cannot be completely effaced on a mere presumption that a judge, being a trained person, would be immune from such impact.

REMEDIAL MEASURES V/S PRIOR RESTRAINT

The United States typically relies on remedial measures rather than prior restraints to correct the prejudicial effect media coverage may have on the fair administration of justice while the UK relies on prior injunctions on publications to combat the same.

The United States of America

Unlike the Indian Constitution, the American Constitution does not contain any provision for imposition of reasonable restrictions by law on the absolute terms in which the US First Amendment dealing with freedom of speech and expression is couched. The US judiciary has evolved a theory of "real and present danger" as the only inherent limitation on that right.

In an important line of cases, the US Supreme Court has struck a peculiar balance between the principles of free speech and fair trial, attaching great weight – undoubtedly greater than in any other Western country – to the former.[15] Hence, in the US the permitted restrictions to freedom of speech are narrow and they must only satisfy the test of "clear and present danger".

In the case of Nebraska Press Association v. Hugh Stuart[16], the American Supreme Court vacated a prior-restraint order passed by the trial Judge in a multiple murder case while that case was pending, on the ground that the view of the trial Judge that Jurors are likely to be influenced by the press publications, was speculative. The US Supreme Court stated that the trial court should have resorted to alternative remedies such as – change of venue, postponement of trial, a searching voir dire (that is, the opportunity given to a party in a litigation to object to the selection of a juror who has been exposed to adverse publicity or appears to be biased) of the Jury panel for bias, and sequestration of jurors – before passing a restraint order.

In the said case, the US Supreme Court held nv:

"For although there may in some instances be tension between uninhibited and

robust reporting by the press and fair trials for criminal defendants, judges possess adequate tools short of injunctions against reporting for relieving that tension. To be sure, these alternatives may require greater sensitivity and effort on the part of judges conducting criminal trials than would the stifling of publicity through the simple expedient of issuing a restrictive order on the press; but that sensitivity and effort is required in order to ensure the full enjoyment and proper accommodation of both First and Sixth Amendment rights."

In another case being Sheppard v. Maxwell[17], the US Supreme Court held:

"Due process requires that the accused receive a trial by an impartial jury free from outside influences. Given the pervasiveness of modern communications and the difficulty of effacing prejudicial publicity from the minds of the jurors, the trial courts must take strong measures to ensure that the balance is never weighed against the accused...Of course, there is nothing that proscribes the press from reporting events that transpire in the courtroom. But where there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial, the judge should continue the case until the threat abates, or transfer it to another county not so permeated with publicity. In addition, sequestration of the jury was something the judge should have raised sua sponte with counsel. If publicity during the proceedings threatens the fairness of the trial, a new trial should be ordered. But we must remember that reversals are but palliatives; the cure lies in those remedial measures that will prevent the prejudice at its inception. The courts must take such steps by rule and regulation that will protect their processes from prejudicial outside interferences. Neither prosecutors, counsel for defence, the accused, witnesses, court staff nor enforcement officers coming under the jurisdiction of the court should be permitted to frustrate its function. Collaboration between counsel and the press as to information affecting the fairness of a criminal trial is not only subject to regulation, but is highly censurable and worthy of disciplinary measures."

It appears that in the USA, courts are not in favour of passing orders of "prior restraint" on public issues until and unless there is a "clear and present danger" to a pending or imminent trial. On the other hand, the courts are prone to resort to various remedial measures to regulate media publications and prevent adverse influence of such publications on pending trial.

The following remedial measures are used to keep a check on media publications from adversely influencing a trial:

1. Voir dire
2. Special jury instructions
3. Sequestration
4. Gag orders
5. Change of venue

England

In contrast, in England, fair trials and public confidence in the courts as the proper forum for settlement of disputes is given greater weight than the goals served by an unrestrained freedom of the press. As a consequence, the exercise of free speech respecting ongoing proceedings is more strictly limited. Instead of resorting only to neutralizing devices, this model makes extensive use of penal sanctions – under the doctrine of contempt of court – in order to curb disclosure of facts or statements of opinion that threaten to prejudice the proceedings. In addition, statute-based or court-ordered prior restraints are admitted when necessary to prevent the reporting of specific items of prejudicial information. Furthermore, affected parties would find it easier to recover under defamation law, and their actions would not be automatically trumped by free speech. This model accepts restricting the free flow of information in order to protect the right of the accused to a fair trial and to safeguard public confidence in the administration of justice.

While subsequent punishment may deter some speakers, prior restraint limits public debate and knowledge more severely and prior restraint must be subjected to stringent conditions, whether it is permanent or temporary. Under English law, Section 4(2)[18] of the UK Contempt of Court Act, 1981 requires proof or "substantial risk of prejudice" has to be proved if a postponement order has to be passed by Court. Further, the legal proceeding should be "pending" or "imminent" in nature.

Meaning of "substantial risk of prejudice" in Section 4(2)

In Attorney General v. Newsgroup Newspapers,[19] Sir John Donaldson MR stated :

"There has to be substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced. This is a double test. First, there has to be some risk that the proceedings in question will be affected at all. Second there has to be a prospect that if affected, the effect will be serious. The two limbs of the test can overlap, but they can be quite separate. I accept the submission of counsel for the defendant that substantial as a qualification of risk does not have the meaning of "weighty" but rather means "not insubstantial" or "not minimal". The "risk" part of the test will usually be of importance in the context of the width of publication."

Again, in Ex Parte the Telegraph Group & Others,[20] the Court of Appeal stated that in order to decide if the suppression order is "necessary" in the context of Articles 6 and 10 of the European Convention[21], a three pronged test must be satisfied:

"The first question was whether reporting would give rise to a non-insubstantial risk of prejudice to the administration of justice in the relevant proceedings and if not, that would be the end of the matter; that, if such a risk was

perceived to exist, then the second question is whether a Section 4(2) order would eliminate the risk, and if not there could be no necessity to impose such a ban and again that would be the end of the matter; that, nevertheless, even if an order would achieve the objective, the Court should still consider whether the risk could satisfactorily be overcome by some less restrictive means, since otherwise it could not be said to be "necessary" to take the more drastic approach; and that thirdly even if there was indeed no other way of eliminating the perceived risk of prejudice, it still did not follow necessarily that an order had to be made and the Court might still have to ask whether the degree of risk contemplated should be regarded as tolerable in the sense of being the lesser of two evils; and that at that stage, value judgment might have to be made as to the priority between the competing interests represented by Articles 6 and 10 of the Convention."

In the case of Sunday Times v. United Kingdom[22], the newspaper (Sunday Times) published a series of articles to bring pressure on the Distillers Ltd to settle several pre-trial civil cases which were filed by or on behalf of those affected by thalidomide drug administered during pregnancy to women. The Attorney General commenced proceedings for injunction restraining the newspaper from publishing one in the series which was about to be published. Injunction was granted. But, the Court of Appeal vacated the injunction granted by the Divisional Court. The House of Lords allowed the appeal and restored the injunction. It was held that when the civil cases were pending, it was contempt of court to publish articles pressurizing the Distillers to settle the matters as that would affect the administration of justice. The House of Lords categorically opposed "trial by newspaper" and restored the injunction.

In the said judgement, Lord Reid remarked:

"I think that anything in the nature of prejudgment of a case or of specific issues in it is objectionable, not only because of its possible effect on that particular case but also because of its side effects which may be far-reaching. Responsible 'mass media' will do their best to be fair, but there will also be ill-informed, slapdash or prejudiced attempts to influence the public. If people are led to think that it is easy to find the truth, disrespect for the processes of the law could follow, and, if mass media are allowed to judge, unpopular people and unpopular causes will fare very badly. Most cases of prejudging of issues fall within the existing authorities on contempt. I do not think that the freedom of the press would suffer, and I think that the law would be clearer and easier to apply in practice if it is made a general rule that it is not permissible to prejudge issues in pending cases."

The House of Lords judgement was challenged by the Sunday Times before the European Court of Human Rights at Strasbourg. The Strasbourg Court sought to strike a delicate balance between Article 6 and Article 10 of the European Convention on Human Rights. The Strasbourg Court held on facts that the proposed article by Sunday Times was "couched in moderate terms and did not present just one side of

the evidence or claim that there was only one possible result at which a Court could arrive". It said "There appears to be no neat set of answers…" to the effects of Thalidomide. Therefore, the effect of the article on readers was likely to be 'varied' and hence not adverse to the 'authority of the judiciary'.

The Strasbourg Court accepted that:

"…the concern that the processes of the law may be brought into disrespect and the functions of the courts usurped either if the public is led to form an opinion on the subject-matter of litigation before adjudication by the courts or if the parties to litigation have to undergo "trial by newspaper"... If the issues arising in litigation are ventilated in such a way as to lead the public to form its own conclusion thereon in advance, it may lose its respect for and confidence in courts. Again, it cannot be excluded that the public's becoming accustomed to the regular spectacle of pseudo-trials in the news media in the long run have nefarious consequences for the acceptance of the Courts as the proper forum for the settlement of legal disputes".

The Strasbourg Court has held that a "virulent press campaign against the accused" is capable of violating the right to a fair trial, particularly where the trial is to take place with a jury.[23]

The Court, however, observed:

"The mass media and even the authorities responsible for crime policy cannot be expected to refrain from all statements, such as the mere existence of criminal proceedings or the fact that a suspicion exists. What is excluded however is a formal declaration that somebody is guilty."[24]

When contrasted with the American law, English Courts as well as the European Court at Strasbourg have been more conservative and resorted to prior restraint orders in the event there is a "substantial risk of prejudice" to a pending or imminent trial instead of relying on remedial measures alone. The expression "substantial risk of prejudice" has, therefore, received a more wide interpretation than the "clear and present danger" clause in American law enabling the defendants to obtain prior restraint orders against media publications.

CONTEMPT OF COURTS ACT, 1971 – WHETHER ADEQUATE

In India, publications which interfere or tend to interfere with the administration of justice amount to criminal contempt under the Contempt of Courts Act, 1971. At present, under Section 3(2)[25] of the Act read with the Explanation, full immunity is granted to publications even if they prejudicially interfere with the course of justice in a criminal case, if by the date of publication, a charge sheet or challan is not filed or if summons or warrant are not issued. Such publications would be contempt only if a criminal proceeding is actually pending i.e. if charge sheet or

challan is filed or summons or warrant are issued by the Court by the date of publication. Unlike the British law, the protective umbrella in the Indian law extends only to "pending proceedings" and not to "imminent proceedings".

This inadequacy in the Indian law has been extensively dealt with under the 200th Report of the Law Commission of India on "Trial by Media: Free Speech v/s Fair Trial under Criminal Procedure (Amendments to the Contempt of Courts Act, 1971)" and the Commission has recommended relevant amendments to the Contempt of Courts Act, 1971 to address the damaging effect of sensationalized news reports on the administration of justice. The Commission has suggested that the starting point of "imminence" of a criminal case should be deemed from the time of arrest of an accused (referred to as "active criminal proceeding") and not from the time of filing of the charge sheet (referred to as "pending criminal proceeding"). Further, borrowing from the UK Contempt of Court Act, 1981, the Commission felt the need to empower the Courts to pass "postponement" orders as to publication when it is proved that there is "real risk of serious prejudice". Any breach of a postponement order will be contempt as is provided in the UK as well.

In 2006, the Contempt of Courts Act was amended and truth as a valid defence was incorporated in the said legislation.[26]

Section 13
Contempt's not punishable in certain cases

In the R.K. Anand case[27], this provision was pressed into service to justify the sting operation during pending trial so as to expose the attempts of the accused to win over prosecution witnesses. It was argued that publication of such sting operation, which was in fact true, was in public interest and to ensure the purity of the ensuing trial rather than to corrupt the clear stream of justice. Such argument was accepted by the Supreme Court. While in the aforesaid case, truth may have been a valid justification for publication of a sting operation in that factual matrix, it may be argued that a frequent and liberal resort to this justification doctrine may result in a glut of pre-trial and judgemental adjudication by the press on the premise that their investigative journalistic efforts were in search of "truth" (as they perceived it to be) and was in the larger public interest. The perception of truth is not only subjective in nature but also dependent on the material and information collected by a particular agency. It is, therefore, debatable as to whether truth as a valid defence published in larger public interest prior to adjudication by the judicial authority on the selfsame matter in issue is justified. To permit such a course may, more often than not, amount to usurpation of the judiciary's role by the press.

CATEGORIES OF MEDIA PUBLICATIONS WHICH ARE RECOGNIZED AS PREJUDICIAL TO A SUSPECT/ACCUSED

Analysis of the law with regard to the adverse affect of the media publication

on an imminent or pending criminal proceeding may be summarized in the following categories:

1. Publications concerning the character of accused or previous conclusions
2. Publication of confessions
3. Publications which comment or reflect upon the merits of the case
4. Photographs of accused/suspects/victims
5. Graphic details of investigation or its proposed future course
6. Creating an atmosphere of prejudice
7. Criticism of witnesses
8. Premature publication of evidence
9. Publication of interviews with witnesses

CONCLUSION & SUGGESTIONS

The role of a responsible press has been aptly summed up in the the case of Bijoyananda v. Bala Kush[28]:

"The responsibility of the press is greater than the responsibility of an individual because the press has a larger audience. The freedom of the press should not degenerate into a licence to attack litigants and close the door of justice nor can it include any unrestricted liberty to damage the reputation of respectable persons."

One of the essential attributes of fair trial is that the same should be held in public and not in camera.[29] Prompt and objective media reporting ensures a fair trial through continuous scrutiny particularly when the legal battle is between two unequals – a powerful individual being pitted against a weak opponent. However, the trouble begins when media reporting with regard to criminal investigation or pending legal proceedings tend to be judgemental and acquire a definite slant. In such occasions, the media usurps the role of the investigating agency under the garb of "investigative journalism" or the adjudicatory role exclusively reserved for the judiciary. This tendency severely affects the fairness of any investigational effort or a legal proceeding. Notwithstanding the undeniable benefits of an ever-vigilant media in a democratic society, an overenthusiastic judgemental media role is an anathema to the cherished object of "fair trial and procedure". Apart from the legal safeguards as discussed, it is the inbuilt concept of self-restraint of media which can ensure a balanced role of a watchdog in society instead of being a bloodhound which bays for the blood of its prey on the pre-conceived belief of guilt. The biggest fear of such a motivated media particularly in the days of "paid news" – is the fact that publications may be through the skewed prism of bias prompted by "money power" or majoritarian prejudices. Rule of Law, sadly, would drown in the cacophony of Rule by Media.

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1 R v. Sussex Justices; Exparte McCarthy (1924) 1 KB 256, at 259

2 1959 SCR 12

3 1989 (2) CHN 252

4 AIR 1958 Punjab 273

5 (2009) 8 SCC 106

6 1995 (1) NZLR 45

7 2005 (2) SCC 686

8 2005 (1) ALT 740

9 (1982) 2 SCC (Jour) 1

10 Lecture IV, "Adherence to Precedent. The Subconscious Element in the Judicial Process", (1921) Yale University Press

11 1997 (8) SCC 386

12 AIR 1970 SC 1821 at 1829

13 1981 AC 303 (HL)

14 (1946) 328 US 331

15 Among the more important rulings on the relationship between the First Amendment and fair trial rights, see Nebraska Press Association v. Hugh Stuart, 427 U.S. 539 (1976) (holding prior restraint in a murder case was unconstitutional and did not serve the defendant's rights); Sheppard v. Maxwell, 384 U.S. 333 (1966) (finding that certain press behaviour may be so prejudicial as to interfere with defendants' due process rights); and Bridges v. California, 314 U.S. 274 (1941) (reversing contempt of court convictions editorials published in local newspapers regarding a pending trial). On the limitation of freedom of speech of trial participants, see Gentile v. State Bar of Nevada, 501 U.S. 1030 (1991) (allowing State Bars to regulate lawyers' public statements that have a "substantial likelihood of material prejudice"). On the particular issue of disclosure of rape victims' identities, see Florida Star v. B.J.F., 491 U.S. 524 (1989) (holding for a rape victim whose privacy was invaded unlawfully when a newspaper, violating Florida law, published the victims' names), and Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975) (finding that rape victims' privacy rights fade when their names appear in the public judicial record).

16 (1976) 427 US 539

17 384 US 333 (1966)

18 Section 4(2): In any proceedings, the Court may, if it appears to be necessary for avoiding a substantial risk of prejudice to the administration of justice in those proceedings, or in any other proceedings pending or imminent, order that the publication of any report of the proceedings or any part of the proceedings, be postponed for such period as the Court thinks necessary for that purpose.
19 1986 (2) All ER 833

20 2001 (1) WLR 1983 (CA)

21 The European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950; Article 6 deals with the right to a fair trial and Article 10 deals with freedom of expression.

22 (1979) (2) EHRR 245

23 X v. Austria, (1963) 11 C.D. 31 at 43

24 Application No. 9433/81 (unreported), (1981) 2 Dig. 738

25 Section 3(2): Innocent publication and distribution of matter not contempt –

(2) Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, the publication of any such matter as is mentioned in sub-section (1) in connection with any civil or criminal proceeding which is not pending at the time of publication shall not be deemed to constitute contempt of court.

