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THE HIGH COURT OF BOMBAY (II)

APRIL 14, 1962, is a red letter day in the annals of the High Court of Bombay, as on that day the centenary celebrations of the High Court were inaugurated. The Bombay High Court has established great traditions of independence and integrity by holding the scales of justice even between the State and its subjects, and between individual and individual.

The following are the names of the eminent Chief Justices who have adorned the High Court Bench in the course of the last one hundred years.

Hon. Sir Mathew Richard Sausse, (1859-66)	Hon. Sir Lawrence Hugh Jenkins, (1899-1908)
„ Sir Richard Couch, (1866-70)	„ Sir Basil Scott, (1908-19)
„ Sir Michael Roberts Westropp, (1870-82)	„ Sir Norman Cranstoun Macleod, (1919-26)
„ Sir Charles Sargent, (1882-95)	„ Sir Amberson Barrington Marten, (1926-30)
„ Sir Charles Fredrick Farran, (1895-98)	„ Sir John William Fisher Beaumont (1930-43)
„ Sir Louis Addin Kershaw, (1898-99)	„ Sir Leonard Stone, (1943-48)
	„ Mr. M. C. Chagla, (1948-58)
	„ Mr. H. K. Chainani, (1958- )

On April 14, 1962, at 5-00 P.M. the Hon. Mr. Bhuvaneshwar Prasad Sinha, the eminent Chief Justice of the Supreme Court of India, led a unique procession comprising of Hon. Mr. Sri Prakasa, the Governor of Maharashtra, Hon. Mr. N. V. Gadgil, the Governor of Punjab, and Hon. Mr. H. V. Pataskar, the Governor of Madhya Pradesh, Hon. Mr. Y. B. Chavan, the Chief Minister of Maharashtra State and the learned Chief Justices of the High Courts of Andhra, Assam, Bihar, Bombay, Gujarat, Jammu and Kashmir, Kerala, Madhya Pradesh, Madras, Mysore, Orissa, Punjab and Rajasthan, Judges of the Bombay High Court, Mr. M. C. Setalvad, Attorney General, Mr. C. K. Daphtary, Solicitor-General, and some leading members of the Bar, dressed in their respective robes and gowns from the precincts of the High Court building towards the Oval Maidan where a temporary pandal had been erected. In the pandal were seated the ministers of the State, prominent citizens and lawyers of the local Bar.

The proceedings began with the singing of the Indian National Anthem by Mr. V. R. Talashikar, Assistant District Judge, Nagpur.

This was followed by the following song sung by Mrs. Prabha Chandrachud.

१

वन्देऽहं मितभाषिणं स्थिरमतिं दक्षं च सत्यप्रियम् ।  
 सद्वृत्तं व्यवहारनीतिनिपुणं शास्त्रार्थसंदर्शिनम् ॥  
 शान्तं यः प्रतिपक्षिणोर्विवरणं संश्रुत्य साक्ष्यं तथा ।  
 निःपक्षं च ददाति निर्णयमसौ न्यायासने राजते ॥

२

युक्तं नैव यदुच्यते भुवि जनैर्न्यायोऽयमन्वः स्वयम् ।  
 सत्यं यत् परमं सु-वर्ण-निहितं संबोध्य चान्तर्दृशा ॥  
 न्यायः सन्तुलयन् समं गुरुलघून् शास्ति प्रजां पालयन् ।  
 धर्मो विश्वसमाश्रयस्य पदवीं न्यायाद्धि संपद्यते ॥

३

मुंबापुर्यां महाराष्ट्रे शतायुन्यायिमंदिरम् ।  
 भारते घटना-युक्ते राजतां तेजसा चिरम् ॥

I

Salutations to one who has measured speech  
 and balanced mind,  
 is ever watchful and loves the Truth,  
 Who is of calm demeanour, profound in  
 worldly knowledge and rules of conduct,  
 who truly comprehends the law,  
 Who the contending parties patiently hears,  
 And impartial judgment gives,  
 he alone *adorns* the seat of justice.

II

“Justice is blind” the people say,  
 but that surely is not true,  
 For Justice by its inner light discerns  
 the ultimate truth,  
 though hidden in words of gold,  
 And weighing evenly punishes high or low alike,  
 thus protecting all.  
 By Justice alone does Law become  
 the shrine universal.

III

In the city of Bombay, in Maharashtra,  
 the High Court is now a century old,  
 May its lustre for ever shine,  
 in Bharat unified by its Constitution.

This was followed by a welcome speech by the Hon'ble the Chief Justice of the High Court at Bombay.

The Hon'ble Mr. H. K. Chainani, Chief Justice, said:

We meet today to commemorate a historic event, the completion by the High Court at Bombay of a hundred years of its glorious existence. On this day our thoughts first turn in humble prayer to the Almighty, the fountain head of all justice, from Whom we derive all our strength and power. I am particularly grateful to Him for giving me the privilege of being the Chief Justice at this time.

We are thankful to the Chief Justice of India for agreeing to inaugurate the centenary celebrations of our High Court. He was formerly a leading member of the Bar at Patna, where he had acquired a reputation for his legal acumen and forensic skill. He achieved greater distinction on the Bench first as a Judge of the Patna High Court, then as Chief Justice of the Nagpur High Court and subsequently as a Judge of the Supreme Court. Today he is the head of the Judiciary in the Indian Union. It is, therefore, but appropriate that he should inaugurate this function. On behalf of the members of the High Court Centenary Celebrations Committee and myself I convey our thanks to him for accepting our invitation. Our thanks are also due to our Governor, our Defence Minister, the Governors of Madhya Pradesh and Punjab, the Chief Minister, the Chief Justices of other High Courts, the Attorney General and the Solicitor General, who have kindly responded to our invitation. I also thank all the other guests who are present today to join us in our celebrations.

The history of this High Court could be said to have begun in 1670, when the first law Courts were established by the British in Bombay. On February 2, 1670, two benches of Justices were appointed for the trial of minor disputes and offences. The Deputy Governor and Council were constituted a Court of appeal and were invested with the power to try all cases beyond the jurisdiction of the Justices. These Courts functioned for two years till 1672, when a Court of Judicature was established. This Court was inaugurated on August 8, 1672, by the then Governor of Bombay, General Aungier, with due pomp and ceremony, after a colourful procession, which included four attorneys or pleaders, had marched through the main thoroughfares of the city.

In 1728 the Mayor's Court was established under a Royal Charter. Its jurisdiction was limited to civil matters. The Royal Charter also constituted the Court of Oyer and Terminer and Jail Delivery, composed of the Governor and some members of his Council, who as Justices of the Peace had jurisdiction to try all offences except high treason. In 1753 a Court of Request was established for the trial of small causes.

These Courts ceased to exist in 1798, when the Recorder's Court was created, with power to exercise both civil and criminal jurisdiction. The Recorder was the King's Judge, unlike the Judges of the earlier Courts, who were the servants of the East India Company. The Recorders set up high traditions and it was from their time that the battle for the independence of the Judiciary commenced.

In 1824 the Recorder's Court was replaced by the Supreme Court. This Court carried on the struggle for judicial independence. In 1828 a letter was addressed to the Supreme Court that the Governor of Bombay had issued orders that a writ issued by the Supreme Court should not be executed. This was resented by the Judges, who had the Government letter read out in open Court and then declared: "Within these walls we know no equal and no superior, but God and the King". Within about a fortnight thereafter one of the two Judges died. After a fresh writ issued by the Court had been disobeyed, the surviving Judge, Sir John Peter Grant, took the extreme step of closing the Supreme Court and the business of the Court remained suspended for five months.