Explanation.—For the purposes of this section, a judicial proceeding—

(a) is said to be pending—

(A) in the case of a civil proceeding, when it is instituted by the filing of a plaint or otherwise,

(B) in the case of a criminal proceeding under the Code of Criminal Procedure, 1898 (5 of 1898), or any other law—

(i) where it relates to the commission of an offence, when the charge-sheet or challan is filed, or when the court issues summons or warrant, as the case may be, against the accused, and

(ii) in any other case, when the court takes cognizance of the matter to which the proceeding relates, an in the case of a civil or criminal proceeding, shall be deemed to continue to be pending until it is heard and finally decided, that is to say, in a case where an appeal or revision is competent, until the appeal or revision is heard and finally decided or, where no appeal or revision is preferred, until the period of limitation prescribed for such appeal or revision has expired;

(b) which has been heard and finally decided shall not be deemed to be pending merely by reason of the fact that proceedings for the execution of the decree, order or sentence passed therein are pending.

26 Section 13: Contempt's not punishable in certain cases –

Notwithstanding anything contained in any law for the time being in force,—

(a) no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice;

(b) the court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bona fide.

27 Supra note 5

28 AIR 1953 Orissa 249

29 Section 327: Court to be open –

(1) The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open court to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room building used by the court.

(2) Notwithstanding anything contained in sub-section (1), the inquiry into and trial of rape or an offence under section 376, section 376A, section 376B, section 376C or section 376D of the Indian Penal Code (45 of 1860) shall be conducted in camera:

Provided that the presiding Judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the court.

(3) Where any proceedings are held under sub-section (2), it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission of the court.

OUR EQUITY JURISDICTION

I. P. Mukerji

I am privileged by the invitation extended to me by Mr. Sondwip Mukherjee of the Bar Library Club to write a few words on the occasion of the 150th Anniversary of our High Court.

Many of us are enamoured by the word 'equity'. We make observations that orders are being passed because it is equitable to do so. In this article, I propose to shortly recount the origin of equity and its application and relevance in our High Court.

After the Norman Conquest, absolute power resided with the King of England. He established the law courts which came to be known as the common law courts. They were the King's Bench, Court of Common Pleas and Exchequer. These common law courts initially applied the law of the Sovereign. Then statute intervened. By the Statute of Westminster 1285 common law remedies were curtailed. Sometimes, the orders that were passed by these courts worked injustice and caused great hardship. In those circumstances, the subjects had the right to petition the King for redress. Principles of morality and the conscience of the Monarch influenced the orders that he passed on these petitions. Orders were passed to relieve the judgment debtor of all or some obligations under the decree passed by the common law courts. The Monarch was said to be doing 'equity' and that is how the term evolved.

With the passage of time this function of the Monarch was delegated to the Chancellors drawn from the clergy, who applied their notions of canon law, morality and good conscience to deal with those petitions. Recognition of this was found in the Order of Edward III in 1349. There was no defined standard. Similar orders were not passed in similar cases. Orders were made as the Chancellors thought fit and proper. From the time of the Tudors common law lawyers were appointed as Chancellors.

As the concept of good governance developed it was also realized that in order that the courts had credibility, there should be some uniformity in their standards and consistency in the justice delivery system. In other words, like cases had to be treated alike, as far as possible. The early Lord Chancellors to name a few were Wolsey (16th century), and Thomas More (16th century), Lord Ellesmere (1596-1617), Lord Nottingham (1673-82) and Lord Hardwicke. Nevertheless, there was great inconsistency in the decision of each Chancellor in a particular case with the decision in an earlier similar case. That is why it was often said that orders varied with the length of the foot of the Chancellor.

However, by the turn of the eighteenth century, the rules of 'equity' also became well-defined and quite rigid. While administering the equity jurisdiction, the courts invented amongst others the remedy of injunction, specific performance, the law of trusts so as to do complete justice between the parties. In the beginning of the nineteenth century a very prominent Chancellor was Lord Eldon (1801-1827) who took a lot of time to decide and who famously said that it was better to doubt before deciding than doubting after deciding. It is very important to note that by that point of time the notion of morality or conscience of a particular judge was not decisive in deciding a particular case. The Chancellor had to decide each case according to existing principles. In these circumstances, the celebrated Judge Jessel MR said "The Court is not as I have often said a Court of conscience but a Court of law" (Re National Funds Assurance Co (1878) 10 Ch D 118 at 128). This was an ironical statement from him. But I suppose by that time equity had been firmly entrenched in the common law.

As I have already said, the birth of the equitable jurisdiction exercised by the Courts was due to the frequent injustice caused by the orders passed by the common law courts. The expansion of the equitable jurisdiction was a result of successful attempts by the Lord Chancellors to bend the law, by applying principles of good conscience and morality, so that justice could be done between the parties. But there was no scope for breaking the law. That is why it is said that equity follows the law. For example, when a seller of property threatened to break his promise to convey the property to the buyer, by selling it to a third person, the buyer was not fully redressed by the damages which might have been awarded. The common law courts awarded only damages. The property was invaluable to the buyer. Money could not compensate his loss of it. The courts of equity intervened by granting an interlocutory injunction restraining the vendor from selling the property to a third party and at the end of the trial ordered specific performance of the agreement. Similarly, legal owners and custodians of property were declared to be holding them on trust as trustees for the person who was for all intent and purpose the real owner of the property, described by the equity courts as the cestique trust. Similarly, equity provided relief to deserted wives by declaring that the matrimonial home to which they had contributed in monetary form or otherwise was charged to that extent to secure their maintenance claim.

In England there was fusion of law and equity in 1875. There was, nevertheless, scope for continuous expansion of this jurisdiction. Lord Denning was the greatest master in modern times in identifying equitable principles and developing them into profound legal principles of universal and timeless application.

Now, the question is: how far this equitable jurisdiction of the courts of England is vested in this High Court?

By an Act of the English Parliament enacted in the 24th and 25th years of the

reign of Queen Victoria, Her Majesty was given the power to promulgate Letters Patent to establish amongst others a High Court of Judicature at Fort William in Bengal. The High Court was so established by Letters Patent in the 25th year of her reign on 14th May 1862. Thereafter, by another Act in the 28th year of her reign, powers were given to the Queen by Parliament for issuance of Letters Patent to make "further provision respecting the territorial jurisdiction of the High Court". In exercise of that power, on 28th December 1865, the present Letters Patent were made.

Clause 2 enacted that the jurisdiction which was hitherto exercised by the High Court would be continued to be exercised.

It was in these terms:

"And We do by these presents grant, direct and ordain, that, notwithstanding the revocation of the said Letters Patent of the Fourteenth of May, One thousand eight hundred and sixty-two, the High Court of Judicature, called the High Court of Judicature at Fort William in Bengal, shall be and continue, as from the time of the original erection and establishment thereof, the High Court of Judicature at Fort William in Bengal for the Bengal Division of the Presidency of Fort William aforesaid; and that the said Court shall be and continue a Court of Record, and that all proceedings commenced in the said High Court prior to the date of the publication of these Letters Patent shall be continued and depend in the said High Court as if they had commenced in the said High Court after the date of such publication, and that all rules and orders in force in the said High Court immediately before the date of the publication of these Letters Patent shall continue in force, except so far as the same are altered hereby, until the same are altered by competent authority."

Furthermore, clauses 19, 20 and 21 provided that the law to be administered by the High Court would be the law and equity which would have been applied had the Letters Patent not been issued. Clause 19 was as follows:

"19. By the High Court in the exercise of ordinary original civil jurisdiction – And We do further ordain that, with respect to the law or equity to be applied to each case coming before the said High Court of Judicature at Fort William in Bengal, in the exercise of its ordinary original civil jurisdiction, such law or equity shall be the law or equity would have been applied by the said High Court to such case if these Letters Patent had not issued."

Clauses 20 and 21 were identical. They applied to extraordinary original civil jurisdiction and to exercise of appellate jurisdiction by the High Court.

The Letters Patent nevertheless stated that the application of the above law was subject to the Letters Patent and also subject to changes made by the 'competent authority' in the future.

It goes without saying that the jurisdiction which the High Court was exercising before enactment of the Letters Patent was that of the High Court of England & Wales. That jurisdiction was recognised and as far as applicable vested in the High Court. Now, Article 372 of the Constitution of India provides, inter alia, that all the laws which were in force at the time of commencement of the Constitution would continue. Similarly, Article 225 of the Constitution enacts that the law administered by the existing High Courts and their jurisdiction would also be the same. Therefore, our High Court retains the same equitable jurisdiction which it had 150 years ago at the time of its foundation.

We enacted and gave to ourselves our Constitution on 26th November 1949. It grants an extraordinary jurisdiction to the High Court. Article 226 specifically confers it. It says that the High Court can issue to any person or authority any order for any purpose. In my judgement, our jurisprudence has explored this jurisdiction as much as a navigator can fathom an iceberg by looking at its tip. It is a veritable storehouse of the equity jurisdiction of the High Court, which needs to be invoked more fully.

At this stage, I would like to add that the principles of equity have undergone progressive codification, as a result of which they do not always remain common law but are embodied in statute law. As examples, I can quote the Specific Relief Act, 1963, the Indian Trust Act, 1882, the Civil Procedure Code and Statutes codifying the law relating to equitable mortgage, maintenance, estoppel and so on. The Legal Services Authorities Act, 1987 gives recognition to the constitutional principle that the poor or the disadvantaged should not be denied legal assistance. Legal advice, assistance and monetary aid are provided by the Legal Services Authorities established by and under the above Act.

A significant progress was made with the evolution of public interest litigation. The Hon'ble Supreme Court identified a principle whereby the poor or the socially backward or any other disadvantaged person or sections of the society could be represented in court by a public spirited person to redress a legal wrong committed by public authorities. In my opinion, this is an expansion of the equity jurisdiction of our courts to enlarge the number of persons who can be the beneficiaries of the legal system relaxing the law relating to locus standi. (See Fertilizer Corp Kamgar Union – v – Union of India, (1981)1 SCC 568- paragraphs 37, 38, 43, 47 and 48 of the judgment of Krishna Iyer, J.; Bandhua Mukti Morcha vs. Union of India, [1984] 3 SCC 161-Judgment of P.N. Bhagwati, J.; S.P. Gupta vs. Union of India 1981 (Supp) 5 CC 87 and other subsequent cases.)

I am of the opinion that there is also need to develop and expand this law into private law domains. A poor or disadvantaged person, who is unable to read or write but nevertheless has a right to protect, should be capable of being represented by a humane person in a court of law. Our Code of Civil Procedure provides for minors, idiots and lunatics to be so represented (OXXXII). But there is no provision for such

representation for a person who is unable to understand his legal rights or to explain them to a lawyer or to a court or even sign a petition. I do not think that the principles of order 1 Rule 8 of the Code of Civil Procedure, providing for representative action or the Legal Services Authorities Act, 1987 can take care of these individual cases.

The frontiers for expansion of this doctrine are endless.

Victims of unequal bargaining power need more protection. The care shown by one's parents and spouse should be capable of a monetary value, and of being declared as a charge on the property of an uncaring offspring or spouse. Similar should be the remedy for a neglected child. But no judge has the right to break the law, in passing equitable orders. So, where the law cannot be moulded, legislation should be recommended by the Judges.

I hope our equitable jurisdiction will continue to blossom and conquer new grounds.

THE HIGH COURT AT CALCUTTA & CORPORATE LAWS

S. B. Mookherjee

I am one of the fortunate few who have witnessed the celebrations of the Centenary of the High Court at Calcutta, participated in the function commemorating the 125th year of the High Court, and who are waiting to participate in the Sesquicentenary Celebrations of this Court, to be held in 2012.

The present book, which is intended to be released on the occasion of the Sesquicentenary Celebrations of the Calcutta High Court, is likely to contain contributions by the Learned Judges, members of the legal fraternity, and others.

I have been asked to write a few words on the role played by the Calcutta High Court in interpreting and implementing the Corporate Laws in India.

I have been dealing with the Companies Act, 1956 from day one in the sense that I was called to the Bar on November 22, 1955 by the Hon'ble Society of Lincoln's Inn, London and on returning to India in January 1956, had to roam the corridors of this High Court for over a year as I had not done my chamber reading in England. I had to devil with one of the then seniormost lawyers of our Court, the late Sankardas Banerjee. I was enrolled as an Advocate of the Calcutta High Court on March 12, 1957 and the Companies Act, 1956 came into force on the April 1, 1957. I was told by Sankardas Banerjee that as a raw junior, I would not follow or learn anything in his chambers. So he suggested the name of Subimal Chandra Roy who, in his turn, on the same plea referred me to the chambers of Samarendra Chandra Sen. I consider the late Samarendra Chandra Sen as my "guru". I was the first Advocate to join his chambers as a junior. His practice was more or less confined to the Company Court, dealing with various company matters. In the year 1957 Samarendra Chandra Sen was not a senior advocate and was commanding a fee of only 10 GMs for drafting pleadings and also for appearance in Court. But later on, because of his superb advocacy, knowledge of the law, erudition and fearlessness, he became the leading lawyer in the Company Court. At that point of time Ranadeb Chowdhury gradually shifted his practice to the Writ Court and also Mining Laws. The Dhanbad Court was well-known in those days for resolving disputes regarding Mining Laws and running of coal and iron mines.

The Calcutta High Court played a pioneering role in the interpretation and implementation of the provisions of the Companies Act, 1956. Prior to that, the number of company proceedings was not so large and it was mainly the Calcutta

High Court and the Bombay High Court which decided cases on Company Law. If one looks up the various law reports, one would find numerous cases decided by the Calcutta High Court. I have seen Learned Judges like S. R. Dasgupta, J., P. B. Mukharji, J., R. S. Bachawat, J., H. K. Bose, J., S. P. Mitra, J., Bimal Chandra Mitra, J. and a host of other Learned Judges presiding over the Company Court and laying down the law.

Justice Prasanta Bihari Mukharji, in the year 1958, while interpreting the scope of Section 402 of the Companies Act, 1956 had observed: "the pattern of Court's power of managing under Section 402 has to be worked out. The Section is an innovation in company administration by the Court". In that judgement, His Lordship laid down a scheme which His Lordship hoped would not only be useful for the purpose of that case but also serve as a basis in appropriate cases. His Lordship appointed a "board of advisors" to advise a Special Officer appointed over the company called Richardson and Cruddus Limited (Life Insurance Corporation of India, Applicant – vs – Haridas Mundhra & Ors. (Respondents). In fact, the whole gamut of Sections in Chapter VI of the Act have been held to be a complete code and provide, inter alia, a breakdown machinery when the normal corporate management has failed.

It was the Calcutta High Court which laid down the law in the case reported in AIR 1966 Calcutta 512 (Rama Sankar Prasad & Ors., Appellants – vs – Sindhri Iron Foundry Pvt. Ltd. & Ors., Respondents), that even majority shareholders are entitled to invoke the Court's jurisdiction under Sections 397 and 398 of the Act. In the background of the provisions contained in Section 210 of the English Companies Act, 1948 and Section 153C of our Companies Act, 1913 as amended in 1951, our Division Bench held that no upper limit is specified as in the English Act of the shareholders who are competent to apply under Section 397 and 398 of the Companies Act, 1956. In other words, even a majority group of shareholders are eligible to apply under these Sections provided a proper case is made out. The case also decided that the oppression or mismanagement need not be of a long duration and a single act of oppression and mismanagement, if it had a cascading effect, would satisfy the test of continuous and continuing mismanagement or oppression.

I must also refer to another important case decided by our High Court which is reported in (1980) 50 Company cases 771 (Debi Jhora Tea Co. Ltd. – vs – Barendra Krishna Bhowmick and others). Our Division Bench, inter alia, observed at Pages 782-783 of the said report:

"It should be borne in mind that when a Court passes an order under Sections 397, 398 and 402 as has been done in the instant case there could be no limitation on the Court's power while acting under the sections. Instead of winding up a company, the Court under the abovementioned sections has been vested with ample power to continue the corporate existence of a company by passing such orders as it thinks fit in order to achieve the objective by removing any member or members of a company

or to prevent the company's affairs from being conducted in a manner prejudicial to the public interest. The Court under Section 398 read with Section 402 of the Act has the power to supplant the entire corporate management. Under the aforesaid sections, the Court can give appropriate directions which are contrary to the provisions of the Articles of the company or the provisions of the Companies Act."

So far as winding up under the just and equitable and insolvency clauses are concerned, the law was laid down by the Calcutta High Court in Hind Overseas Pvt. Ltd.'s case. This judgement was reversed by the Appeal Court, but the Hon'ble Supreme Court upheld the judgement of the Learned Single Judge. The case is reported in AIR 1976 SC 565 (Hind Overseas Pvt. Ltd.). In this case, AIR 1976 SC 565, the Supreme Court also observed:

"Although the Indian Companies Act is modelled on the English Companies Act, The Indian law is developing on its own lines. Our law is also making significant progress of its own as and when necessary."

Equally important was the case of our Division Bench on the aspect of winding-up under the just and equitable and insolvency clauses in the case reported in AIR 1954 Calcutta 499 (Bukhtiarpur Bihar Light Railway Co. Ltd., Appellant – vs – Union of India & Anr., Respondents).