The jurisdiction of the Supreme Court was confined to the town and island of Bombay. About the same time when this Court was established, Sudder Diwani Adalat and Sudder Fozdari Adalat were established to exercise supreme civil and criminal jurisdiction respectively over the other territories in the Presidency of Bombay. In 1861 the British Parliament enacted the Indian High Courts Act, which empowered the Queen to establish a High Court in each of the three Presidencies of Bengal, Madras and Bombay. It abolished the Supreme Court and the Sudder Diwani and Fozdari Adalats and vested their original and appellate jurisdiction in the High Court. On 26th June 1862, Letters Patent were issued establishing the High Court at Bombay.

The birth of the High Court took place in a quiet manner. There was no pomp and pageantry and no procession like the one which was taken out in 1672. On August 14, 1862, the Judges appointed by the Letters Patent made a solemn declaration in the presence of the Bar and the public that from that date they would sit as Judges of the High Court and with that declaration the High Court at Bombay came into being.

The establishment of the High Court was a landmark in the history of this country. It led to the introduction of a uniform system of law and procedure throughout the Presidency of Bombay and thereby contributed materially to national integration. It also ushered in the rule of law, which is the very life breath of democracy.

For a long time the Judges of the High Court were as a rule Europeans. In June 1864 the first Indian, Rao Bahadur Janardhan Wassoodewji, who was the principal Sudder Amin, that is, a First Class Subordinate Judge, in Khandesh, was appointed a Judge in a short leave vacancy of about two months. He acted as a Judge again for about four months in 1865. Nanabhai Haridas, who was previously a Government Pleader, was the first Indian to be appointed a permanent Judge. This was in 1883. The number of Indian Judges increased to two in 1895. This number increased gradually during the present century. The Chief Justices were, however, without exception, English barristers. The first Indian to act as Chief Justice was Justice Badruddin Tyabji. He served as Chief Justice for about a month in a leave vacancy in January 1903. It was, however, not until we achieved independence that the first Indian, my distinguished predecessor Mr. M. C. Chagla, was appointed as the permanent Chief Justice of this Court.

There was not much statute law when the High Court began its career in 1862. The Civil Procedure Code was enacted in 1859, the Indian Penal Code in 1860 and the Criminal Procedure Code in 1861. In regard to other matters, the law was both uncertain and unsettled. The Judges therefore generally applied the principles of English law, with which they were familiar, except where the parties were Hindus or Mahomedans. The Hindu law was then in a state of confusion and uncertainty. There were several texts, a larger number of commentaries and divergent translations. The early decisions and in particular those given by the Sudder Adalats on the advice of Hindu Shastris and Pandits tended to make Hindu law rigid and unsuitable to the conditions of the day. Profound learning, laborious study and a broad vision were required to give the ancient laws a liberal, just and humane interpretation. Fortunately this Court had Judges of the requisite calibre, like Sir Michael Westropp, Sir Raymond West, Justice Telang and Justice Ranade. In the words of Justice Chandavarkar, in the time of these Judges the High Court embarked on an era of Hindu law reform. They had the daring of Judges who know how to make the law bend to the cause of justice. By striking out a path of their own they placed the administration of Hindu law on a progressive and liberal basis and thereby rendered service to the cause of progress in the country.

Many famous trials have taken place in this High Court. Two of these were of Lokmanya Tilak. At the end of his second trial in 1908, Tilak stated that there are higher powers that rule the destiny of men and nations and that it might be the will of Providence that the cause which he represented might prosper more by his suffering than by his remaining free. The cause for which Tilak underwent great personal suffering prospered and the country gained independence in 1947. Mysterious are the ways of Providence. On the midnight of 14th August 1947 in the very Sessions Court room in which Tilak had been tried and sentenced, the last English Chief Justice, Sir Leonard Stone, unfurled the national flag of India amidst strains of Vande Mataram.

The achievement of independence did not change the character of this Court, though it altered its composition. The Court has continued to administer the same laws and follow the same rules of practice and procedure. The same traditions have been maintained and in some cases enhanced.

In 1948 and 1949 several Indian States, as they were then called, merged with the Province of Bombay. The jurisdiction of the High Court was extended to the new territories and many new Courts had to be established.

On January 26, 1950, the Constitution of India came into force. The Constitution established the Supreme Court as the highest judicial tribunal in the country. This High Court had the honour of supplying to the Supreme Court its first Chief Justice, the first Attorney General and the first Solicitor General. Since then four other distinguished Judges of the Supreme Court have been drawn from this Court.

The Constitution recognises the vital role the judiciary has to play in a democratic State. It has made the judiciary the guardian of the rights and liberties of the people. Each High Court has been given the power of superintendence over all tribunals working within the limits of its jurisdiction. No tribunal or authority can therefore now act arbitrarily or capriciously, for its acts are liable to be scrutinised and corrected by the High Court. The Constitution has also conferred on the judiciary the power to decide, subject to certain conditions, whether the restrictions imposed by the State on the liberty of a citizen and on his right to possess and enjoy his property are reasonable. The High Court is therefore now playing a new role of reviewing legislation, in order to ensure to each citizen the enjoyment of his guaranteed rights, subject to such limitations as, in the opinion of the High Court, may reasonably be imposed in the larger interests of the society.

In 1953 complete separation of the judiciary from the executive was effected in the territories forming part of the old Bombay State. Bombay was probably the first State to effect this long overdue reform. After the reorganisation of the States with effect from November 1, 1956, the territories of the Bombay State and with it the jurisdiction of the High Court were extensively extended. We welcomed the addition of the new territories. It strengthened the Bench and the Bar. Benches of the High Court were established at Nagpur and Rajkot to deal with matters arising from Vidarbha and Saurashtra districts respectively. In these territories also the judiciary was separated from the executive in September 1959. All Courts are now under the administrative and judicial control of the High Court and their judicial independence has been fully and effectively secured.

In 1960 on the formation of the State of Gujarat, many of our esteemed colleagues and several advocates, with whom we had been long associated, left us to serve the new State. We were sorry to part with them, but we had the consolation that what was our loss was Gujarat's gain. The work of separation was carried out with utmost goodwill and cordiality.

Until the early part of this century, the Original Side Bar was almost entirely English. Badruddin Tyabji, who subsequently became a Judge of the High Court, was the first Indian barrister from Bombay. He qualified for the Bar in 1865. He was followed by Sir Pheroze Shah Mehta. The vakils, who practised on the Appellate Side, were not allowed to appear on the Original Side. After the enactment of the Bar Councils Act in 1929, the vakils practising in the High Court were all enrolled as advocates. In November 1949 the High Court abolished the distinction between the advocates practising on the Original Side and those practising on the Appellate Side and since then all the advocates practising in the High Court have been enrolled on a common roll.

The British barristers, who practised in this Court, brought with them the traditions of the English Bar. One of these traditions is to combine courtesy and fairness to the Bench with fearless presentation of the client's case before the Court. In establishing and maintaining this tradi-

tion, they were assisted by the Judges, who realised that a docile or servile Bar is not of much assistance in the administration of justice. The traditions established by the early English barristers have been developed and maintained by succeeding generations. Throughout its long history this Court has been fortunate in having, both on its Original and Appellate Sides, a Bar distinguished for its learning, its independence and devotion to the best traditions of the legal profession. The relations between the Bench and the Bar have always been cordial. On behalf of my colleagues and myself I must acknowledge the deep debt of gratitude, which we owe to all members of the Bar, senior and junior, both in Bombay and in Nagpur, for the assistance and co-operation which they have always given to us. I must also acknowledge the uniformly good work done by the attorneys of this Court, who have also played their part in building up the fine traditions of this High Court.

Great Judges have sat on the Bench of this Court and eminent lawyers have practised before it. Both have jointly contributed to the greatness of this Court. Amongst others, whose names readily come to mind, are Sir Joseph Arnould, who laid down the classic dictum "What is morally wrong cannot be spiritually right", Sir Michael Westropp, Justice Telang and Justice Ranade, who will always be remembered for their courageous and liberal interpretation of ancient texts of Hindu law, Sir Charles Sargent, who encouraged Indian advocates when the Original Side Bar was almost entirely British, Justice Badruddin Tyabji, who had many firsts to his credit, Sir Lawrence Jenkins, whose statue adorns the lawns of this High Court, Sir Norman Macleod who possessed the gift of arriving at quick and correct decisions, Sir Dinshah Mulla who was a great jurist and whose books are almost a second source of law, Sir Charles Fawcett and Sir Robert Broomfield, who examined each case with meticulous care and thoroughness, Sir Amberson Marten who was known for his legal learning, Sir John Beaumont who possessed a clear and a quick legal mind and whose judgments are remarkable for their lucidity and precision, Sir Harilal Kania, who combined strong common-sense with sound law and who was the first Indian Chief Justice of the Federal Court and the first Chief Justice of the Supreme Court, Sir Eric Weston and Justice Rajadhyaksha, who heard patiently and decided wisely, and my immediate predecessor, Mr. Chagla, who in a time of stress and strain maintained and enhanced the traditions and the prestige of this High Court. Amongst the outstanding lawyers I may recall the names of Anstey, Lowndes, Macpherson, Inverarity, Sir Chimanolal Setalvad, Jinnah, Bhulabhai Desai, Jayakar, Rao Sahab Mandlik, Daji Abbaji Khare, Diwan Bahadur G. S. Rao, H. C. Coyajee, G. N. Thakore and A. G. Desai. I must not omit two other distinguished lawyers, who are still in practice, our Attorney General Mr. M. C. Setalvad, the pride of the Bombay Bar, and Sir Jamshedji Kanga, the widely respected doyen of the profession, who has been described as the walking encyclopædia on law.

Both the Judges and lawyers of this Court have made a name outside the domain of law. Justice Forbes, Justice Telang, Justice Ranade, Rao

Saheb Mandlik and Tripathi were gifted and versatile writers, who have made signal contributions to our literature. Amongst the present day scholars and writers, I may mention Mahamahopadhyaya Dr. Kane and Dr. K. M. Munshi. Justice Telang and Justice Ranade were associated with many social reform movements. Sir Lawrence Jenkins was the founder of the Orient Club in Bombay. Justice Badruddin Tyabji and Sir Narayan Chandavarkar were Presidents of the Indian National Congress. The father of the nation, Mahatma Gandhi, was an advocate of this Court, even though he never practised in it. Sir Phirozeshah Mehta, Sardar Vallabhbhai Patel, his brother Vithalbai Patel, and Bhulabhai Desai, were some of the other members of the Bombay Bar, who have left a mark on the history of the country. Dr. Ambedkar, another gifted lawyer of this Court, will occupy a place of his own in history on account of his ceaseless efforts to uplift his less fortunate fellow men and the part he played in the framing of our Constitution. It is a matter of pride that the legal profession in Bombay has supplied four Governors of States, Mr. Mangaldas Pakvasa, Dr. K. M. Munshi, Mr. Pataskar and Mr. Gadgil. From time to time it has also made its due contribution to the ministries, both at the Centre and in the State.

These are a few of our illustrious predecessors, who have built up for this Court the high reputation, which it enjoys today. Throughout its long history the High Court has stood for the impartial administration of justice, unaffected by any extraneous influences. The first Chief Justice of this Court, Sir Mathew Sausse, known as Sausse the Silent, was a model of judicial dignity and reserve. He did not attend any social functions and it is said that he never read newspapers, lest his judgments might be affected by what he heard or read outside the Court. The Judges, who followed him, resisted social and official pressure and valiantly fought for judicial independence. Time and again they came to the rescue of the citizen and protected him against the arbitrary action of the executive. This led to numerous conflicts, many of which are only recorded in the confidential files of this Court. Fortunately no serious conflicts have arisen recently. For this our thanks are due to the present Chief Minister, Mr. Chavan, and to his predecessor, Mr. Morarji Desai, who readily consented to and carried through the proposal to separate the judiciary from the executive. The relations of the High Court with Government today are cordial and friendly. We only hope that Government would be more willing to provide us with funds, so as to enable us to have the Judges and the staff which we require, the necessary buildings and amenities for our Courts and the much more needed residential quarters for our Judges, particularly in the mofussil. We also trust that Government will check the unhealthy tendency to oust the jurisdiction of Civil Courts in various matters.

It is often said that Judges live in the past. This criticism is not justified. Having been born out of the past, we respect it. We derive inspiration and guidance from it. But we live in the present and look to the future. Happiness must no longer be the privilege of a few. The old order is giving place to new and with it the laws must change. The

laws enacted by the Legislatures represent the will of the people expressed through their chosen representatives and must be presumed to have been made in order to secure public good. It is in the consciousness of these facts and an awareness of the demands of social justice that this Court has interpreted the new social legislation and tried to strike a balance between liberty and licence and between the rights of the individual and the requirements of the community. In recent years the High Court has been particularly keen to administer substantial justice and not to give undue weight to procedural technicalities. I am confident that the same liberal and progressive spirit will guide this Court in future.

A question may legitimately and properly be asked what role has this High Court played in the progress and development of this country? Has it been concerned only with deciding disputes between quarrelling persons and punishing the wrongdoer or has it done anything more substantial? It seems to me that the first great achievement of this High Court is to establish the supremacy of law. By impartial and efficient administration of justice it has created respect for the rule of law. It has enforced equality of all persons before the law and even the otherwise all powerful Government is treated before it like any other person. It has upheld the rights and dignity of the individual and has thereby assisted in the establishment and successful working of democratic institutions in this country. In these times of rapid change it has served as a stabilising force, but at the same time it has brought to bear a fresh outlook on the new social and economic legislation and has construed it in accordance with the ideas of the present age, bearing in mind the constitutional objective of achieving social and economic justice. By administering a uniform system of law, practice and procedure, the High Court has provided a link, strong and stable, between different sections of the community. The judiciary today is in fact a powerful unifying force binding together the people of this country.

It is, therefore, up to those who are in power to maintain the dignity and prestige of the judiciary. Formerly a call to the Bench was regarded as a great honour and the status and dignity, which went with the office of a Judge, was regarded as sufficient compensation for the financial loss suffered. Conditions have now altered. Owing to the unfortunate tendency in some quarters to lower the position of the judiciary, lawyers, who have made a success at the Bar, are not willing to come to the Bench. It is becoming increasingly difficult to get persons of the requisite calibre to man the judiciary even at the lower levels. This will in due course affect the efficiency of the judiciary. I hope this matter will receive serious consideration at the hands of the authorities concerned. Perhaps the new Bar Council of India may also consider the matter.

The High Court is responsible for the proper administration of justice not only in the High Court, but in all the other civil and criminal Courts in the State. Many of our Judges, who are serving in the mofussil, are working in conditions of extreme difficulty. They have no proper Court buildings, well-equipped libraries or suitable living quarters. It is often a matter of surprise to us how in spite of these serious handicaps they turn out such fine work. During the last few years in particular they

have worked very hard and have cleared off almost all the old matters. On behalf of my colleagues and myself I express our deep appreciation of the good work, which our judges and magistrates have done, both in Bombay and outside.

I must also pay a tribute to the staff of the High Court, both past and present, for the efficiency and integrity which they have displayed during all these years. The high esteem in which this High Court is held is due as much to the labours of its Judges and advocates as to the silent and efficient work done by its staff. I thank them for their loyalty and their devotion to their work.