The High Court retains jurisdiction as of today regarding sanctioning of schemes and there have been many cases of our High Court laying down the law on the subject. The judgement of the Supreme Court, reported in AIR 1997 SC 506 (Miheer Mafatlal's case) has dealt with the powers and duties of the Court while sanctioning schemes under Section 391 of the Companies Act, 1956. In this judgement, the Hon'ble Supreme Court has quoted a passage in extenso from a judgement of the Calcutta High Court on the scope of the Court's powers while sanctioning a scheme. In that case the Supreme Court also observed:

"The Court certainly would not act as a Court of appeal and sit in judgement over the informed view of the concerned parties to the compromise as the same would be in the realm of corporate and commercial wisdom of the concerned parties. The Court has neither the expertise nor the jurisdiction to delve deep into the commercial wisdom exercised by the creditors and members of the company who have ratified the Scheme by the requisite majority. Consequently, the Company Court's jurisdiction to that extent is peripheral and supervisory and not appellate. The Court acts like an umpire in the game of cricket who has to see that both the teams play their game according to the rules and do not overstep the limits. But subject to that how best the game is to be played is left to the players and not to the umpire".

I remember that a learned lawyer from another High Court who had specialized in Company Law, had come to see me several years ago in Kolkata. This

was a sequel to my advancing arguments before the Company Law Board and citing an unreported judgement of the Calcutta High Court. He came to see me and asked for reference of other important unreported judgements of the Calcutta High Court. I provided the details to him and through a law journal he obtained the certified copies of such judgements of the Calcutta High Court and advanced those arguments in various other matters as if those matters were being argued for the first time by him and the law was laid down by other High Courts. I thought this was not proper nor fair and at least an acknowledgement should have been made that these points were decided by the Calcutta High Court earlier.

The Government's policy, however, has been to constitute Tribunals, Law Boards and other statutory bodies to decide company matters. As a result of such policy of the Government, the High Court has practically been denuded of its power of deciding company matters except for winding matters and scheme applications and those winding-up matters are utilized as an equitable mode of execution of the undisputed debt. One hardly comes across any winding-up case now-a-days under the just and equitable clause. Amendments sought to be brought about by the Bill which is pending before the Parliament now would be taking away the entire jurisdiction of the Company Court and vesting such jurisdiction in the Tribunal to be constituted under the Act. Thus a very important jurisdiction, namely the Company Law, will be taken away if the Bill is passed in the Parliament for amendment of the Companies Act and we would have to content ourselves with the judgements of the Companies Tribunal and the Regional Tribunals (Law Boards), now functioning at Delhi (Principal Bench), Kolkata, Mumbai and Chennai. So the Calcutta High Court, which played such an important role in interpreting and implementing the corporate law, would no longer be able to lay down the law on the subject and we will have to rest contented with the laws laid down earlier by our High Court. However, I sincerely hope and believe that the Company Court, which played such an important role in the past, will again assume the jurisdiction over company matters and play an important role in laying down the law and in resolving corporate disputes.

I must also mention some other statutes in the interpretation and implementation of which our High Court has played a leading role. The Monopolies & Restrictive Trade Practices Act, 1969 which was enacted to prevent concentration of economic power to the common detriment, for the control of monopolies, for the prohibition of monopolistic and restrictive trade practices etc, failed to achieve the objective. This Act instead of facilitating growth of industries resulted in a deterrent enactment. It restricted healthy competition and helped perpetuate License Raj. Ultimately it proved to be a damp squib and served no purpose.

Similarly, the Sick Industrial Companies (Special Provisions) Act, 1985 instead of helping to revive such companies increased litigation before the Board for Industrial & Financial Reconstruction and the Appellate Authority for Industrial & Financial Reconstruction. Very few companies were revived under this Act and it ultimately proved to be a dead letter.

The provisions of the Companies Act, 1913 having been found to be inadequate to deal with the Banking Companies, particularly those which went into liquidation just preceding or following the attainment of Independence, The Banking Companies Act, 1949 was enacted. The name of the Act was later changed to Banking Regulation Act, 1949. The Official Receiver attached to our High Court used to discharge the functions of the Official Liquidator and used to be known as "Court Liquidator."

I will refer to only one particular Section of this Act, viz S. 45B which occurs in the Chapter dealing with speedy disposal of winding-up proceedings. This Section was construed by our High Court as providing a summary and exclusive remedy in appropriate cases for disposal of all questions of fact and law which arose in respect of a Banking company in liquidation. The same provisions are also incorporated in Sec. 446 of the Companies Act, 1956. The judgement of our High Court rendered in the matter of Associated Bank of Tripura Ltd. was affirmed by the Supreme Court in AIR 1955 SC 213 (Dhirendra Chandra Pal – vs – Associated Bank of Tripura Ltd.). This judgement which approved of our High Court decision still remains the leading case on the subject. (See also our Division Bench judgements reported in (1990) 67 Company Cases 16 (In re Sakow Ltd.) and 67 Company cases 394 (Vidyadhar Upadhyay vs Sri Sri Madan Gopal Jew).

Having regard to the mandate which I have to adhere to I refrain from dealing with many other Statutes, i.e. The Securities Contracts (Regulation) Act, 1956, The Securities and Exchange Board of India Act, 1992 etc, in respect of which our High Court also played a leading role.

PREROGATIVE WRITS AND THE CALCUTTA HIGH COURT IN THE PRE-CONSTITUTION ERA

Bhaskar P. Gupta

i

A Writ is a written order or warrant. The Writ process had its origin in the continent of Europe. From the 12th century, it gradually developed in England. The Writs were issued in the name of the King addressed to the defendant to appear in Court at a specified time. It was in the nature of a command to the Sheriff to be enforced upon the defendant. Original Writs were issued in litigation between private parties but when the Crown was involved, these Writs came to be known as "Prerogative Writs".

The development of the Writ Jurisdiction of the Calcutta High Court has a long and complicated history. If we start from Section 223 of the Government of India Act, 1935, it will take us back to Section 106 of the Government of India Act, 1915. From there, we have to go further back to the Letters Patent of 1865 which replaced the Letters Patent of 1862 and then to the Indian High Courts Act of 1861 which, in turn, throws us further back to still older Statutes and Charters. All these have to be pieced together "into a mirror of the past in which one may catch the reflection of the law of today", to use the words of Sri Arthur Egger in his Laws of India, Part III, Page 62.

These old Statutes, Charters etc. were so pieced together in a very erudite judgment of Acting Chief Justice Ameer Ali and Justice Das in 1944 [48 Calcutta Weekly Notes, Page 76 (Re: Banwarilal & Others)].

To understand this history it is best to begin at the beginning. The jurisdiction, powers and authority of the Calcutta High Court have their origin in ancient English Statutes and Charters granted by the sovereign of England to East India Company, which was established by a Charter of Queen Elizabeth I in 1600. The Company was established for the purpose of trading only. But, by that Charter it was also empowered to make laws for the good governance of the Company, its employees, officers etc. and for the better advancement and continuance of trading and to impose punishments and fines in enforcement of those laws. Those laws and punishments were, however, not to be repugnant to the laws of the realm.

Gradually the Company established factories and acquired territories in India and for the protection of its territories and servants and for further acquisition it was empowered to raise an army, make war and peace and exercise Governmental

functions. The military supremacy of the East India Company, however, began with the battle of Plassey in 1757. In 1765, the Company obtained the grant of the Dewani of Bengal, Behar and Orissa from Emperor Shah Alam and thus secured "the substance, though not the name, of territorial power".

Either out of policy or of necessity, the British Crown did not all at once and directly assume the sovereign powers but as between the Crown and the Company it was distinctly agreed by an Act of 1813 that the possession and Government of British territories were being continued in the Company "without prejudice to the undoubted sovereignty of the Crown". This sovereignty of the British Crown was reiterated by the Government of India Act, 1833 and it was acknowledged by the Company that it remained in possession of the territories "in trust for His Majesty".

With the growth of the East India Company, it became necessary to establish Courts of Justice within the territories under the control of the Company. The Letters Patent of 1726 granted by King George I recited that the Company by strict and equal distribution of justice very much encouraged not only the British subjects but subjects of princes and natives to resort to and settle their disputes both in civil causes and criminal matters. These Letters Patent established and constituted three several Courts of record known as "Mayor's Court" (consisting of a Mayor and nine Aldermen) in Fort William in Bengal, in Madras and in Bombay. The Civil Jurisdiction of the Mayor's Court at Calcutta was dependent upon the residence of the defendant as well as the accrual of the cause of action within the town or factory of Calcutta at Fort William in Bengal, or within any of the factories subject or subordinate thereto. It was not limited as to territory to the town of Calcutta or as to persons, to European British subjects. There was a right of appeal to the Governor General in Council. This was also the case with regard to the criminal jurisdiction conferred on the Governor and five senior members of the Council constituted as a Court of Oyer and Terminer and Gaol Delivery. They were also made the Justices of the Peace.

These Letters Patent of 1726 were surrendered by the East India Company to King George II and the Company obtained fresh Letters Patent in 1753. By these Letters Patent the Mayor's Courts were limited in their Civil jurisdiction to suits between persons not natives, and suits between natives were directed not to be entertained by them unless by consent of the parties. The Mayor's Courts practically excluded Indians from having any share in the administration of justice in India. The only capacity in which Indians were allowed to participate in the administration of justice was as jurors in the Sessions Court. Even this privilege was restricted to only those who accepted the Christian religion.

After the East India Company secured the Dewani of the three provinces of Bengal, Behar and Orissa in 1765, it set up Courts of Civil and Criminal jurisdiction for the Mofussil. The Moffusil Diwani Adalat was established for administration of civil justice, with a right of appeal to the Sadar Diwani Adalat in Calcutta. For

criminal justice, the Faujdari Adalat was set up with right of appeal to the Sadar Nizamat Adalat at Calcutta. These Courts were not the King's Courts but were the Company's Courts established by the Company on the authority derived from the Mogul Emperor. This had nothing to do with the Mayor's Court or its successors.

In 1773 came the Regulating Act, the object of which was to impose control over the Company and its servants both in England and in India. It provided for the appointment of the Governor General and Council in Bengal. It also empowered the Crown by Charter to erect and establish a Supreme Court at Fort William with full power and authority to exercise and perform all Civil, Criminal, Admiralty and Ecclesiastical jurisdictions. Pursuant to this Act, King George III issued a Charter dated 26th March 1774 establishing a Court of Record called the "Supreme Court of Judicature at Fort William in Bengal". Clause 3 prescribed the number of judges, their qualification and tenure of office. From the various Clauses of this Charter of 1774, it would be noticed that the jurisdiction of the Supreme Court extended throughout the Presidency though it was not in terms limited as to persons. The only condition of civil jurisdiction of the Supreme Court in the matter of suits and actions was that the defendant must be one of the six classes of persons mentioned. The jurisdiction was not confined to the town of Calcutta but extended to the whole of the Presidency. In other words, the Civil jurisdiction had no territorial limit except the limits of the Presidency.

The Supreme Court was a Crown's Court. Sri Elijah Impey was the first Chief Justice while Stephen C. Lemaistre, Robert Chambers and John Hyde were the three Puisne Judges. So far as the jurisdiction of the Supreme Court in the matter of issuing the High Prerogative Writs was concerned, Clause 21 of the Charter of 1774 expressly empowered the Court to issue Writs of Mandamus, Certiorari, Procedento or Error. The recorded cases of the Supreme Court also indicate that it freely issued the Writs of Habeas Corpus in addition to the four Writs mentioned above. Question arose in early cases decided by the Calcutta High Court as to how this Writ of Habeas Corpus was being issued by the Supreme Court when Clause 21 of the Charter of 1774 mentioned only four Writs to be within the powers of the Supreme Court to issue. This was answered by saying that under Clause 4 of the Charter of 1774 the Supreme Court had been given all the jurisdiction and authority of the Court of King's Bench of England and this power was not curtailed in any way by limiting the power given under Clause 21 to issue the four Writs only.

It may be mentioned that Sir Elijah Impey, the First Chief Justice of the Supreme Court, drafted the Charter of 1774 and took good care to give himself as wide powers as he could. This was in fact one of the Articles of impeachment against him in the House of Commons. There were, however, ambiguities and vagueness in the language of the Regulating Act and the Charter. As a result, frequent conflicts arose between the judiciary and the executive as to their respective powers. A Parliamentary Enquiry was held in England into the administration of justice in Bengal, and the Act of Settlement of 1781 came to the passed. The Governor General

and Council of Bengal were not made subject to the jurisdiction of the Supreme Court and protection was given to any person acting under an order in writing of the Governor General and Council. In short, substantially and virtually the Act of Settlement 1781 was in favour of the Governor General and Council and against the Supreme Court on all points of conflict.

The position of the Supreme Court at Calcutta as regards its jurisdiction, powers and authority continued to be the same from 1781 right upto 1858.

After the Sepoy Mutiny of 1857, the British Crown took over the territories and Government of British India from the Company by the Government of India Act, 1858. From this point of time India came to be governed directly by and in the name of the Crown, acting through the Secretary of the State aided by a Council.

In 1861, the Indian High Courts Act was passed by the British Parliament which authorised Her Majesty Queen Victoria by Letters Patent to erect and establish High Courts in the three presidencies. According to the provisions of the Act such High Courts were to "have and exercise all jurisdiction and every power and authority whatsoever in any manner vested in any of the Courts in the same presidency abolished under this Act at the time of abolition of such last mentioned Courts". The Supreme Courts and the Courts of Sadar Diwani Adalat and Sadar Nizamat (Faujdari) Adalat were abolished.

In exercise of powers under the Indian High Courts Act, 1861, the Letters Patent of 1862 were issued establishing the High Courts in the three Presidency Towns of Calcutta, Bombay and Madras. As successors of the old Supreme Court, the writ jurisdiction was limited to the High Courts of the three Presidency Towns. Though several other High Courts were established by the Crown in India, they had no powers to issue the prerogative writs.

WRIT OF HABEAS CORPUS

The earliest known case in which this writ was issued was in the matter of Smt. Ganesh Sundari [1870 (5) B.L.R. 418]. The persons concerned in this case were residents of the town of Calcutta. The next case was Ameer Khan [1870 (6) B.L.R. 392] where the question arose whether the High Court had the jurisdiction to issue such a writ outside the Presidency Town. The question was answered in the affirmative. After this decision, the Code of Criminal Procedure of 1872 was enacted and Section 82 of that Act took away the jurisdiction of the High Court to issue any such writ of habeas corpus beyond the Presidency towns. In 1898, the Code of Criminal Procedure codified the right to the writ of habeas corpus by inserting Section 491 but confined to the High Courts in the three Presidency Towns of Calcutta, Bombay and Madras and the power was exercisable only in respect of their Ordinary Original Civil Jurisdiction. Chief Justice Rankin in the case of Girindranath vs. Birendranath Pal (I.L.R. 54 Calcutta 727) held that although in cases not falling

within Section 491 habeas corpus may or may not be available, yet in cases falling within the Section, they completely displaced the common law writ of habeas corpus. This view was approved by the Privy Council in Nathen vs. The District Magistrate, Trivandrum [I.L.R. 1939 (Madras) 744]. The cases which fell within the statutory provisions were so rare that the High Court's jurisdiction to issue common law writ of habeas corpus was regarded as almost gone.

WRIT OF MANDAMUS

Justices of the Peace etc. vs. The Oriental Co. [(1872) 8 B.L.R. 433] is one of the earliest cases in which a writ of mandamus was issued by the Calcutta High Court on the Justices of the Peace who were within the town of Calcutta. The Specific Relief Act of 1877 by Section 50 took away completely the power of the High Court (derived from Section 9 of the Indian High Courts Act, 1861, and the Letters Patent of 1862 and 1865) to issue a writ of mandamus and in its place by Section 45 empowered the High Court to make orders in the nature of mandamus under certain conditions. The Proviso to that Section, however, prevented any such order being made on the Secretary of State, the Central Government, the Crown Representative or any Provincial Government. This statutory power was limited to orders requiring anything to be done or forborne within the local limits of the Ordinary Original Civil Jurisdiction of the High Courts.

WRIT OF CERTIORARI

The earliest known case in which the Calcutta High Court issued a writ of certiorari was in the matter of Sagar Dutt: The Queen vs. The Justices of the Peace [1868 (1) B.L.R. 41]. In this case, a Division Bench of the High Court removed the proceedings from the Court of the Justices of the Peace for the town of Calcutta and quashed the conviction. The next known case was that of Nandlal Bose vs. Corporation of Calcutta [I.L.R.11 Calcutta 275] in which the assessment of certain premises in the town of Calcutta made by the Municipal Commissioner was quashed. The jurisdiction of the Chartered High Courts to issue this writ was recognized by the Judicial Committee of Privy Council which approved the decision of Nandlal Bose's case. There is, however, no case in which the Calcutta High Court issued a writ of certiorari outside the town of Calcutta to any Court or in person or body of persons exercising judicial functions.

WRIT OF PROHIBITION

In Re-National Carbon Company [I.L.R. 61 Calcutta 450] was the first case in which the Calcutta High Court issued the Writ of Prohibition.

WRIT OF QUO WARRANTO

The only instance in which this writ was issued appears to be the case of

W. K. Corkhil [I.L.R. 22 Calcutta 717].

The Government of India Act, 1915 in Section 106 continued all the powers, jurisdiction and authority in the High Courts as were vested in them respectively at the commencement of the Act. By the Government of India Act, 1935, the jurisdiction and the law administered in any existing High Court and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any powers to make Rules of Court and to regulate the sittings of the Court, were directed to be the same as obtained immediately before the commencement of the Act.