A great tradition of this High Court is that Judges of this Court work as a team in harmony and in friendship. We are all members of a happy family. I have been fortunate in having colleagues, who are both competent and amiable. They are a source of great strength to me and I am grateful to them for the invaluable and ungrudging help which they have always extended to me.

For us today is not merely a day of rejoicing, but it is more a day of rededication. On this day we renew our pledge to serve the cause of justice faithfully and conscientiously, without fear or favour, affection or illwill. May this great High Court continue to stand as a symbol of liberty and justice and may it always enjoy the confidence and respect of the people, whom it seeks to serve.

This was followed by a speech by the Governor of the State of Maharashtra.

Hon. Mr. Sri Prakasa, Governor of Maharashtra, said:

Hon'ble Judges, fellow-Governors, Members of the Bar, Ladies and Gentlemen,

On behalf of the State and Government of Maharashtra and on my own behalf, I extend a most warm welcome to our visiting Judges, Governors, lawyers and other friends who have come to us from far and near to assist us at the Centenary Celebrations of our High Court which despite the bifurcation of the earlier composite State and emergence of Maharashtra, is still known as the High Court of Bombay. I am most grateful to our Chief Justice for the privilege he has accorded me of associating myself with this function and performing this pleasant duty. Throwing our minds backwards, we find that the first law Court in Bombay was set up in 1670 which did its work in its own way without much of law or procedure, followed by the Mayor's, Recorder's and Supreme Courts. It is a matter of pride for us all to recall that during the last hundred years, this High Court has played a great part in the evolution of not only the system of the judiciary in the country but of the life of the people themselves. It is amusing to know that one hundred years ago when the High Court was ushered into existence, there were no functions worth speaking of, and the Press gave no prominence to the event. We have reason to congratulate ourselves that today not only have we organised celebrations on a suitable scale but the news-

papers of tomorrow will not entirely black out our proceedings from its columns.

So far as I am concerned, I must express my thankfulness that unlike one of my remote predecessors who asked his Private Secretary to invite the Judges to a party at Government House and who received a reply from the Chief Justice's Private Secretary declining the invitation, I took care to write myself to the Chief Justices of India and some of the States, regard being had to the capacity of Raj Bhavan, to do me the honour of being my guests when they come. Even though, because of my impending departure, I had requested the Hon'ble the Chief Justices to ask their Private Secretaries to write to the Comptroller of the Household telling him of their wishes in this behalf, they have been good enough to send replies to me personally and inform me that they were asking their Secretaries also to do the needful. I very much appreciate the courtesy, and I am glad that there was no occasion for any personal difficulties between the Governor and the Judges. I also hope that Judges have nothing to complain about when they honour Raj Bhavan with their presence on various occasions as I have reason to know that their predecessors used not unoften to have in the earlier days of the British. This is practically the last of my public duties before I relinquish my office as Governor of the State, and I should like to say how grateful I am to the succeeding Chief Justices—in fact, I took charge of my office from the Chief Justice himself who was officiating as Governor at the time—and Judges of the High Court for the great courtesy and kindness they have always extended to me. I should like to take this opportunity of offering my tribute to the great and learned Judges—both English and Indian—that have adorned our High Court Bench through the century, and also to the many brilliant lawyers that have pleaded their cases before them. Many great men have been both lawyers and Judges, and they have enriched our public life and put a permanent stamp on the evolution of Indian society.

It has been a peculiarity of the British people that wherever they went, they took their institutions with them; and not only did they regulate their own lives in accordance with these, they were also able so to impress the people among whom they sojourned, whether as traders, missionaries or rulers, that they in their turn not only accepted these institutions, but actually revelled in adopting them and attuning their own lives in accordance with them. The British brought in their wake their clubs and gymkhanas, their amusements and recreations which influenced the lives of those that came in touch with them for they eagerly adopted the ways of the newcomers which perhaps they regarded better than their own. Missionaries established their schools and hospitals, which were eagerly availed of by persons seeking new knowledge or desiring to enter new professions. Our bankers and merchants found how valuable it would be to join the new traders that had come from abroad, and they did so with gusto. Taking full advantage of the situation, the British as they advanced from being mere traders to becoming the absolute masters of the land, superimposed upon the foundations of the administrative system that had come down in some form or another from

old and medieval times, their own methods and ideals, and this is particularly seen in the system of law that they introduced, of which the High Court whose centenary we are celebrating, is a great symbol. The history of the evolution of the system of law in India is itself a saga of man's adventure for his own well-being. There is no doubt that the British system of law has had the greatest influence on the life and thought of our people from the highest to the humblest as nothing else has had that was brought to us by any foreign peoples, at any time through the long ages of our history.

Law has entered the life of everyone, and it hangs over every single individual from birth to death all the time—one may almost say, even after death. Whatever normally was governed by custom and convention, is now governed by written law. No one can escape it. It has become so complicated that apart from the vague sense of realising that it is all around us, no one knows or can know it in its fullness. Streams of legislation are flowing from all the many legislatures of the land—Central and State—all the time, and though large masses of our people are regarded as illiterate and even uneducated, they are expected to know the law, for ignorance thereof cannot be pleaded as an excuse—*ignorantia legis neminem excusat*. Thus the British established their Courts of law of all varieties, and these permeated town and country. As we observe the hundredth anniversary of a great High Court like ours, it will perhaps not be out of place to assess the good and bad points of the system we have been administering so that the good may be preserved, strengthened and perpetuated while the evil should be eliminated as far as it is possible to do so.

In this world, there is always room for difference of opinion, and when Judges can disagree among themselves, there is no reason for any surprise if members of the Executive and the Judiciary are not sometimes able to see eye to eye with each other. The Judiciary in the present set-up has the advantage that it has the last word. It can criticise both the Legislature and the Executive, being itself immune from any criticism from either. As will have been noted, both the Legislature and the Executive have always upheld the dignity of the Judiciary even when they have felt that they might have been treated in a different manner. Still it will be acknowledged that the relations of the three limbs of the State have been cordial, and there has been no necessity for any Chief Justice in high dudgeon to close the High Court of which we have a precedent here because the Governor was not exactly behaving in the manner the Chief Justice wanted or ordered. I was let off rather lightly with only some words of good advice at the close of a long judgment that the power that the Executive was using in a particular matter of procedure, should be used very sparingly. Since it was so used only once—and that too by my unfortunate self—during the twelve years that the present Constitution of the country has been working, I felt that it had really not been at all too freely used, and I have every confidence that even such an occasion will not arise again.

Courts and lawyers have played their own notable part in many a land in the evolution and attaining of constitutional freedom, and our

own country is no exception to this. If it is true here as anywhere else that violations of law have taken place in the course of our Freedom movement, it cannot be denied that they were only of a temporary nature, and their harshness was mitigated by the presence of courts and lawyers, and the main current was hallowed by the existence of a rule of law. I remember that at the time of the first Civil Disobedience Movement which took the form of the boycott of the visit of the then Prince of Wales in 1921-22, the great lawyer and Judge Lord Reading, the then Viceroy of India, felt "puzzled and perplexed" with the curious spectacle before him of some of the highest and the greatest men of the land including the most eminent lawyers going voluntarily to jail. The Viceroy in despair cried that it went against the grain to put such persons behind the bar. If I am not mistaken, it was he who spoke of "justice according to law" instead of merely "justice", the expression ordinarily used. That itself showed that this eminent jurist did distinguish between what may be regarded genuine absolute justice from justice according to law, the dispensing of which has always troubled the conscience of men called upon to do so as part of their unfortunate duty.