The powers of the High Court to issue prerogative writs before the coming into force of the Indian Constitution were, therefore, the same as those of the English Courts, modified or curtailed by statutes as referred to above. In the Constitution the powers of all the High Courts in India to issue certain writs are contained in Article 226. The scope of this article was explained by Subba Rao J. in Dwarkanath vs. I.T.O. [1965(3) SCR 536] as :

"This article is couched in comprehensive phraseology and it ex-facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Court to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself."

We have come a long way since the pre-Constitution days on the concept of judicial control. The Constitution confers and contains many rights, duties and guarantees. The judicial control over the fast expanding maze of bodies affecting the rights of the people are no longer put into watertight compartments. It remains flexible to meet the requirements of variable circumstances, and technicalities do not come in the way of granting relief under Article 226 of the Constitution.

ii

The High Court of Judicature at Fort William (later known as the High Court at

Calcutta) was formally opened on 1st July 1862 under the Letters Patent of 14th May 1862, with Sir Barnes Peacock as its first Chief Justice. Appointed on 2nd February 1863, Justice Sumboo Nath Pandit was the first Indian to be appointed as a judge of the High Court followed by such illustrious judges as Justice Dwarka Nath Mitter, Justice Romesh Chunder Mitter, Sir Chunder Madhab Ghose, Sir Gooroo Das Banerji, Sir Ashutosh Mookerjee and Justice P.B. Chakravartti who was the first Indian to become a permanent Chief Justice of the Calcutta High Court. The last English Chief Justice was Sir Arthur Trevor Harris, Barrister-at- law.

The High Court building as it stands today was designed by Walter Granville, Government Architect, on the model of the "Staad-Haus" or Cloth Hall at Ypres in Belgium.

The Calcutta High Court has the distinction of being the first High Court and one of the three chartered High Courts to be set up in India, along with the High Courts of Bombay and Madras.

It has jurisdiction over the State of West Bengal and the Union Territory of the Andaman and Nicobar Islands.

The reader may want to know how the first four judges of the Supreme Court of Bengal played out their lives.

Sir Elijah Impey lived for some time in a house behind the Roman Catholic Church in Middleton Row, now a convent, with grounds extending almost from Middleton Street to Russel Street. The road from the entrance on Middleton Row was an avenue through a park leading upto the "Burial Ground Road", now Park Street. He was a distinguished graduate from Trinity College, Cambridge and a Barrister from Lincoln's Inn. Impey was forty-three years of age when, as Chief Justice of the Supreme Court of Bengal, he presided over the infamous trial of Maharaja Nanda Kumar. He was in Calcutta for a little over nine years before he was recalled to England to face impeachment proceedings by Parliament for certain charges while in India as Chief Justice. The motion was lost in the House of Commons. He died in 1809. There are two portraits of Impey in the Calcutta High Court, one of them still hangs in the Chief Justice's Court.

Stephen Caesar Lemaistre, a Barrister of Inner Temple, lived in a house called "The Wilderness", or otherwise May's Garden, on Free School Street which was then a bamboo jungle along which people were afraid to pass by night. Lemaistre is reported to have been a jovial soul and often kept a table on a roar for several hours. He died in 1777 at the young age of thirty-nine and was buried in South Park Street Cemetery. His tomb never had an inscription. The vacancy among the judges caused by Lemaistre's death remained unfilled until 1783, when Sir William Jones was appointed.

John Hyde, like Impey, was from Lincoln's Inn. During his long tenure of office (1774 – 1796) as Puisne Judge, Hyde kept note-books, which were preserved in the Bar Library of Calcutta and are now with the Victoria Memorial Hall. His note-books are a veritable store-house of historical and legal information. The notes also show that Hyde's personal integrity and diligence as a public servant were of a very high order. It is also on record that Hyde declined the honour of being knighted though it was usual to create every judge of the Supreme Court a Knight. A few leafs from the handwritten notes of Hyde are reproduced in the accompanying Plates. He died in harness at the age of fifty-nine after twenty-one years of uninterrupted service and was buried in South Park Street Cemetery. A large and elegant pyramidical tomb, bearing a lengthy inscription, was erected to the memory of the Honourable John Hyde.

Sir Robert Chambers lived with his wife for several years in a garden house at Bhowanipur and later at Cossipore. He was knighted, and it is said that when in 1791 he took his seat as Chief Justice he was honoured with a salute from Fort William. He remained in India till 1799 and died in Paris in 1803 at the age of sixty-six. According to William Hickey, Chambers was "so whimsical and yet so precise in the execution of the most trifling matter" that "even in writing a common note he always first made a rough copy, using various words that expressed the same meaning. These words he placed one above the other; he then referred to Johnson (Dr Johnson's Dictionary) and other authorities for the purpose of ascertaining which of the selected words would be the most correct to use, and adopted one accordingly." There is a very good likeness of Chambers in his robes in the High Court Judges' Library.

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The history of the world is a history of arrivals and departures. So it has been with the then Supreme Court of Bengal, the predecessor of the High Court at Calcutta, and the High Court itself. The High Court has seen many judges – some illustrious, some not. They have come and gone. But the High Court has survived and has been preserved and continued under the Constitution of India. And so long as it survives, there is hope – hope for the common man and the country that justice will be done. The flag that flies high in the sky atop the High Court building is a symbol of this hope and of expectation.

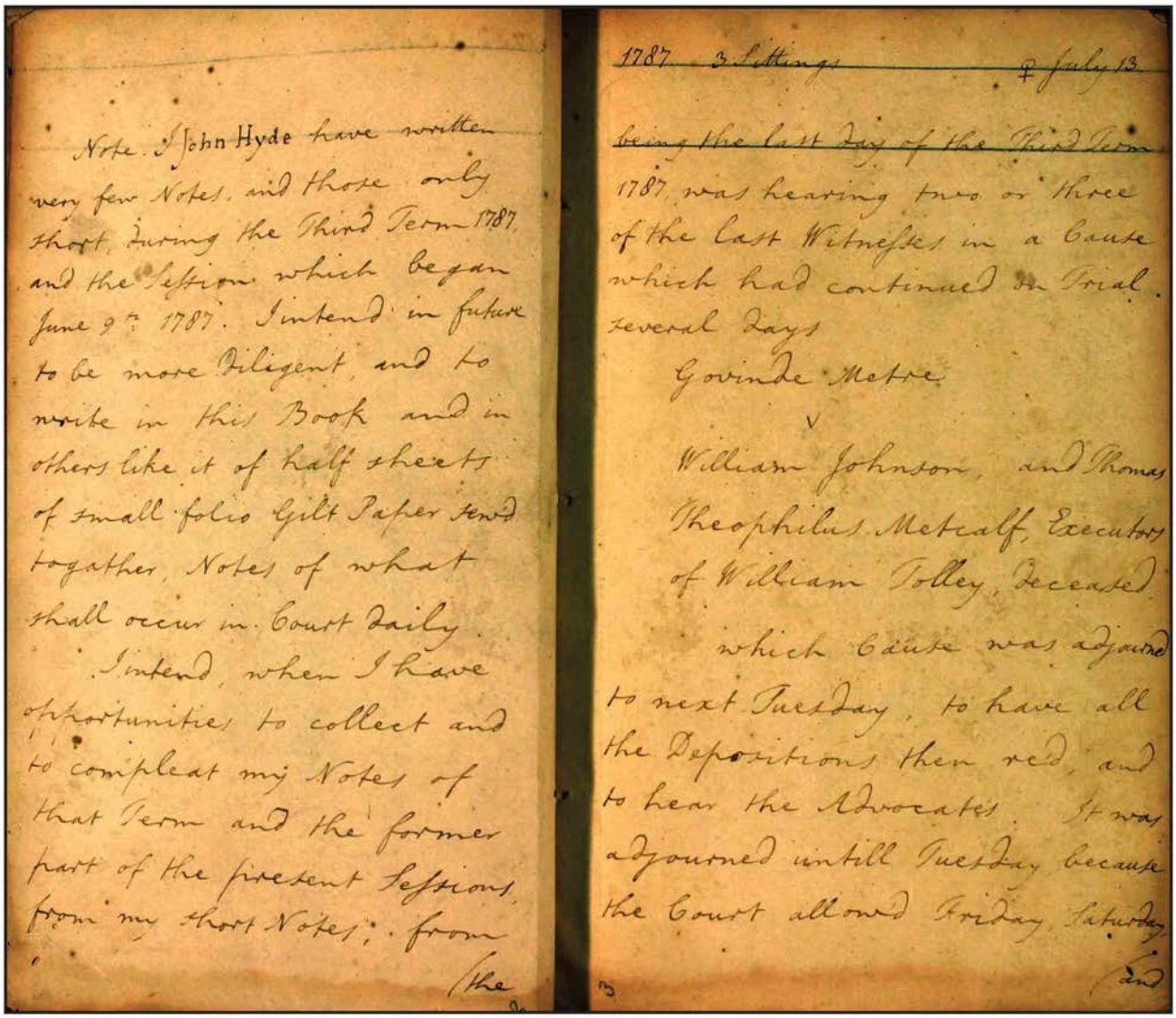
108 YEARS AGO

At the High Court yesterday before Mr. Justice Stephens, Mr. Chuckerbutty instructed by Messrs Bhupendro Nauth Bose and Co., applied for the appointment of a Receiver to the estate of the late Pundit Issur Chander Biddyasagar on behalf of certain legatees under the will of the deceased, the allegation being that Narain Chunder Bannerjee, the son of the deceased, had been wasting and mismanaging the estate, and refusing payment of annuities. His Lordship granted a rule to show cause why a Receiver should not be appointed, and why the son of the deceased, the wife and the executor under the will of the deceased should not be further restrained from dealing with the estate. The estate is said to be worth about three lakhs of rupees.

The Statesman,

March 8, 1904

[It is ironical that Vidyasagar's will could not be probated.– Editors]



Note. I John Hyde have written very few Notes, and those only short during the Third Term 1787, and the Session which began June 9th 1787. I intend in future to be more Diligent, and to write in this Book and in others like it of half sheets of small folio Gilt Paper sewd togather, Notes of what shall occur in Court daily.

I intend, when I have opportunities to collect and to compleat my Notes of that Term and the former part of the present Sessions, from my short Notes; from the

1787 3 Sittings ~~4~~ July 13.

~~being the last Day of the Third Term~~ 1787, was hearing two or three of the last Witnesses in a Cause which had continued on Trial several Days

Govinde Metre

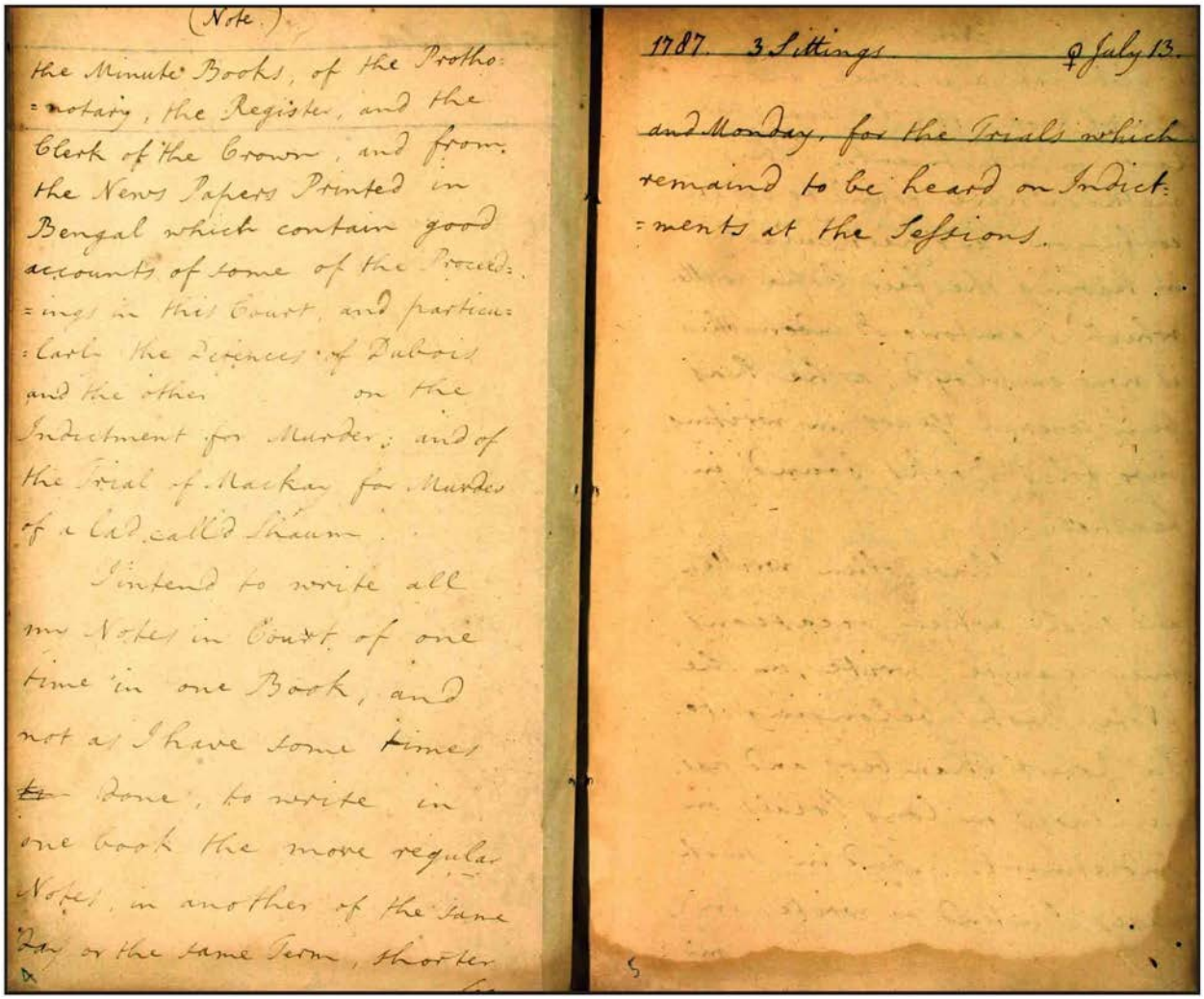
v

William Johnston, and Thomas Theophilus Metcalf, Executors of William Tolley, Deceased

which Cause was adjourned to next Tuesday, to have all the Depositions then red, and to hear the Advocates. It was adjourned untill Tuesday because the Court allowed Friday, Saturday, and

3

The Hyde Papers - a few sample pages



(Note.)

the Minute Books, of the Prothonotary, the Register, and the Clerk of the Crown, and from the News Papers Printed in Bengal which contain good accounts of some of the Proceedings in this Court, and particularly the Sentences of Dubois and the other on the Indictment for Murder; and of the Trial of Macken for Murder of a Lad called Shaun.

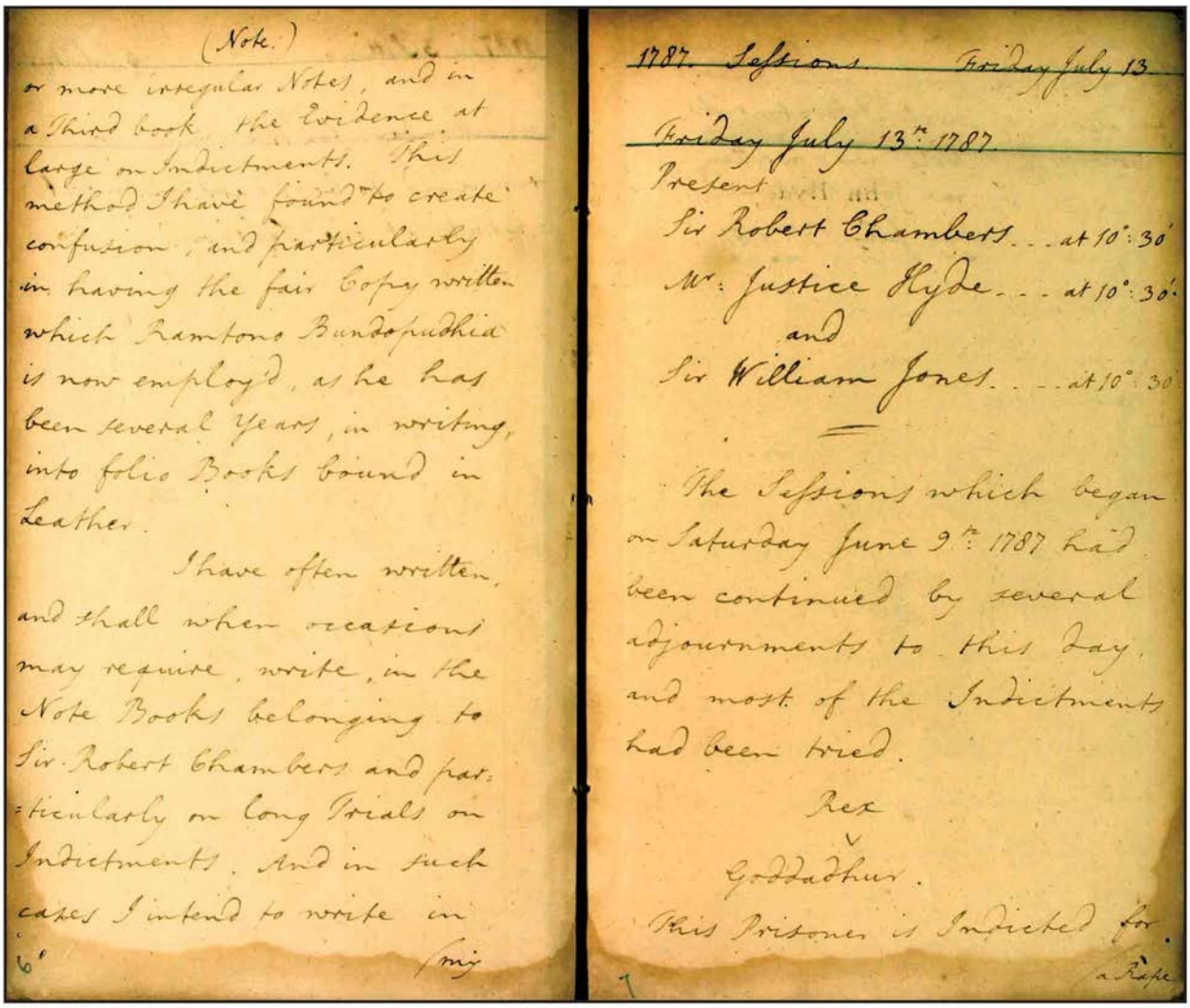
I intend to write all my Notes in Court of one time in one Book, and not as I have some times done, to write in one book the more regular Notes, in another of the same Day or the same Term, thou-

1787. 3 Sittings 9 July 13.

~~and Monday, for the Trials which~~ remaind to be heard on Indictments at the Sessions.

Hyde Papers contd.

P42



(Note.)

or more irregular Notes, and in a Third book the Evidence at large on Indictments. This method I have found to create confusion, and particularly in having the fair Copy written which Ramtono Bundopadhia is now employd, as he has been several Years, in writing, into folio Books bound in Leather.

I have often written, and shall when occasions may require, write, in the Note Books belonging to Sir Robert Chambers and particularly on long Trials on Indictments. And in such cases I intend to write in

6' /mj

~~1787. Sessions. Friday July 13~~

~~Friday July 13th 1787.~~

Present

Sir Robert Chambers . . . at 10 : 30'

Mr. Justice Hyde . . . at 10 : 30'

and

Sir William Jones . . . at 10 : 30'

The Sessions which began on Saturday June 9th 1787 had been continued by several adjournments to this day, and most of the Indictments had been tried.

Rex

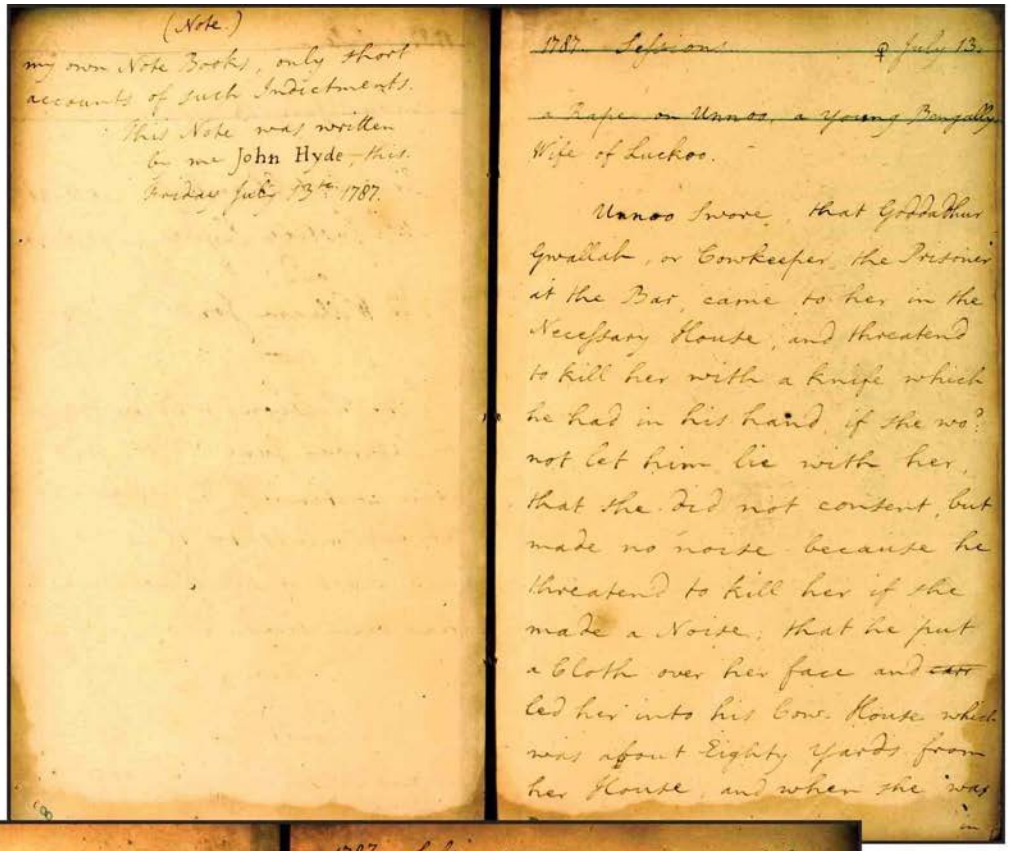
v

Goddadhur.

This Prisoner is Indicted for a Rape

Hyde Papers contd.

Hyde
Papers
contd.

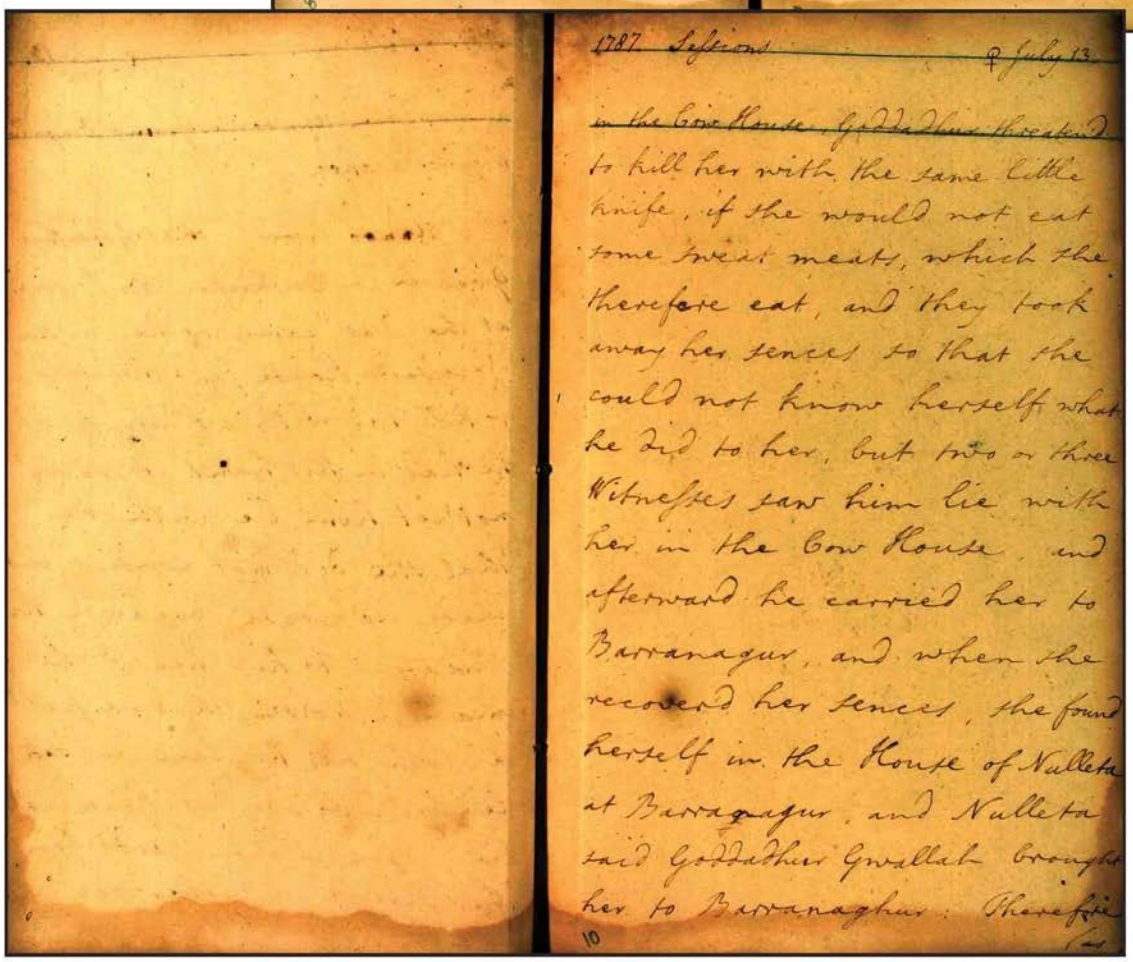


(Note)
my own Note Books, only short
accounts of such Indictments.
This Note was written
by me John Hyde this
Friday July 13th 1787.

1787 Sessions ♀ July 13.

a Rape on Unnoo, a young Bengally
Wife of Luckoo.

Unnoo Swore, that Goddadhur
Gwallah, or Cowkeeper the Prisoner
at the Bar, came to her in the
Necessary House, and threatend
to kill her with a knife which
he had in his hand, if she wo?
not let him lie with her,
that she did not content, but
made no noise because he
threatend to kill her if she
made a Noise, that he put
a Cloth over her face and
led her into his Cow House which
was about Eighty Yards from
her House, and when she was
in



1787 Sessions ♀ July 13.

in the Cow House, Goddadhur threatend
to kill her with the same little
knife, if she would not eat
some sweat meats, which she
therefore eat, and they took
away her senses so that she
could not know herself what
he did to her, but two or three
Witnesses saw him lie with
her in the Cow House, and
afterward he carried her to
Barranagur, and when she
recovered her senses, she found
herself in the House of Nulleta
at Barranagur, and Nulleta
said Goddadhur Gwallah brought
her to Barranaghur: Therefore
10

THE ADMIRALTY JURISDICTION OF THE HIGH COURT AT CALCUTTA

Soumendra Nath Mookherjee

The purpose of this article is not to trace the history of the admiralty jurisdiction of the High Court at Calcutta. It is also not my intention to enumerate what could form the subject matter of an admiralty action in this High Court. The Supreme Court in the case of "M.V. Elizabeth"[1] and in the later case of "M.V. Sea Success I"[2] has settled what could form the subject matter of an admiralty action in India. It has held that the subject matter of an admiralty action at present could be all or any of the matters provided for in the Admiralty Court Act, 1861 and the 1999 Arrest Convention.

The issue that I propose to address here is whether the admiralty jurisdiction of the Calcutta High Court is subject to any territorial limits? For example, could this High Court in exercise of its admiralty jurisdiction order an arrest of a vessel berthed in Vishakapatnam or for that matter in Chennai?

Subsequent to the decision of the Supreme Court in "M.V. Elizabeth", a learned single judge of the Calcutta High Court in the case of M.V. "Prapti"[3][where the vessel in question was berthed in Vishakapatnam], held that the High Court at Calcutta "as a Colonial Admiralty Court" could arrest vessels lying anywhere within the territorial waters of the country.

However, another learned judge of the same High Court observed in the case of "M.V. SV Pavel"[4] that the decision in the case of "M.V. Prapti" needed serious reconsideration and referred the matter to a Division Bench. The reference though was not required to be decided as the case itself was settled amongst the parties.

Thus, as the High Court at Calcutta observes 150 years of its establishment as a High Court, the extent of its territorial jurisdiction in the exercise of its admiralty jurisdiction now appears to be uncertain.

However, in my view though, the issue of the territorial jurisdiction of the Calcutta High Court in the exercise of its Admiralty jurisdiction was settled long before in the case of "S. S. Leelavati"[5].

P. B. Mukharji J after construing the various provisions of the Admiralty Court Act, 1861, clause 26 of the Charter of 1774 which defined the admiralty jurisdiction of the Supreme Court, clause 31 of the Letters Patent of 1862, clause 32 of the Letters Patent of 1865, Section 106 of the Government of India Act, 1915, Section 223 of the

Government of India Act, 1935 and Article 225 of the Constitution of India held that the words "domiciled in England and Wales" appearing in Section 5 of the Admiralty Court Act 1861 has to be construed as "domiciled in the Union of India", when the Calcutta High Court exercised jurisdiction as a Court of Admiralty. The learned judge arrived at this construction by reasoning that as the extreme of "one system of law" was a valid criterion for determining the area of domicil, the whole of the Indian Union should be regarded as an area of domicil where "one system of law" prevails with the Indian Parliament holding all residuary powers of legislation in spite of the existence of different State statutes on specified subjects. In coming to this conclusion, the learned judge recognized, that by this interpretation, the Calcutta High Court would have jurisdiction as a Court of Admiralty to determine claims even if the ship was at Bombay.

P. B. Mukharji J dealt with the issue of a possible conflict between different Courts of Admiralty as follows:

"28. The fear of a possible conflict between different Courts of Admiralty if the words "domiciled in England or Wales" are interpreted to mean domiciled in the Indian Union, appears on a close analysis to be over-done. If each of the Admiralty Courts in India exercises the jurisdiction on the basis of one Indian domicile, then while in theory it is possible to say that the High Court of Bombay may happen to be exercising jurisdiction over a ship or a person in Calcutta, in practice it does not appear to me to be a situation which will hardly arise. The previously instituted proceedings in any one of these Courts of Admiralty will preclude the same matter being subsequently agitated by another Court of Admiralty not only by a Comity of Courts working in the Indian Union backed up now by the full faith and credit clause of the Constitution contained in its Article 261, but also by the procedure of stay of proceedings in Courts of concurrent jurisdictions dealing with the same subject matter and the powers of injunction relating to chartered High Courts in case of abuse of the choice of forum. By such means the conflict can always be avoided."

The decision in "S. S. Leelavati" was overruled by the Supreme Court in the case of "M.V. Elizabeth" only to the extent that the High Court had held that its admiralty jurisdiction was limited to what was permitted by the Admiralty Court Act, 1861 and the Colonial Courts of Admiralty Acts of 1890 and 1891. The Supreme Court did not differ with the view expressed by P.B. Mukharji J with regard to the territorial jurisdiction of the Calcutta High Court as a Court of Admiralty and nor was this an issue before the Supreme Court.

The decision in "S.S. Leelavati" expressly deals with the argument of a possible conflict between different Courts of Admiralty, which ironically was the sole ground for referral to the Division Bench of the issue pertaining to the territorial jurisdiction of the High Court at Calcutta as a Court of Admiralty in the case of "M.V. SV Pavel".

This issue of the territorial jurisdiction of the Bombay High Court was dealt with by a Division Bench of the High Court in the case of "M.V. Umang"[6]. The Bombay High Court has held that its admiralty jurisdiction is not limited to the State of Maharashtra but extends to the territorial waters of India.

The Bombay High Court arrived at such decision on the following grounds:

(a) Article 372 of Constitution read with Article 225 preserved all existing laws and left all the powers of the High Court intact.

(b) As such the Bombay High Court continued to enjoy the territorial jurisdiction it had under the Colonial Courts of Admiralty Act 1890 & 1891 i.e. it continued to enjoy territorial jurisdiction over the entirety of the territorial waters of India as a Court of Admiralty.

(c) This power had not been curtailed by the Constitution or any enactment by the competent Legislature.

(d) Article 214 of the Constitution which provides that there shall be a High Court for each State did not abridge the jurisdiction exercised by the Bombay High Court as a Court of Admiralty.

(e) There is no concept of territorial waters of a State in the Constitution and it is not possible to imagine what could be the territorial limits of a State over the sea adjoining it in the absence of specific legislation in this regard.

(f) The arrest of a foreign ship in the territorial waters of a country was an exercise of sovereign power and as such all ships within the territorial waters of India were liable to be arrested in the exercise of Admiralty jurisdiction of all High Courts exercising such jurisdiction as part of the sovereign powers of the country.

The Calcutta High Court has also in the recent decision of "M.V. Vinashin Sky"[7] recognized that the substantive authority of the Calcutta High Court to receive an Admiralty action does not flow from Clause 12 of the Letters Patent and nor do the provisions of Sections 16 to 20 of the Code of Civil Procedure apply to admiralty actions.

In this view of the matter the limits of the territorial jurisdiction of the Calcutta High Court has to be determined on the basis of the provisions of the Admiralty Court Act, 1861 and the Colonial Courts of Admiralty Acts of 1890 & 1891 and the provisions of the Constitution.

The analysis of these provisions in the case of "S.S. Leelavati" and "M.V. Umang" quite unhesitatingly point to the conclusion that the territorial jurisdiction of the Calcutta High Court as a Court of Admiralty extends to the entirety of the

territorial waters of India.

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1 1993 Sup (2) SCC 433

2 (2004) 9 SCC 512

3 1998 CWN 196

4 Order dated 21st December 2009 in G. A. No. 3276 of 2009, in A. S. No. 18 of 2009 [Link Oil Trading Ltd. V The owners & parties interested in the vessel M.V. SV Pavel & Anr]

5 AIR 1954 Calcutta 415

6 Unreported decision of the Bombay High Court in Appeal No. 59 of 2000, in Notice of Motion No.1153 of 1998, in Admiralty Suit No.33 of 1997 [Kamla Kant Dube & Anr. VS. M.V. Umang]

7 (2011) 2 CHN 580

THE FIRST "TASTE" OF FREEDOM

Sumita Mookerjee

The Constitution of India came into operation from midnight of 25th January 1950. At the dawn of the Constitution, a substantial number of cases testing the impact of Fundamental Rights guaranteed to us citizens of India were preferred before the Hon'ble High Court, Calcutta. Morning shows the day and so I perused through some of the judgments passed by the Hon'ble High Court, Calcutta in the very early three years after the Constitution came into operation. My task was to ascertain and indeed I was rewarded to find out that the Hon'ble High Court, Calcutta was ready for the occasion.