This brings me to the subject of law itself. Ordinarily it is in the form of codification of public opinion regarding right and wrong, so far as criminal law is concerned, and the proper conduct of human relations, so far as civil law goes. It is, however, clear that in many cases public opinion is not the same as the law as it stands. This High Court of Bombay had to deal with such cases while I have been in office here where there has been a conflict between law and public opinion as regards what should or should not be done in particular cases. Incidentally, it might be said that the system of jury enabled the Judge to obtain some idea of the opinion of the general public on matters that came before him. That system, however, is being abolished; and so the Judge is deprived of what little he could know of what others felt about individual cases or even the law on the subject. The Constitution of a country therefore has provision that where Judges are helpless, being bound by the letter of the law, the Executive should step in as the supreme and ultimate authority to put things right. That is why Judges themselves are known to make recommendations to the Executive after their own judgment has been pronounced, so that the right thing may be done which the Judges themselves are in no position to do. I sometimes feel that the time has come that in the light of experience, something might be done to remove this anomaly. Perhaps I may give a glaring example with which this very High Court has been intimately associated. Justice according to law was done to a great patriot on two separate occasions when he was sentenced to long terms of imprisonment. Nearly half a century later, the horrified Chief Justice of the time put up a plaque in a prominent place on these buildings, on which are inscribed not the words of the Judge sentencing the accused, but the words of the accused defying the Judge and all the powers that be; and in language of rare beauty and fervid eloquence, the highest judicial authority of the State does justice according to public opinion telling a surprised world that his predecessors had tarnished their reputation in doing what they had

done. Really speaking, the earlier Judge had rendered justice according to law and the later Judge rendered it, though posthumously, according to public opinion. I cannot put the situation in stronger language than the language of the Judges themselves.

Judges of our High Court have always been noted for their very courteous and correct manners in social converse and the performance of their public duties. It will always be remembered as a mark of great graciousness that the last British Chief Justice before he retired on the attainment of the country's Freedom, hoisted the National Flag over the High Court buildings to the strains of our National Anthem with dignity becoming the high office and genuine loyalty for the change in the country's status. The story goes that long years earlier, another British Judge who knew the Gujarati language very well, happened to be travelling in a railway compartment with an Indian family as fellow passengers. The lady speaking Gujarati told the others with her that she did not know how she could spread out a meal with the 'monkey' by their side. The kindly Judge appreciating the situation and respecting the customs of the people, alighted at the next stoppage, saying in choice Gujarati: "Now the monkey is clearing out, and you can have your meal in peace", to the utter amusement and embarrassment of his unsuspecting companions. In strange contrast to this was the conduct of the Britisher who asked one of the most eminent of Indian High Court Judges—a person held in the highest respect in public life as well—to get out of his compartment as he could not bear a countryman of ours anywhere near him.

One would naturally think that those who are engaged in the profession of law would have the greatest amount of faith in its processes; but apparently that is not so. The phenomenon that has most astounded me is that I have not seen lawyers going to law. I do not know whether there has been any case anywhere in the land where two lawyers have gone to law against each other. They also, like any other ordinary householders, possess property and have the usual urges and emotions of ordinary human beings. How is it that they have not sufficient faith in their own profession and do not seek relief at law when they have any troubles among themselves as they are bound to have in the very conditions in which our lives are cast? Knowing the ruination that formal appeals to law mean, I presume they decide their cases among themselves or by private negotiations or through the help of friends. I have been curious to know, and no lawyer friend of mine whom I have approached with this query, has given me any answer apart from getting angry at my temerity in insinuating that it is not always possible to get proper justice in Courts of law. I know Government itself provides legal aid to impecunious persons in certain cases, but we also know that lawyers being only human, are not inclined to put that much of care and fervour in cases that are referred to them in that manner as they would do when parties themselves have approached them and for which they have received fees that they felt were their due.

It is a matter of the deepest sorrow to me that in a well-governed and peaceful State like ours with its thrifty, law-abiding and hard work-

ing population, there should not be less than forty to sixty murders in every one of its twentysix districts every year. In the course of my tours, I have asked police officers and District Judges as to what is being done or can be done to check the evil. I have found Judges telling me that even when they were morally convinced that a particular person had committed a murder with which he is charged, he could not be convicted because the evidence was so slender that the case would not only have been dismissed by the High Court but that the Judge might have received a reprimand as well. It is well-known that in British jurisprudence, the adjective law is so much more powerful and important than the substantive one. The police officers tell me that it is just impossible to get witnesses. The atmosphere is such that persons fear that harm would come to them if they bear witness against offenders. In England, I was told on high authority that witnesses have no such fear, and no murder there goes undetected and unpunished. Actually there are not more murders in the whole of the United Kingdom than there are in a single district of Maharashtra. We have, therefore, to take steps to protect the witnesses if real justice is to be done, and society saved from anti-social elements.

I hope I shall not be accused of taking too great or unfair an advantage of the courtesy that our Chief Justice has extended to me in inviting me to this function when as a layman, I venture to say something about law and justice themselves. There is no doubt that the system of law as prevalent today, has had the greatest influence in the remotest parts of the country; and curiously enough, even those who are regarded as illiterate and supposed to be uneducated, seem to be quite familiar with whatever portions of it affect them. I have often been amazed at their knowledge; and I remember that when soon after I returned from England with an academic degree in law from Cambridge and a professional one from London, and went to my villages as their zamindar, one of the persons discussing a particular matter pertaining to the village with me, said to me quite plainly even though he was a tenant of mine: "What do you know of law? It is I who know it." And he was right. He was known as the village barrister, and was responsible for most of the quarrels in the village when he manoeuvred to get various persons to the law Courts at considerable profit to himself and ruination of the parties themselves. He was a person who could get the necessary folks to bear witness to anything that he desired.

I can confess that at that moment I got a little unhappy that a people who at one time were known to speak nothing but the truth before the *panchas* to whom they went for a decision of their cases, should have been turned into liars and perjurers by the system of law that had been introduced in the country. Instead of going with their simple cases to village elders who knowing all the facts of the case, decided everything on the spot within a few minutes, they now want to take their chance in the law Courts at considerable inconvenience for they know that the Judges who hear their cases, know nothing of the facts of the case and have entirely to depend on the evidence tendered by witnesses. British jurisprudence requires that those who try a case should not know any-

thing about the matter beforehand, and therefore parties are able to tutor witnesses and get the evidence they desire. The whole thing is heart-breaking; and I do hope that as our High Court celebrates its Centenary, those who are interested in the great and noble task of dispensing justice, will do something so that things may be bettered.

I should like to say also that if justice is to be real justice, it should be swift; it should be cheap; and it should be effective. Law's delays are proverbial; and when cases drag on their weary length for decades, it is something too sad for words, for the actual suffering caused is very serious. Even if real justice is given in the end after the parties concerned have been completely ruined and turned out of their house and home, it gives as much satisfaction as the doctor's declaration that the operation was completely successful, only the patient died. Something has got to be done so that all delays are avoided. The costs of getting justice done are so prohibitive that many find it cheaper to suffer wrong rather than to go and seek redress in courts of law. It is a curious thing that a visit to a prison shows that practically cent per cent of the prisoners come from the poorer sections of the population. It is difficult to believe that wealthy people do not commit any crimes. One such may get caught once in the blue moon and find his way to the prison house but usually the rich can afford to have big lawyers to defend their cases, and not unoften they manage to escape. The poor man cannot do so, and so he must suffer. Something must, therefore, be done in this direction also; and as we celebrate the centenary of our High Court, it seems to be a fitting opportunity when thought can be given to it.

Justice must also be effective. It must not be only on paper. When a person is sentenced to punishment by a Court of law, Government immediately comes into the picture and takes charge of him and forces him into the prison cell. In civil cases, however, we may get our decrees which are not always difficult to obtain, but it is our own business to get them executed, and we have to go to Courts of law again and again till it does not seem to be worthwhile to get any execution at all, and the whole purpose of law and justice is defeated. I think it should be the Government's business to see that the judgments of civil Courts are also implemented, and that Government itself takes responsibility for the execution of the decree and for giving the party concerned what is its due. If these things are taken into consideration, justice will become swift, cheap and effective. If that is not done, I venture to say that while we shall have palaces of justice and the most eminent of Judges and lawyers, the common man will not be assured that real justice is done to him or even can be done to him.

Our leaders are making no secret of the fact that we are all aiming at a socialistic pattern of society. I am authoritatively informed by those who know these things better than I do, that this means the elimination of the middle man. I know in my own person what this elimination means. As a landlord, I have been eliminated so that the Government and the tiller of the soil may come directly in contact. Belonging as I do to a family of traders and merchants, I know that State-trading and the co-operative movements, will eliminate my class. I cannot help

having the feeling that the lawyer is a middle man between the litigant and justice. I cannot say if there will be any attempt made to eliminate this class also. Law is a new profession to us. It had been unknown in India but it has become, curiously enough, the most popular profession for the educated; and those who practise it regard themselves and are regarded by others as members of the most honourable and respectable calling. Perhaps the three objects that I have in view, in the matter of the dispensation of justice, namely, that it should be swift, it should be cheap and it should be effective, may be realised if socialism should also mean that we would not have lawyers as middlemen between those who dispense justice and those who are in need of the same. I beg to be pardoned for putting things so strongly and so bluntly, but I felt that I should not hesitate to say what has been in my mind when I stand before an assemblage so distinguished and on an occasion so significant as this.

Once more I offer my greetings to all assembled on this great Day when we close a hundred years of good work according to our own lights, and step into another century with the hope that great Judges will ever adorn the Bench and great lawyers will continue to come to plead their cases before them. May true justice ever radiate from these noble halls, and may those who are stricken and sorrow-laden, and those who feel that they have been wronged in any way by Government, society, or neighbours, ever come here without any hesitation or fear, fully assured that their grievances will be redressed, and every solace and comfort will be afforded unto them to the glory and greatness of God and the dignity and well-being of man.

मित्र प्राप्तु सज्जनाः जनपदैः, लक्ष्मीः समालम्बताम् ।  
 भूपालाः परिपालयन्तु वसुधां, शाश्वत् स्वधर्मो स्थिताः ॥  
 आस्तां मानस तुष्टये सुकृतिनां नीतिर्नवोद्वैव वः ।  
 कल्याणं कुरुतां जनस्य भगवान् चंद्रार्णं चूडामणिः ॥

This was followed by the speech of the Attorney General of India.

Mr. M.C. Setalvad, Attorney General of India, said:

Mr. Chief Justice, distinguished guests and visitors and Brothers of the Profession of the law,

I deem it a great privilege to have the opportunity of joining on behalf of the Bar in requesting the Chief Justice of India to inaugurate the Centenary Celebrations.

It is but appropriate that the inauguration should take place at the hands of the judicial head of the whole country. We recall, with pride, that our Constitution, unlike the Constitutions of many Commonwealth and other countries, has placed the Chief Justice of India in a position to guide the judicial administration of the whole land. Though our Constitution empowers the Union Government to establish its own Courts, the Union has not chosen to adopt the system of dual Courts as in the United States of America. We have a unified system of Courts dealing with civil and criminal matters pertaining to the States or the Union and an integrated judiciary. The dominant purpose of our Constitution-

makers was, it would seem, to enact provisions which would emphasise and promote the unity of the country; nothing could do so in a greater degree than an integrated judicial system for the entire Indian Federation. Whether he be the citizen of the extreme South or the inaccessible North or the remote East, all are under the sway of an administration of justice which has at the head in each State the State High Court or the corresponding Court in the Union territory and at the apex, the Supreme Court of India. We know how the Chief Justice of India has a voice in the appointment of the judiciary in the highest Courts of the States. In a considerable measure, therefore, there rests on him the responsibility for the selection of the highest judiciary in the land. The exercise of this important role necessarily involves a duty on his part to constantly keep himself informed of the working of the judiciary in the State High Courts and of the functioning of the Bars in the States. In order that he may effectively discharge his important function of sharing in the selection of proper judicial personnel he has naturally to keep in touch with the Bars of the High Courts in the States. Thus, there seems to have arisen a convention that the Chief Justice of India should, by personal visits and otherwise, have contacts with the functioning of the higher judicial tribunals in the States. The practice was initiated, I believe, by Chief Justice Kania, the first Chief Justice after the Constitution came into force, who, we are proud to claim, belonged to the Bar and the Bench in Bombay. Succeeding Chief Justices have continued the practice and, if I may say so, the present Chief Justice of India has strengthened and enlarged that convention.

It is no easy task for the head of the judiciary in India to perform the functions, I have mentioned, without affecting the status and the dignity of the High Courts. It needs to be remembered that we are certainly in form and in a great many matters in substance a federated State having State autonomous units. The highest Courts of the States have therefore to command the respect of the citizens of the State and no action which detract from their importance and dignity and the confidence they inspire, would be consonant with the constitutional propriety. It is a matter of gratification that the successive heads of the judiciary in India have, on the whole, performed this delicate task with care and discrimination maintaining a just balance between keeping themselves in touch and seeking information on the one hand and exercising supervisory functions on the other. We are happy that the initiation of the celebrations which are to mark the completion of a hundred years of judicial administration by the highest Court of this State should take place at the hands of the head of a unique and unified judicial system such as we have in India.

The city of Bombay has played a singular part in the administration of justice in what was till 1947 British-India. Soon after the cession of the island of Bombay by the Portuguese to the English and its lease to the East India Company there was established in 1672 a Court of Judicature in this island which was inaugurated with pomp and ceremony, including a ceremonial procession from the Fort through the Bazaar to the then Guild Hall. Presiding at the ceremony the then British Governor

enunciated memorable principles which set the pattern for the administration of justice not only in this newly acquired island, but in the other parts of the country. Said he "the inhabitants of this island consist of several nations and religions, to wit—English, Portuguese and other Christians, Moores and Jentus, but you, when you sit in this seat of justice and judgment, must look upon them with one single eye.... without distinction of nation or religion for...they have all an equal title and right to justice and you must do them all justice, even the meanest person of the island and in particular the poor, the orphan, the widow and the stranger...and this not only one against the other but even against myself and those who are in office under me nay against the Hon'ble themselves... for this is your duty and therein will you be justified and in so doing God will be with you to strengthen you." Those noble words epitomise the fundamentals which by and large guided the administration of justice throughout the period of British rule, not only in this island or in the Presidency of Bombay, but all over the land. Independent India has endeavoured to follow the same path since the advent of freedom. It is, I venture to say, the pursuit of these principles which has earned for this great institution, the High Court of Bombay, the confidence and respect of the citizens of the State.

I have been a witness only to the latter half of this saga of a great tradition which completes its hundred years in 1962. It may be that all of us are apt to be devotees of the past. But I feel that the first fifty years of the existence of this High Court were momentous and went a long way in laying a landmark of the glorious way of achievement. The tribunal which came into existence under the Charter of 1861 took to itself the powers and jurisdiction and inherited the traditions established over a hundred and fifty years, by the Mayor's Court, the Recorder's Court, the Sadar Adalats and the Supreme Court; and it enlarged and built upon those traditions. Great names figure in the judicial history of those memorable years. On the Judges' rolls one reads the distinguished names of Westropp and West, Telang and Ranade and that of the first permanent Indian Judge, Justice Nanabhai Haridas. The Bar of the two sides of the Court was led by great personalities such as Anstey and Inverarity, Badruddin and Pheroza, Kirtikar and Chaubal. During that half century the Court endeavoured boldly to harmonise the doctrines of Hindu law with the changing needs of Hindu society and grappled with vexed questions of property law. The erudite judgments of that period bear eloquent testimony to those years of destiny.