As soon as we were gifted with our Constitution, the Hon'ble High Court, Calcutta, in several cases evaluated the earlier Criminal Acts and Orders passed thereunder in the light of our guaranteed freedoms. A number of legislative provisions relating to Criminal Law were struck down by the Hon'ble High Court. Article 13(1) of the Constitution states that all laws in force in the territory of India before the commencement of the Constitution in so far as those are inconsistent with the provisions of Part III of the Constitution (guaranteeing and protecting rights), shall, to the extent of such inconsistency, be void.

Then again, new Acts were passed pursuant to which executive actions were taken, some of which did not take adequate precaution with a view as not to infringe upon the newly found freedom of the people. Our Hon'ble High Court was quick to intercept under Article 13(2) of the Constitution and correct such unconstitutional Acts and Executive actions.

The right of a citizen to free movement throughout the territory of India, as guaranteed under Article 19(1) (d), was tested by a Special Bench in the case of Sunil Kumar & others vs. The Chief Secretary to the Government of West Bengal & another (AIR 1950 Cal 274). As many as 370 persons were detained under the Bengal Criminal Law Amendment Act, 1930 as amended by the Criminal Law Amendment (Amending Ordinance), 1949. Section 2 of the Act provided that if in the opinion of the Provincial Government there were reasonable grounds for believing that a person is or was at any time a member of an association with certain objects of commissioning any offence as included in the Schedule to the Act or with violence interfering with the administration of justice, then certain restrictions on his movement could be imposed on such a person including that of being committed to custody in jail. Such a person could be put into jail for one year which detention could be continued thereafter.

The Hon'ble High Court, Calcutta struck down such provisions of the Act, which was a permanent Act and not an 'emergency Act' where greater restrictions could pass the test of 'reasonableness'. The Hon'ble Court evaluated that even when a person joined an association without knowing its objects or after having become acquainted with the objects of such an association, he leaves the association, still his freedom of movement as guaranteed under Article 19(1)(d) could be curtailed or, worse still, he could be put in prison. Further, if he was instigated by a member of such an association and even after having left such association he could be imprisoned under the Act, although he did not act as per such instigation. Thus the objective of the Act was not by way of preventive detention and a person detained under the Act could be detained for an indefinite period. Surely such a statutory provision could not withstand the sword of Freedom and was rightly beheaded by our Hon'ble High Court.

The Hon'ble High Court tested the detention orders under Article 21 of the Constitution of India which lay down that "no person shall be deprived of his life or personal liberty except according to the procedure established by law". This protection has been reinforced for every person, whether citizen of India or not, by Article 22 of our Constitution.

The validity of a detention order under the then newly born Preventive Detention Act of 1950 was challenged in the case of Safatulla Khan vs The Chief Secretary to the Government of West Bengal and another (AIR 1951 Cal 194). There the Petitioner who was the General Secretary of the Bengal National Chamber of Labour was organizing the workers in West Bengal for better terms of employment. He was detained under the Preventive Detention Act, 1950 on certain specified grounds giving a communal hint. Under Section 7 of the Preventive Detention Act, grounds had to be supplied to a detainee for his detention, thus giving him an opportunity of making a representation, although the government was not required to disclose facts if such disclosure of facts would be against public interest. The Hon'ble High Court examined and evaluated the "grounds" supplied to the Petitioner and concluded that the same were insufficient and vague against which no effective representation could be made by the detainee. Hence, the Hon'ble Court held that the detention was not justified.

Again, in the case of Janab Tozammal Khundel Salaji vs Joint Secretary to the Government of West Bengal (AIR 1951 Cal 322), an order was passed against the Petitioner pursuant to Section 22 of theWest Bengal Security Act, 1950 by which he was restrained from entering or remaining within the District of 24 Parganas on the ground that the Governor was satisfied that the Petitioner was likely to endanger communal harmony. The said order was tested on the anvil of Article 19(1) (d) giving every citizen the fundamental right to move freely through the territory of India and under 19(1) (e) guaranteeing the right to reside and settle in any such part. Of course reasonable restrictions could be imposed upon such fundamental rights in the interest of the general public or for the protection of the interest of any schedule tribe (Article

19(5) of the Constitution). The Court was not precluded from considering the reasonableness of the substantive as well as the procedural part of any law imposing restrictions on our freedom.

In Tozammal's case, it was held that there was no provision in the West Bengal Security Act, 1950 as to how a person, against whom an internment order had been passed, could take steps for having the order reviewed by a tribunal. Further, the petitioner was 'externed' from the place where he usually resided. The Hon'ble High Court struck down Sections 21 and 22 of the said Act as widest powers were given to the State Government infringing a citizen's fundamental rights as given under article 19(1) (d) and (e) of the Constitution. Hence the impugned order of externment was declared void and illegal.

The West Bengal Criminal Law Amendment (Special Courts) Act, 1949 was enacted to provide for more speedy trial and more effective punishment of certain offences. Section 2 of the Act empowered the State Government by notification in the official gazette to constitute Special Courts of Criminal Jurisdiction to be presided over by a Special Judge. There was a Schedule to the Act listing offences which could be tried by such Special Courts. Offences by public servants or offences depriving the Government of money or property, offences of forgery, falsification of accounts, offences punishable under Essential Supplies Act, 1946 etc. were included in the Schedule.

In J K Gupta & Others vs. The State (AIR 1952 Cal 644) the Full Bench of the Hon'ble High Court held that the offences were included in the Schedule arbitrarily. The Hon'ble Court went on to decide that even if it be assumed that the Schedule had included a 'valid' class of offences to be tried by such Special Courts, under Section 4, the State Government had an unbridled discretion to allot cases to these Special Courts. Section 4 provided that the State government from time to time by notification can allot cases for trial to such Special Courts. Otherwise the offenders under the Schedule were to be tried by Ordinary Courts of Law. Section 4(1) was struck down as ultra vires the Constitution. The Special Judges constituted under the said Act had no jurisdiction and under-trials were to be tried by Ordinary Courts of the land. The wide discretion given to the State Government to pick and choose purported offenders to be tried by such Special Courts instead of Ordinary Courts was held to be unconstitutional, and hence struck down.

Again, a Full Bench of this Hon'ble High Court in the case of Anwar Ali Sarkar vs The State of West Bengal : AIR 1952 Cal 150 struck down Section 5(1) of the West Bengal Special Courts Act, 1950 as being discriminatory. Section 5 of the Act provided that the Special Judge "may" take cognizance of a case in which event the accused would be deprived of trial by jury, which was otherwise available to him in appropriate cases. He would be deprived of his valuable rights given to him under the Code of Criminal Procedure. His rights to move the Sessions Court or the High Court by way of Revision would then be taken away. The Hon'ble High Court held

that Section 5 clearly discriminates persons similarly situated or equally circumstanced. This offended against Article 14 of the Constitution and so was struck down by our Hon'ble High Court.

A Special Bench of the Hon'ble High Court, Calcutta struck down Section 12 (1) of the West Bengal Black Marketing Act, 1948 (Ram Kissen Chandgothia & Others vs. The State : AIR 1952 Cal 639). Under the said provision the State Government had the unfettered discretion to allot cases under the Act to a Special Tribunal. Thus persons accused of like offences could be dealt with differently and two different sets of punishments imposed on the offenders for the same crime, depending upon whether they were tried under the West Bengal Black Marketing Act, 1948 (with maximum punishment of seven years) or under the Essential Supplies Act, 1946 (with maximum punishment of three years). By use of the word "may" in Section 12 instead of "shall" the State Government had unbridled discretion, which was violative of Article 14 of our Constitution, and hence declared ultra vires the Constitution.

By the year 1952 a catena of decisions were made by our Hon'ble Apex Court as to the meaning and scope of Article 14 of the Constitution under which a reasonable classification of persons/groups was permissible but all persons within that group must be treated equally. Such principles were ardently prescribed by the Hon'ble High Court, Calcutta as is evident from the above-referred cases.

Turning the page from detention and externment Acts and orders, let us look into other aspects of our freedom. In fields other than criminal, the "reasonableness" of acts of the State was evaluated, in the process of which the principles of natural justice were also not given a go by.

Article 15 of our Constitution prohibits discrimination on the ground, inter alia, of sex in all matters. In Anjali Roy vs State of West Bengal (AIR 52 Cal 825) the Petitioner wanted admission in Hooghly Mohsin College, a co-ed college, for a B.A. (Hons) degree but she was refused admission. She was asked to get admission in Chinsurah Women's College, which did not have Honours Course.

In the Trial Court (Anjali Roy vs State of West Bengal : AIR 1952 Cal 822) reference was made to a decision of an American Court, wherein a student of African origin was denied admission to the University of Texas Law School (Sweatt vs. Painter (1950) 339 629:94 Law.L.Ed. 1114). Upon order passed by the State Trial Court, a new Law School was established but it did not provide the same facilities as the Law School confined to white students. Ultimately, the Supreme Court held that the new law school offered less facilities and the equal protection of laws as guaranteed by Fourteenth Amendment had been violated.

In contrast, upon Appeal, this Hon'ble High Court in Anjali Roy's case arrived at a finding that there was no malafide intention on the college authorities' part in

refusing admission to the petitioner and held that there was no discrimination on the ground that she was a woman. A scheme was adopted by the Government for advancement of female education by establishing a Women's College and since that college did not have honours courses, its student had the right to attend Honours courses in Hooghly Mohsin College. The Court found that order restricting further admission of women to the Mohsin College was a reasonable restriction. This Hon'ble Court observed that "The framers of the Constitution may have thought that because of the physical and mental differences between men and women and considerations incidental thereto, exclusion of men from certain institutions serving women only and vice versa would not be hostile or unreasonable discrimination."

While protecting our rights, the principle of natural justice was not forgotten. In the case of Dipa Pal vs University of Calcutta (AIR 1952 Cal 594) this Hon'ble High Court issued a writ against the University. There the Petitioner, a non-collegiate examinee for Bachelor of Arts examination was reported against by the University authorities for having allegedly adopted unfair means in the examination. Hence, her examination result was 'cancelled'. The High Court found that she was not given any opportunity to explain her conduct before the inquiry held by the Committee, upon recommendation of whom the University Syndicate cancelled her result. The Hon'ble High Court found that the procedure adopted by the University in coming to its conclusion, albeit not malafide, was unreasonable as the principles of natural justice were violated. Hence, the order of cancellation of Petitioner's examination result was quashed and the Petitioner's case was ordered to be reconsidered.

From the birth of our Freedom, our Hon'ble High Court was well aware of its duties and it observed: "It has always been the proud tradition of this Court to stand between the subject and any encroachment on his liberty by the executive or any other authority however high. It is a great tradition which we have inherited and we believe that this Court will be worthy of this inheritance." (Sunil Kumar & others vs. The Chief Secretary to the Government of West Bengal & another (AIR 1950 Cal 274)).

At the dawn of our Constitution, we, the citizens of India, set foot on an uncertain path to Freedom. The path was safeguarded with full vigor and zeal by our Protector, the Hon'ble High Court at Calcutta.

ABUSE OF RULE OF LAW AND OUR HIGH COURT

Sunrit Deb

Article 13(3)(a) of the Constitution of India defines 'law' very widely by an inclusive definition intended to bring in its fold much more than law as enacted by legislature. It includes, for instance, custom or usage having the force of law. A custom or usage, therefore, like any other law has to be declared void if it were held to be in violation of any of the fundamental rights guaranteed by the Constitution. Upholding of those rights by the High Court is deemed essential to the maintenance of the rule of law.

On the other hand, notwithstanding the difference of language, the expression "law in force" used in Articles 13(1) and 372 is held to mean the same thing as "existing law" in Article 366 by Chagla C.J. in Bombay–vs–Aleman Alreja : AIR 1952 Bom 16. In Edward Mills Co. Ltd.–vs–. Ajmer : AIR 1955 SC 25 the Supreme Court held that there was no material difference between the two expressions "existing law" and "law in force". As John Locke said, "No man in civil society can be exempted from the laws of it ," meaning thereby both 'existing laws' and 'laws in force'.

Venkatarama Aiyar J. in delivering the majority judgement in MPV Sundararamier vs. Andhra Pradesh: (1958) SCR 1422 = AIR 1958 SC 468, observed that a law made without legislative competence and a law violating constitutional limitations on legislature's power were both unconstitutional and both bad, both having the same reckoning in a court of law; they are both of them unenforceable even though both the laws may not have the same quality and character and may not stand on the same footing for all purposes. A law void for lack of legislative competence cannot be revived but a law partly void because of constitutional limitations operates proprio vigore if and when the limitations are removed.

Given such meaning and limitation "law", both existing and in force, binds and governs every citizen. It prescribes and governs his rights and obligations, for the breach of which a citizen is answerable to the Courts. An abuse of the rule of law occurs when persons entrusted to maintain and perpetuate it, either directly or by the help of executive or administrative functionaries, so act as to wrongfully cause harm to be inflicted on another citizen, even if those persons have a right to do the act by which such harm is done. That right may have been exercised directly by such persons for the purpose or primary motive of causing the harm or without a serious or legitimate interest deserving judicial protection or without good faith or elementary fairness, or for a purpose other than the one it was granted for. More generally, the rule of law is abused when the ostensible authority of law is put to misuse by persons

entrusted to ensure its goverance departing from its recognized principles and such departure results in harm being caused to a citizen.

The above state of things takes its rise in any of the following circumstances, amongst others:

(i) Where the persons aforesaid have caused the harm to be done directly or either expressly or by necessary implication have caused or authorized some State or administrative functionaries to commit it thereby resulting in harm to a citizen,

(ii) where the law-makers of the State either by their legislative acts or by means of delegated legislation such municipalities, panchayets etc. transgressed the constitutionally guaranteed lawful right of a citizen thereby causing him harm, or

iii) where such persons as aforesaid have wilfully violated the Court's orders or directions or scandalously interfered with its judicial functions thereby causing harm to a citizen.

Illustrations such as those cannot be exhaustive, it is needless to say.

Abuse of the rule of law is clearly distinguishable from abuse of the process of court which constitutes or amounts to gross interference with or an attempt to subvert the prescribed or recognized procedure of court by a litigating party. For instance, when a party has no enforceable legal right to be permanently absorbed in a particular employment or when the state offering such employment has no legal duty to make him a permanent employee, the writ of mandamus cannot be issued in favour of such employee directing the Government to make him permanent. Because such point of law is no more res nova or res integra, the attempt to have the same point of law agitated before the High Court was held by Justice Biswanath Samadder to amount to abuse of process of Court, resulting invariably in waste of Court's time and preventing it from deciding more deserving case. See Kartik Chandra Singha vs. State of W.B. 2011(2) Cal High Court Notes 849.

In ICI India Ltd. –vs–Second Labour Court reported in (2010) 2 Calcutta High Court Notes (Calcutta) 183 the subject matter of challenge in the writ petition was an award dated 20th June 2003 whereby the Learned 2nd Labour Court directed the writ petitioner to reinstate the applicant employee in service and to pay her all her back wages deducting what has been already paid. On an application under section 17B, Industrial Disputes Act by the employee His Lordship, the Hon'ble Justice Girish Chandra Gupta, observed that the workman could not be left high and dry so long as the employer chose to litigate on the award which, on the face of it, was in favour of the workman. The writ petitioner, therefore, was directed by His Lordship to deposit the amount as per the award together with interest at the rate of 12% per annum with the Registrar, Original Side. The interest, however, was directed to be made, by an

accidental slip, payable to the writ petitioner month by month or quarterly as the case may be. From the tenor of His Lordship's judgement it appeared that so long as the writ petition was pending, the workman should get the interest of the deposit directed to be made.

The writ petitioner contended, however, that if the writ petition were eventually allowed the writ petitioner, being the employer, would have no means to recover the interest on the said deposit should it be paid to the workman. His Lordship held that that was the intention of the legislature in enacting section 17B of the Industrial Disputes Act. The writ petitioner was, on the other hand, still at liberty to prefer an appeal. As the mistake in recording the order appeared on the face of it, His Lordship was pleased to clarify in the interests of justice that the interest already accrued upon the fixed deposit made by the writ petitioner had to be payable to the workman. A major attempt to abuse the process of law was thus thwarted by this Hon'ble Court.

It is unquestionable that the concept of rule of law, as we understand it today, was and is a legacy of British governance of this country. Yet even in the colonial days the British Indian law operating in the districts could hardly prevent abuse of the rule of law. The rural "power system", in practice, employed methods which were contrary to the prevailing law of the land and the common man often found himself without any means of lawfully operating that "power system" and had to take recourse to extra-legal means.When it came to actual practice, further, there was no question that the requirements of administration in the districts unduly enjoyed the greatest priority, greater even than the rule of law. For instance, where a District Magistrate displayed his independence disregarding the Government's administrative policy and insisted on the strict standard of proof of an offence alleged to have been committed and acquitted large numbers of accused in police cases on the ground that the offence was not proved, he had to reconcile himself to stagnation of his career. Except for the Hon'ble High Court the supposed autonomy of the judiciary was demonstrably an illusion, perpetuated by colonial legitimating ideology, and the law and its enforcement in the districts were often relegated to the department of the executive.