In the half century which followed, the Court entered into, what one may call, its modern phase. That was a hectic period marked by two world wars. The Court had to take the strains and stresses arising out of the commercial litigation which followed the conclusion of the first world war and from various other causes. The half century was towards its close marked by the historic events of the country's success in its struggle for independence and its adoption of a Constitution ensuring justice, liberty and equality in a Democratic Republican State for all. These fifty years have brought to the Court fresh problems arising out of the new jurisdictions created by the Constitution, the merger of the new

territories into the State and the re-organization of the State. The Court dealt with these manifold novel situations with great success under the guidance of the distinguished Chief Justice who took charge of it soon after independence.

It cannot be gainsaid that the law laid down in the numerous decisions of the Court, the eminence of the Judges who from time to time have adorned the Bench and the distinguished advocates who have over the years pleaded at the Bar of this Court have inspired respect and admiration throughout the country. Some one speaking in New Delhi the other day observed on the healthy rivalry between three High Courts of Calcutta, Madras and Bombay during the hundred years of their existence. But said he "it must be admitted that Bombay has definitely beaten the other High Courts in the race". The Bench and the Bar in Bombay have won many a laurel and to Bombay belongs the distinction of having provided the first Chief Justice of India under the Constitution.

The completion of a record of useful and distinguished service for a hundred years is undoubtedly an occasion for celebration and jubilation. Is it not also an occasion for taking stock of ourselves, and of seeing what we are today, so that in the coming years we may be able to give as good an account of ourselves as in the past? Here, one perceives definite indications which cause anxiety and even alarm. There has been unmistakable evidence of the decline in the standards of efficiency and correct behaviour at the Bar. That necessarily postulates a corresponding decline on the Bench; for, the Bench and the Bar are the wings of the same profession, the profession of the law. The Law Commission has in its report pointed out the decline in the standards of appointments to the High Courts and the part played by the Executive in lowering the standards of efficiency and integrity of the judiciary. The situation has certainly not improved since the Commission made its report in 1958. We have heard of dissensions in some High Courts. Appointments to the judiciary based on political or communal considerations still hold the field. Patronage in the matter of these appointments is being exercised at high levels. The Executive already dominant is bound, as our welfare activities grow, to be still more powerful. Should not then the Bar and the Judiciary stand firm against these practices instead of succumbing to them and themselves becoming tools of the exercise of power by the Executive?

We are pledged to build a secular and a democratic State. The paths which we are pursuing in matters relating to the administration of justice are such as are bound in course of time to undermine real democracy. Democracy can thrive only under a pure and efficient administration of laws which alone can help maintain the rule of law. The picture all around us of nations being ruled by autocratic Governments carries a great lesson for us. Unless we eliminate these corrupt influences which are threatening the proper functioning of the administration of justice, we shall not be able to travel for long on our appointed path of the freedom of a democratic State.

May I conclude by welcoming you, Sir, again, on behalf of the Bar and invite you on its behalf to inaugurate these celebrations.

The Hon'ble the Chief Justice of India then delivered his inaugural address.

The Hon'ble Mr. B. P. Sinha, Chief Justice of India, said:

We are all happy to meet on this historic occasion when we are going to celebrate the hundred years of the functioning of the Bombay High Court as such. It was ushered into existence as a result of the High Courts Act of 1861, along with the High Courts of Calcutta and Madras. Thus, during the current year, the three most ancient High Courts of Bombay, Calcutta and Madras will be celebrating their centenary. It is in the fitness of things that on a special occasion like this, besides the Judges and members of the Bar of this High Court, the Chief Justice of India along with the Chief Justices of most of the High Courts in India, as also the Attorney-General of India and the Solicitor-General, should be associated with these celebrations.

On a historic occasion like this, it would not be out of place to make a reference to the fact that though the High Court as such has been functioning so vigorously and efficiently during the last 100 years, its roots go far deep into the dim past. It is a matter of history that the earliest source of judicial power emanating from the Crown of England goes back to the reign of James I. However, the first authority for the introduction of British law in India was granted by Charles II, by the Charter of 1661. In 1669, the East India Company was empowered to make laws and constitutions for the good government of the Island of Bombay. In 1670 Justices were appointed for the trial of minor disputes and offences, while the Deputy Governor and Council were invested with the power to try more serious cases. The amended Charter granted by Charles II to the East India Company in 1683 empowered the Governor and Council to establish Courts of Judicature. Further in 1726, King George I empowered, by Royal Charter, the East India Company to establish at Bombay a Court superseding the existing Court. This Court, called the Mayor's Court, was to consist of a Mayor and nine Aldermen, and was to be a Court of Record with powers to try, hear and determine all civil suits, actions and pleas between party and party. From this Court appeals lay to the Governor and Council, and ultimately to the King in Council, in causes of high valuation prescribed. King George II granted a fresh Charter in 1753 re-establishing the Mayor's Court at the three Presidency cities of Bombay, Calcutta and Madras. The powers of the Mayor's Court were also limited in jurisdiction in respect of suits of prescribed nature. Courts of Requests were also established in the Presidency towns for the determination of civil suits involving smaller pecuniary jurisdiction. Thus, at this period of time, the Presidency towns had the Mayor's Courts and Courts of Requests for the administration of civil justice; and criminal justice was administered by Justices in Petty and Quarter Sessions. The Mayor's Court was superseded by the Recorder's Court established in the reign of George III, in 1798. The Recorder's Court consisted of the Mayor, three Aldermen and a Recorder, who was to be appointed by His Majesty. From the decision of the Recorder's Court, an appeal lay to the King in Council. The Recorder's

Court yielded place to the Supreme Court of Judicature, which was established in 1824 in the reign of George IV. The Supreme Court was to consist of a Chief Justice and two other Judges, being barristers of England or Ireland, of not less than five years' standing. The local jurisdiction of the Supreme Court was confined to the Island of Bombay, with full power and authority to exercise all Civil, criminal, equity, Admiralty and Ecclesiastical Jurisdiction. For the administration of justice in the mofussil, outside the Island of Bombay, the Governor-General in Council authorised the Bombay Government to constitute Courts of Civil and Criminal Judicature, towards the end of the 18th century. Thus came into existence the Sudder Dewanny Adawlut (Court of Supreme Civil Jurisdiction) for the administration of civil justice, and the Sudder Foujdary Adawlut as the Court of Supreme Criminal Jurisdiction. These Courts functioned as Courts of Appeal and of Revision, with power of superintendence over the administration of civil and criminal justice respectively. Thus, the Supreme Courts—the Sudder Dewanny Adawlut and the Sudder Foujdary Adawlut—continued to function until they were amalgamated into the High Court of Judicature at Bombay, under the High Courts Act (24 and 25 Vict. c. 104). It was by this process of evolution that the Courts which began in the 17th century with small jurisdictions developed into this High Court with original and appellate jurisdiction, the former confined to the original local limits of the Supreme Court and the latter comprising the whole Presidency. By this statute, the Queen was empowered to establish, by Letters Patent, the High Courts at the Presidency towns. The High Court was to consist of a Chief Justice and as many Judges, not exceeding fifteen, as Her Majesty might think fit to appoint. Of the Judges, not less than one-third were to be Barristers, and not less than one-third were to be members of the Covenanted Civil Service. It was in 1879 that the High Court came to occupy its present majestic building. The history of the High Court in its barest outline, as set out above, illustrates the truth of the great saying that all great institutions had small beginnings.