Even the much vaunted "white man's burden" and impersonal procedures of the British rule of law were not seen in the districts to be immune from the corrupting influence of prejudice and irrationality, particularly when the system was required to depend on the irresolute character of native dispensers of justice. Even there it was only for the Hon'ble High Court to come down heavily upon the abuse of the rule of law and set right the course of justice. It is for this fact that the High Court earned the esteem of the masses. The machinery of administration in districts often made mockery of the law and its procedures. The High Court by employing procedural methods of revision and appeal from decisions of district courts duly enforced the due process of law both in Civil and Criminal cases as and when such abuses surfaced before it. But that was only the tip of the iceberg.

The rule of law or the cause of maintaining its governance suffered badly in the hands of autocratic Zemindars and rapacious money-lenders. Magistrates imposed fines and imprisonment and even physical torture on peasants and rayats for presumed infraction of their administrative authority. The rural peasantry could hardly expect to set in motion the due process of law against this pervasive "power system" in the districts. The crying need of the hour was the sweeping power of review, supervision and superintendence of both administrative and judicial irregularities by the Hon'ble High Court whenever brought to its notice. But the exercise of its power of superintendence was not to be guaranteed until after introduction of the provisions of Article 226 and 227 of the Indian Constitution.

It is well-known that in exercise of power under Article 227 it is the duty of the High Court to keep the inferior courts and tribunals within the bounds of their authority. The control vested in the High Court is administrative, judicial and disciplinary. The strength of such control and power is not displayed solely in cracking a whip on errors, mistakes or failures. The Supreme Court recommended administrative Committees and inspecting Judges in the High Courts. Periodical inspection of subordinate courts will have to be carried out regularly. Assessment of quality, etc. of judicial officers should constitute an ongoing process: Biwanath vs State of Bihar (2001) 12 SCC 305 and In re. K, a Juridical Officer: (2001) 3 SCC 54 = AIR 2001 SC 972.

On the other hand, a provision of appeal does not take away or bar the exercise of jurisdiction under Article 227. The High Court may strike down a patently illegal exercise of jurisdiction by any inferior court or tribunal even if a procedure for appeal be well provided: AIR 1991 Calcutta 120/87 Calcutta Weekly Notes 358 and 81 Cal.Weekly Notes 649. The abuse of the rule of law by the arbitrary executive and administrative functionaries and erring courts and tribunals is far too strong a malady to be remedied by any single procedure of this Hon'ble Court.

Absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by the rule of law, discretion when conferred upon executive authorities must be confined within defined limits. No one is above the law. Executive authorities must submit their decisions and actions to the governance of the law of the land. If, on the contrary, they amount to abuse of the rule of law, it is the duty of this High Court to nullify their effect.

A quite recent instance is offered by the appeals preferred by the West Bengal Trade Promotion Organization and the Kolkata Municipal Corporation against Indian Craft Village Trust heard alongside by a Division Bench of the Calcutta High Court and reported in (2011) 2 Cal. High Court Notes 641(DB). There His Lordship Bhaskar Bhattacharyya J. held that even in the case of a purely contractual matter where illegality has been alleged against the State within the meaning of Article 12, if it is found that the State or its authorized functionaries infringed Article 14 of the

Constitution, a writ court is entitled to interfere. The ground of its interference is that, even in the field of contract, a "State" must not violate Article 14. That Article enshrines equality before law and equal protection of law to all citizens. If the concerned functionaries of the "State" deny this equality or renege the protection due to the contracting party under the law prevailing, then the High Court, when called upon to exercise its writ jurisdiction, must not stand idly by. This proposition shall apply even more particularly where elements of public interest appear to be present in the contract itself.

The invitation to take a narrow view of the scope of the writ jurisdiction was repelled by His Lordship pointing out that the scope of Mandamus can be so enlarged as to be issued by the High Court against a person or body to carry out the duties placed on them by the statute, even though they may not be public officials or a statutory body. Reliance was placed by His Lordship in this respect on the judgement of the Supreme Court in Praga Tools Corporation vs. Shri C. A. Immanuel reported in 1969(3) SCR 773 = AIR 1969 SC 1306. Abuse of the rule of law it was held by their Lordships cannot be allowed by the High Court to continue even where the offending party is not a public official or a non-statutory body. In the contractual context such as a lease should there occur a violation of some duty or obligation prescribed by statute, and more so if public interest were involved the scope of Mandamus would be attracted. Mandamus is a very wide remedy which must be easily available to reach injustice wherever found by the High Court. Technicalities must not come in the way of granting the just relief under Article 226. Again, the Hon'ble Judge would rather not deny Mandamus on the ground that the duty to be enforced was not imposed by statute. It was noted that the Hon'ble Supreme Court shared the view of Professor de Smith where he stated: "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract" (Judicial Review of Administrative Act, 4th Ed., 540).

The other occasion for the Hon'ble Court's prevention of the abuse of rule of law occurs where persons entrusted to maintain and perpetuate its governance wilfully violate the High Court's mandates, orders and directions by non-compliance. This might occur in lower administrative levels, for instance, in the form of police inaction, or in high places where political motivations may come in the way of enforcement of Court's orders and directions. This might go unnoticed to start with but may ripen into a habit or practice adopted by high level executive functionaries to remain unconcerned with prolonged or systematic non-compliance with Court's directions. As a result, it may not readily reach public notice and, as months wear on, the common man more often than not gets used to it. Nevertheless, it eventually hurts his interests either individually or collectively as a group.

When that happens and the individual or group approaches the High Court on proceedings for contempt of court, it becomes the duty of the Court to set right the wrong and prevent further harm by ensuring that its orders and directions are

enforced, that being the primary object of proceedings for civil contempt. However, it may so happen that by the time the contempt proceedings are brought before this Hon'ble Court the bar of limitation stares the petitioner in the face. Can that bar be crossed by the Hon'ble Court to prevent further continuation of the abuse of rule of law? If so, how?

Such questions are duly investigated and sufficiently answered by a recent judgment of our High Court's Division Bench presided over by His Lordship the Hon'ble Justice Kalyan Jyoti Sengupta and reported in (2010) Calcutta High Court Notes 306 (Subrata Kundu & Ors. –vs–Kshiti Goswami & Ors.). There upon test and interview duly taken a merit list was prepared by Chief Engineers PWD (Roads) and Chairman of the Selection Committee for appointment of 4th Grade Clerks. 254 candidates were chosen to be eligible. 179 candidates out of these 254 were reserved for the general category. 28 candidates were selected out of the general category. The respondents, without following the seniority of this merit list, started appointing candidates on their own. The order of the learned Tribunal (when it was moved) directing the Chief Engineer (Roads) to appoint candidates on the basis of merit list without resorting to pick and choose method was duly upheld by the Hon'ble High Court on 12 September 1997. On 30 January 2001 the Hon'ble Minister in-charge cancelled the merit list after appointing persons from and amongst the departmental candidates and candidates from the reserved category to fill in what had been the merit list. The point taken by the respondents before their Lordships was that the contempt application taken out against them on 2 May 2007 was barred by limitation and as such was not maintainable.

It was argued on behalf of the petitioner, on the other hand, that violation of the order of the Hon'ble Court was in this case a continuing one and, therefore, continues so long appointment was not given. The cause of action for contempt, therefore, arose day by day and every day.

Thus the question before the Court arose: Was the cause of action for initiating the contempt application continuous, or was it not? Justice K. J. Sengupta observed that by the order of the Division Bench made on 12 September 1997 not only the learned Tribunal's order had been affirmed but fresh direction was issued by this Hon'ble Court. It was that offer of appointment had to be made to candidates on the basis of the merit list within two months from 12 September 1997. Violation of the Hon'ble Court's order, therefore, started on 12 November 1997. No action, however, had been taken by the petitioners till as late as 15 February 2002 before the Tribunal. Therefore, there was no continuation of the cause of action. There was no satisfactory explanation as to why the petitioners remained silent over more than four years preceding 15 February 2002.

However, His Lordship noted that though limitation of one year applies to a contempt proceeding in superior courts, the Apex Court in the case of Pallav Seth: (2001) 7 SCC 549 ruled that by virtue of Section 29(2), read with Section 3 of the

Limitation Act, provisions of Sections 4 to 24 stand attracted to contempt proceedings. The Contempt of Courts Act, 1971, being in addition to and not in derogation of Articles 129 and 215 of the Constitution, must be taken to constitute the legal procedure to be adopted while court's jurisdiction has to be exercised under Article 215 of the Constitution. Still, though provisions of Sections 5 and 17 of the Limitation Act have their application to contempt proceedings, there had been no cogent ground to condone the delay of 4 years in the case under Section 5 of that Act.

Nevertheless, can rule of law be left to be abused by allowing Section 20, Contempt of Courts Act, 1971 to limit or regulate the exercise of the Hon'ble Court's Constitutional jurisdiction under Article 215 of the Constitution? His Lordship noted that the Apex Court in T. Sudhakar Prasad's case: (2001) 1 SCC 516 had laid down that no provision under the Contempt of Courts Act, 1971 can be used to limit or regulate the exercise of jurisdiction contemplated, amongst others, by Article 215 of the Constitution of India.

Drawing on the high authority of Hon'ble Phani Bhusan Chakravarti, CJ. laying down in the case of Dulal Chandra Bhar –vs– Sukumar Banerjee, AIR 1958 Calcutta 474 that contempt proceedings were not directed merely towards punishing alleged contemnors and that proceedings in civil contempt were proceedings in the nature of execution, the Hon'ble Division Bench went on to hold that such proceedings were at times directed basically towards enforcement of the order not carried out, and awarding punishment became only the secondary object. At such times, proceeding in Civil Contempt assumes the character of execution proceeding when the Court's order is not carried out.

The ratio decidendi of the judgement of Justice Kalyan Jyoti Sengupta appears even more clear from the following dates:

29 April 1997: The learned State Administrative Tribunal disposed of the petitioners' O.A. 183 of 1986 directing the Chief Engineer (Roads) to appoint candidates on the basis of the merit list without resorting to pick and choose policy.

12 September 1997: Order made by the High Court dismissing an application by the State challenging the Tribunal's said order and directing that the Government must offer appointment to the candidates on the basis of the merit list within two months.

12 November 1997: The said two months expired and violation of the said order dated 12 September 1997 started. However, no application for contempt was taken out till 2 May 2007.

30 January 2001: The Petitioner learnt that without complying with the said order dated 12 September 1997 the Hon'ble Minister-in-Charge amongst other respondents, cancelled the merit list after appointing candidates from and amongst

departmental candidates and candidates from the reserved category.

15 February 2002: A fresh application was taken out before the learned Tribunal challenging the said order of the state whereby the panel was cancelled. Directions were sought to offer appointment therefrom.

5 April 2006: Such application was dismissed by the learned Tribunal holding that there was no cause of action for the same.

11 April 2007: The said Tribunal's order was upheld by a Division Bench of the High Court which observed that since the aforesaid order dated 12 September 1997 had been violated contempt application was the appropriate remedy.

2 May 2007: Application was made by the petitioners for Contempt of Court.

A period of nearly 10 years separated 12 September 1997 when the High Court had given direction for effecting appointment as per the said merit list and 2 May 2007. On the other hand, from the start of violation of the Court's Order on 12 November 1997 till 15 February 2002 no action was taken. Then an application was taken out only for implementation of the said order and consequential relief. The period between 15 February 2002 and 11 April 2007 can by virtue of section 14 (2) of the Limitation Act be legitimately excluded from the aforesaid period of 10 years. Because proceedings for Civil Contempt is in the nature of execution of the order violated, the said contempt proceedings eventually initiated by the petitioners on 2 May 2007 was well within the period prescribed for enforcement of the said order which is 12 years. The said contempt application, therefore, was disposed of directing the State to implement the order dated 12 September 1997 giving appointment to the petitioners irrespective of cancellation of the panel (of merit list) as against the present vacancies, if available, at the earliest opportunity.

The Hon'ble High Court had been long alive to the abuse of the rule of law that might occur when an innocent citizen was made to suffer at the hands of Executive Magistrates who had earlier worked as a part of the Police machinery. In a case under Prevention of Corruption Act 60 years ago and reported in AIR 1951 Calcutta 524(DB) Justice K. C. Das Gupta observed in pages 528-529 that it was quite difficult, if not impossible, for such Magistrate to bring an unbiased mind to the consideration of problems in which the police were concerned. When a person appearing before them found Magistrates acting in this manner it was reasonably apprehended that they were merely part of the police. His Lordship observed further that there might be some executives who in excess of their zeal for the success of the executive wing of the Government took it that it was right and proper that the judiciary should not be independent of the executive. The Court was convinced that, on the contrary, the interests of the country, no less than the administration of justice, demanded that the judiciary must be independent of the executive. Indeed, to say otherwise would be to throw doubt on the wisdom of the Constitution of India.

No less important for the Hon'ble High Court was its duty to put municipalities in their place when they set themselves to commit infraction of the right of citizens to carry on their particular trade or occupation. In the case of Mangru Meya vs Commissioners of the Budge Budge Municipality reported in AIR 1953 Calcutta 333 a notice issued by the Municipality stated its decision to close down the Municipality Slaughter House and declared that no licence was to be given for slaughtering and sale of beef or flesh of buffaloes, calves etc. Justice H. K. Bose observed that, contrary to Section 370(2) of the Bengal Municipality Act, no reason was specified for such closing down and that the Municipality let extraneous consideration to prevail in passing its resolution and issuing its notice. Two points of law were made and recorded. First, Article 48 of the Constitution was one of the directive principles of State Policy but not enforceable by any Court. It was only to be employed in making laws of the state. Secondly, in this connection, the existence of an alternative remedy by way of appeal was held not to be an absolute bar to the grant of prerogative writs known to the Constitution. It was only to be considered whether or not such alternative would provide an adequate remedy for redress of the petitioner's grievance.

Abuse of the rule of law may take many forms. It may disingenuously appear as protest to executive discrimination against well-known religious practices such as the call of Azan incidental to Muslim prayers. In Masud Alam vs. Commissioner of Police, reported in AIR 1956 Calcutta 9, the Commissioner of Police upon receiving several complaints from local residents, caused the use of electric loudspeakers excessively magnifying the call of Azan from a mosque to be courtermanded. Drawing a sharp distinction between religious faith and belief on the one hand, and religious practices on the other in the line of Chief Justice M. C. Chagla of the Bombay High Court, D. N. Sinha, J held that if religious practice of Azan accompanied by the blare of loudspeakers ran counter to public order and health, then it must give way before the good of the people of the State as a whole. Further, to establish executive discrimination it was necessary to prove that it had been so widely practised and persistent as to give rise to an inference that the real intention of the legislative authorities was to discriminate against a particular community or group of people and, therefore, violative of Article 14 of the Constitution.

Again, when the rule of law is abused by the law-makers themselves the Hon'ble Court never has been slow to nullify the effect of such abuse by striking down the offending provision of the law enacted and declaring it ultra vires Article 14 of the Constitution. There is space enough to mention just one case on the point: S. Kankaria –v– State of West Bengal reported in AIR 1975 Calcutta 354. The question arose whether the provisions of the Calcutta Improvement (Amendment) Act of 1955 refusing statutory allowances or solatium to owners under Section 23(2), Land Acquisition Act, 1894 was ultra vires the Constitution and void. Their Lordships accepted the ratio decidendi of an earlier Division Bench judgement in AIR 1973 Calcutta 478 that the Calcutta Improvement Act was not a self-contained statute. For an identical public purpose, land can be acquired directly under the Land Acquisition

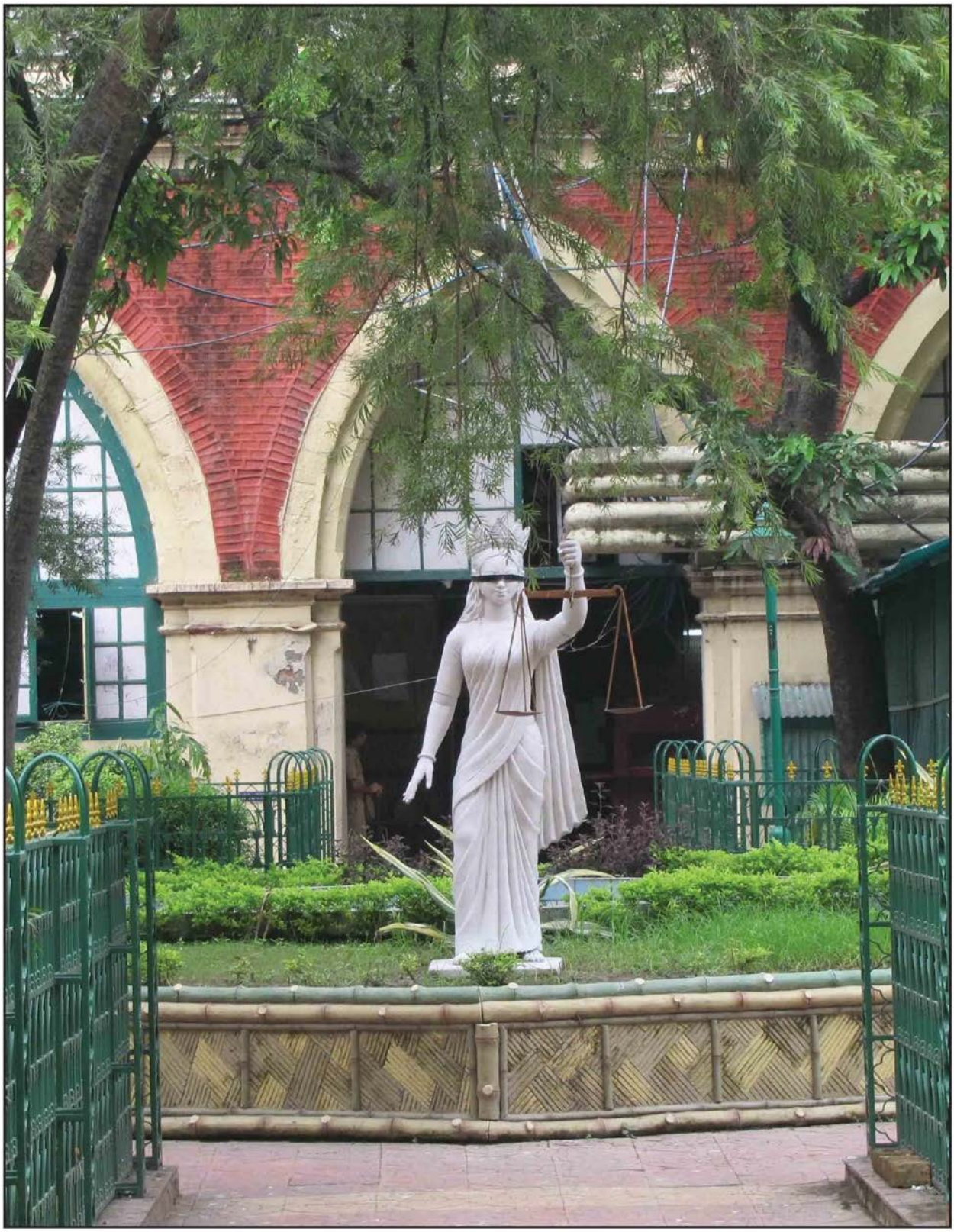
Act or under that Act as modified by the Calcutta Improvement Act. But the owner of the land would be denied the solatium of 15 per cent over the market value only in the latter case. That offered a clear case of discrimination which infringes the guarantee of equal protection of law. There is no intelligent differentia between a purpose mentioned in the Improvement Act and public purpose for which land can be acquired under the Land Acquisition Act that would justify the differential treatment to the owners of the lands under the two statutes. Therefore, paragraph 9(1) of the schedule of the Calcutta Improvement Act, as amended, which deprives the owners of the equality clause in Article 14 was held and declared void.

Finally, as recently as on 16 August 2011, the Supreme Court reiterated the consistent stand taken by our High Court in declaring that "Rule of Law" is an integral part of the basic structure of the Constitution and cannot be abrogated even by Parliament which indeed is bound by it. A five-member Bench of the Hon'ble Apex Court while upholding the Svetoslav Roerich and Devika Rani Roerich Estate Acquisition Act, 1996 enacted by the Karnataka Legislature to protect the 465 acre Bangalore estate of the famous Russian painter and his artist wife and preserve the valuable trees, paintings and art gallery, ruled that the private land of individuals (even though they were foreign investors) could be acquired for a public purpose only on payment of compensation. Here the foreign investor KT Plantation had acquired a part of the Roerich estate during the lifetime of Svetoslav Roerich. Though the entire estate was acquired by the Karnataka Government ostensibly for a public purpose, the apex Court held that the rule of law demanded payment of compensation. Drawing on its earlier Keshavananda Bharati judgement, the Apex Court declared that though Rule of Law as a concept finds no place in the Constitution, it has been characterized as its basic feature which cannot be abrogated or destroyed even by Parliament and, in fact, binds it. "Any law, which deprives a person of his private property for private interest, will be unlawful and unfair and undermines the rule of law and can be subjected to judicial review. Indeed, it was laid down that the rule of law is an "implied limitation" of the Parliament's power to legislate. Its abuse can never be tolerated. In our democratic system, judicial power constitutes the ultimate security of the Rule of Law. But that power is a heady thing. Its exercise calls for the utmost caution and the greatest restraint.

Everyone is governed by the Rule of Law. To anyone who intends to commit its abuse, the Lady of Justice presiding over our High Court's greenery, holding her scales blindfold, warns in words spoken three centuries and a half ago: "Be you never so high. The Law is above you."

The law the lawyers know about
Is property and land:
But why the leaves are on the trees,
And why the waves disturb the seas,
Why honey is the food of bees,
Why horses have such tender knees,
Why winters come when rivers freeze,
Why faith is more than what one sees,
And Hope survives the worst disease,
And Charity is more than these,
They do not understand.
– Harry Pepler[1]

[1] Harry Douglas Clark Pepler, who changed his name to Harry Pepler, was an English printer, writer and poet in Ditchling, Sussex in the 1930s, and was an associate of G.K. Chesterton and Eric Gill. His press published hand-printed works of James Joyce, G.B. Shaw and G.K. Chesterton.



Lady of Justice

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Annual Flower Show

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WHITHER LAW REPORTING

Bimal Kumar Chatterjee

Besides literary sources (books on law) and legislation (law made by parliament) the third and the other principal source of law is judicial precedents (judge–made law, e.g. what the judges had said on any given question earlier).

The operation of the system of judicial precedents is dependent upon records of courts' decision and these records made public are referred to as law reports. The tradition of law reporting is pretty ancient in the English legal system and can be divided into two historical phases–pre–and–post 1865. In India because of the British rule the same tradition of law reporting particularly in Calcutta, commenced in the post-1865 period. Official and non-official law reporting began in Calcutta in or about 1875 and Calcutta series of Indian Law Reports (ILR) can be said to be the pioneer. Thereafter in 1896-97 the first volume of Calcutta Weekly Notes (C.W.N.), in 1905 the first volume of Calcutta Law Journal (CLJ) and in 1914 the first volume of All India Reporter came to be published.

A judicial precedent operates to bind court in similar situation in a distinct case. It is really the lawyer's term of legal experience. We all tend to repeat things we have done before – law is essentially no different. If one case has decided a point of law then it is logical that the solution will be looked at in future. Mike Kington in 'Punch' had put it: "judicial precedent means a trick which has been tried before successfully". The law reports are normally referred to and looked at to find out the tricks which have been tried before successfully. This perception is perfectly acceptable. But is that the only use of law reports and no other? The answer to the issue can be otherwise. The present exercise may be said to be a humble experiment to support that answer.

Law reports can also be said to be the windows through which a researcher can elicit a good view of the then socio-legal issues and how those issues were taken care of by the then judiciary. For example, where Corporation of Calcutta was indicted by one Osmond Beeby under Sections 268, 269, 270 and 290 of the Indian Penal Code for keeping night soil deposit in such proximity to the houses of the complainant as to cause a public nuisance, the Chief Magistrate had doubts as to whether sanction of the Government was required to entertain the charge as he considered Municipal Commissioners to be "public officers". He referred the point for opinion of the High Court. The High Court Division Bench opined in the negative (ILR 3 Cal 758) on 5th June, 1878. Such factual and legal issues are now almost obsolete – though in a different social and legal context similar issues may now crop up in the context of

Article 21 and other articles of the Constitution of India in a public interest litigation. It must be understood that the law reports include therein reports of some of the "reportable cases" dealt with by the High Courts or any court higher than the High Court in the judicial hierarchy. Matters disposed of finally by the District Courts and not appealed against are larger in number but they remain unreported. Nonetheless law reports do have a not so unhappy reflection of the nature of disputes that people come with for adjudication in courts. The subject index of a law report is likely to give a fair glimpse of those disputes and how those disputes got resolved. A fair assessment as to which area of law occupied most of the judicial time of the Hon'ble Judges in High Court in any given period of time can also be made from this window.

At my instance a very humble exercise was undertaken by three junior advocates of the Bar Library Club of the High Court at Calcutta to make an analysis of the cases reported principally in Calcutta Weekly Notes. Their painstaking and commendable analysis is reflected first in chart 'A' and then in graph 'B' e.g. a symbolic diagram expressing the obvious system of connexions incorporating therein five branches of legal discipline. As one is at his liberty to draw his own inferences and conclusions from the said chart and graph advisedly they have refrained from drawing their own inferences and conclusions. Legal critics are likely to point out a large number of falacies and infirmities in the aforesaid exercise but none with confidence can deny the value of such an exercise.

There are two kinds of law reporting – responsible and irresponsible. Responsible law reporting should be able to fairly indicate at the least how many notable legal points have been decided in which discipline of law over a period in any high court or in Supreme Court reflecting change in the judicial minds in various stages of legal history. To give an example it may be safely asked: Has the judiciary been more technical or instead technicalities have taken a rear seat in justice delivery system over a period. The trend appears to be that there is leaning in favour of the latter. There could be a large number of useful conclusions on the basis of the data made available by responsible law reporting to help anticipating and determining the future course of action in a justice delivery system. Responsible reporting necessarily involves, amongst others, intelligent vigil, legal acumen coupled with required professionalism. Could we in India not produce an effective encyclopaedia of legal principles as America has Corpus Juris or England Halsbury's relying on responsible law reporting?

I have no kind of hesitation in saying that irresponsible law reporting has been steadily and at a galloping pace replacing the responsible law reporting. A need is being strongly felt since sometime for responsible law reporting.

In the legal world of India there is an emergent need for a single agenda Summit of Judges, Advocates and Publishers and Printers of legal books and journals. If the dangerously rapid pace at which legal materials are proliferating in India is allowed to continue and remains unabated we shall soon find ourselves underneath

them. We shall find ourselves totally lost in the jungle of legal materials impeding the course of justice. Judges, Advocates, Publishers and Printers of legal materials are jealously competing with each other in precipitating the said pace. Each is equally responsible and blameworthy for the present suffocating unmanageable and useless volumes and consequential frightful state of affairs. The anarchical situation is required to be brought under well-defined control, rule and administration.

It is of necessity a single agenda Summit of Judges, Advocates and Publishers and Printers of legal materials is required to be organized to subscribe to the memorandum being precursor or prelude to a Treaty of Non-proliferation of legal materials recording some certain guidelines, ethical and also otherwise: (a) to bury by scrapping some such materials which are or have become by passage of time useless junk and can only be held to be fit to decorate the archives of legal materials, and (b) to desist themselves from producing or causing to be produced unnecessary and avoidable junk legal materials. In this regard some professionalism is a must as an antidote to creation of a jungle of laws.

The privilege enjoyed by the judges in supplying what statutory laws could not cover or meet deserves to be exercised in the event of a real need therefor and not to satisfy the personal ego of the judges "to lay down the law for the first time" or 'to interpret the law in the manner not done hitherto'. We all like to see our writings (and the present author is not an exception either) in cold print and the judges are no exception. The judges have a further special liking for their judgments to be cited or referred to. It is needless to say that all judgments do not and cannot lay down the law for the first time however erudite a judge happens to be. Nor all judgments do or can interpret the law in a path-breaking manner. Therefore, all judgments may not have general appeal and, hence are not fit for publication but judgements are being indiscriminately published in both official and unofficial legal journals.

The advocates more often than not add fuel to this fire. There are advocates who try to ensure publication of all judgments delivered in the cases they happen to appear. It has a definite publicity value from the commercial point of view of an advocate. There is a further pointer which is more dangerous. Advocates' ignorance is reflected in the lack of assistance rendered to the court by an advocate resulting in contradictory and/or irreconcilable judgments. The Supreme Court Advocates who are expected to be more responsible are no exception. Irreconcilable, if not contradictory, Supreme Court judgments are adversely affecting its credibility as the highest temple of justice, notwithstanding incorporation of Article 141 in the Constitution of India which provides that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The Advocates are expected to perform dual duties. First, to assist the court to come to a correct finding in the light of correct interpretation of law applicable. And second, to render his professional services to his client to obtain relief or resist grant of relief as the case may be. Advocates more often than not are oblivious about their first duty leading the court to deliver wrong judgments without having the required assistance from the

advocate in the matter. The process has its toll. The entire judicial system has been for some time now suffering from credibility crises. It is, however, not to be presumed that this is the only factor contributing to the said crises. There are others, and more frustrating too.

The situation has its indirect adverse consequences. A group of publishers and printers have grown and prospered and are still prospering. Not that they do not owe any duty to the judicial system with the corresponding responsibility but their commercial priorities appear to have eroded the same. Some judgment, irrespective of its publishable contents, is being published in at least half a dozen of legal journals. Number of responsible publishers is dwindling in the absence of proper and healthy control system. Judgments are being published without having any permission of any responsible authority and that too without obtaining even the certified copy. In such pursuit, to a large extent, individual judges and advocates are lending support to the unwelcome commercial motivation of the publishers and printers. And all of them are not publishers. Mostly, they are printers. The distinction between publishers and printers is now rapidly disappearing. Too many irresponsible printers are pirating the operation in an unhealthy competition misleading and taxing the too busy advocates. How and in what manner this is being done is now almost common experience of most advocates. Unfortunately irresponsible advocates are also lending/selling their names to such printers at a consideration.

Thus everyone is vying against the other to make his own contribution to the creation of unnecessary and avoidable junk of legal materials. Each of them is equally possessed of the wealth of antidote thereto. Discipline is the other name of self-restraint which is the only effective permanent antidote to the existing anarchy. Let us all unite to abate and control the chaos.

Statistical support for this article has been obtained from Ms Suchismita Ghosh and Messrs. Siddhartha Chatterjee and Jayjit Ganguly – all advocates of Bar Library Club.

100 Years Comparative Chart

Sl.No.	Topic	1910 - 1919	1920 - 1929	1930 - 1939	1940 - 1949	1950 - 1959	1960 - 1969	1970 - 1979	1980 - 1989	1990 - 2000	2001 - 2010
(A)	Civil matters Arbitration Act (1882, 1897,1913, 1940 and 1996)	7	27	13	26	45	19	30	12	21	66
	Tenancy Laws	138	271	346	366	221	150	122	83	54	30
	Municipal Laws	9	31	58	94	105	42	27	25	15	21
	Code of Civil Procedure (1882 and 1908)	206	379	481	391	143	116	120	115	151	256
	Companys Act (1882,1913, 1956)	1	8	42	25	31	79	13	-	15	5
	Contract and Specific Relief Act	21	107	85	58	31	11	24	9	4	83
	Partition	8	33	30	14	9	6	4	11	4	2
	Hindu Succession	28	28	15	18	24	13	5	11	7	4
	Debuttar Matters	3	30	20	65	6	4	3	2	2	1
	Land Acquisition Act	8	19	32	20	15	11	9	7	10	16
	Transfer of Property Act,1882	58	172	152	92	56	28	31	17	12	49
	Negotiable Instruments Act,1881	1	-	6	7	3	2	-	-	6	11
	Partnership	3	-	5	9	2	5	11	13	5	8
	Railway Matters	7	8	9	6	10	10	6	8	3	5
	Divorce	1	5	11	14	3	9	2	-	4	55
	Patents and Designs Act, 1911	1	-	7	-	-	1	-	1	-	2
	Hindu Law	-	192	-	77	15	-	2	-	-	6
	Industrial Matters	-	2	7	4	62	37	46	18	15	4
	Muslim Law	-	56	-	24	12	-	4	-	2	2
	Copyright and	-	3	1	-	4	4	-	2	-	7

	Trademark										
	Succession Act, 1865	-	10	-	-	-	-	-	-	-	-
	Indian Succession Act,1925	-	6	27	4	6	5	2	4	11	44
	Caste Disabilities Removal Act,1850	-	-	3	-	-	-	-	-	-	-
	Government of India Act, 1935	-	-	11	15	-	-	1	-	-	-
	Married Women's Right to Property 1874	-	-	3	-	-	-	-	-	-	-
	Bengal Money Lenders Act, 1933	-	-	10	261	4	-	-	5	3	4
	Bengal Agricultural Debtors' Act, 1936	-	-	46	118	-	-	-	-	-	-
	Motor Vehicles Act, 1932	-	-	2	5	35	6	5	10	18	83
	Sale of Goods Act, 1930	-	-	3	-	-	4	-	-	-	-
	Hindu Women's Right to Property Act, 1937	-	-	-	9	-	-	-	-	-	-
	Defence of India Act,(1939 and 1962)	-	-	-	8	6	6	3	-	-	-
	Certiorari and Quo-Warranto	-	-	-	2	-	-	-	-	-	-
	Hindu Succession Act, 1956	-	-	-	-	3	7	2	-	-	-
	Banking Companies Act, 1949	-	-	-	-	-	6	-	-	-	-
	Hindu Marriage Act, 1955	-	-	-	-	-	19	2	40	2	-
	Hindu Adoption and Maintenance Act, 1956	-	-	-	-	-	-	-	5	-	-
	Special Marriage Act, 1954	-	-	-	-	-	-	-	3	-	-
	Sick Industrial Companies Act, 1985	-	-	-	-	-	-	-	1	-	-
	Consumer Protection Act, 1986	-	-	-	-	-	-	-	2	5	10
	Wild Life	-	-	-	-	-	-	-	2	-	-