During the last about four centuries, the Courts in England have been the battle ground for fighting out the civil liberties and personal freedoms of people in Great Britain. In India, since the advent of the East India Company in the 17th century, during the last about 200 years, the same struggle between the Judiciary and the Executive had gone on more or less on parallel lines as in England. I am indebted to the autobiographical record published as "Recollections and Reflections" of the late Sir Chimanlal H. Setalvad, one of the greatest advocates that your High Court has produced, for the following instances of the struggles I have just alluded to between the Judiciary and the Executive, to establish some landmarks in constitutional history.

The first instance relates to the regime of the then Supreme Court, which was presided over by Sir Edward West as Chief Justice, and Sir Peter Grant and Chambers, as Judges. The Court had issued writs of *habeas corpus* for the production of two persons kept in custody respec-

tively in Poona and in Thana Jail. The Governor and Members of Council thereupon sent a letter to the Court that it should not take any further action in the matter. The Court ordered the Clerk of the Crown to send the reply to the Government that no notice could be taken of their letter "as it was most unconstitutional for Government to approach the Court not by petition or by motion by themselves or by Counsel in open Court, that being the only way in which for the wisest purposes the law permits Judges to be addressed". The Court rightly strongly criticised the attempt of Government to induce the Judges for reasons of state policy to refrain from administering justice according to what they deemed to be the law, and consequently the Court reissued those writs. As the Executive refused to obey the writs of the Supreme Court, the only surviving Judge, Sir Peter Grant, declared on April 1, 1829, that the Court shall not function in all respects and would remain closed until it received an assurance that its authority would be accepted. The Privy Council ultimately decided that the persons in respect of whom the writs of *habeas corpus* had been issued by the Supreme Court were, at the relevant dates, residing at Poona and at Thana, and that, therefore, the Supreme Court had no jurisdiction to issue those writs. Even though ultimately it was found that the order of the Supreme Court was wrong on merits, the Court had succeeded in establishing the principle that the Executive were not entitled to sit in judgment on the validity of the Orders of the Court (1 Knapp's Report, Privy Council, page 1-12; English Reports 222).

The second remarkable case about which we find reference was that of *Queen v. Kashinath Dinkar* in 1871 (8 Bombay High Court Reports, Criminal Cases 126). It was decided by a full bench consisting of Chief Justice Westropp and Melville, Green, Lloyd and Campbell, Justices. The matter came before the High Court in its revisional jurisdiction. The conviction of the petitioners had been questioned on the ground that their sentence was based on a confession alleged to have been made by them which had really been extorted by cruel and revolting practices with the approval of the trying Magistrate, one Mr. Pritchard. It was also contended before the High Court that the learned Sessions Judge had refused to take any notice of the allegations and the circumstances in connection with the confession. A Division Bench of the High Court directed that the circumstances under which the confessions were made should be investigated by the Sessions Judge and reported to the Court. At the enquiry that followed, the said Mr. Pritchard was appointed by the District Magistrate to appear as the Public Prosecutor, curiously enough at the suggestion of the Sessions Judge. While the enquiry was still proceeding and witnesses on behalf of the Crown had still to be examined, the Sessions Judge, on an application of Mr. Pritchard, gave sanction for the prosecution for perjury of two of the accused persons and one of the witnesses, who had been examined in support of the allegations in favour of the accused. The Sessions Judge adjourned the enquiry directed by the High Court in order to facilitate the prosecution of that witness and to allow Mr. Pritchard to attend to

it. For the purposes of the enquiry before the Judge, Mr. Pritchard applied for summonses to call as witnesses Mr. Anstey and Mr. Shantaram Narayan who had appeared for the accused before the High Court and the summonses required them to produce the instructions given to them by their clients. The Full Bench, which ultimately heard the matter, passed very scathing remarks against the Sessions Judge and against Mr. Pritchard and the extraordinary procedure adopted at the enquiry at which Mr. Pritchard, the Magistrate, had figured as the public prosecutor appointed by the District Magistrate, at the instance of the Sessions Judge. The Full Bench also very properly called the attention of all concerned to the unusual features of the trial and the enquiry proceedings and the issue of summonses to get discovery of the instructions given to counsel by their clients, which, the Court rightly pointed out, could not be disclosed without the consent of the clients. That case fully illustrates the evils of the combination of judicial and executive functions.

The third remarkable case was that reported in *Damodar Gordhan v. Deoram Kanji*, (1876 I.L.R. 1 Bom. 367). In that case, the High Court declared *ultra vires* the action of the Government of India in ceding a part of British India to an Indian State, without the authority of Parliament. The Government appealed to the Privy Council against the decision of the High Court. The Privy Council held that the jurisdiction of the Court at Bombay could not be taken away or altered except by a parliamentary legislation. As a sequel, a Parliamentary statute had to be enacted to legalise the cession.

These examples of the sturdy independence of the Judiciary in upholding the rights of the subject and of protecting his liberties are telling illustrations not only of fearless administration of justice by the High Court but also of the fearless advocacy of counsel at the Bar. The annals of this Court are full of illustrious figures at the Bar who have, by their diligence and fearless advocacy, maintained the high traditions of the Bar and helped the Judiciary in discharging its onerous duties to the glory of the Judiciary and to the satisfaction of all concerned. It will be invidious to mention some of them, and most of you present here know more than I do. Those leading figures exemplify how a fearless, learned and independent Bar is essential for maintaining an efficient and independent judiciary. The publication, referred to above, by one of those luminaries at the Bar contains references to those eminent Judges and leading lights of the Bar, who have contributed to the making of this great High Court. Their examples are beacon lights for the benefit of the succeeding generations of Judges and lawyers.

Your High Court has made a most significant contribution to the Judiciary and to the Bar, at the highest level. One of your Judges, Sir Harilal Kania, was the first Chief Justice of independent India, and the first Chief Justice of India under the Constitution. The Honourable Mr. Justice Bhagwati was another distinguished Judge of your Court, who adorned the Bench of the Supreme Court of India, during the most formative period of its foundation and growth. Three of the members of your Court are functioning as my valued colleagues. The two leaders

of your Bar, Shri Motilal Setalvad and Shri C. K. Daphtary, have been functioning, as you all know, as the Attorney-General of India and the Solicitor-General of India, respectively, with great distinction, and have now been occupying the foremost positions at the Bar of India, as a whole. Let us hope that the Bombay High Court will continue to make its distinctive contribution to the Judiciary and the Bar of the country. The Bombay High Court has acquired a great name as the repository of justice in the State of Maharashtra. But I may be permitted to mention that, if there is a move to change the name of the High Court after the name of the State for which it functions, it will not be, in my humble opinion, a move in the right direction. The Bombay High Court has accumulated, during the hundred years of its existence, as also during the time of its predecessors, noble traditions and the highest reputation as the bulwark of the rights and liberties of the people. Its Bench and Bar have been highly esteemed as the upholders of the highest traditions of the Bench and the Bar. It should continue to add greater lustre to its time honoured name.

We are rightly proud of our Constitution, which has, in Part III, enshrined the fundamental rights of person and property, and has made the enforcement of those rights the fundamental duty of the Supreme Court under art. 32, and of the High Courts under art. 226. As you all know, for the first time the High Courts in India have been empowered to issue appropriate writs or orders throughout their territorial jurisdiction, for the enforcement of those fundamental rights and for other purposes. Hence, what has now been clearly and emphatically provided by our Constitution as one of the fundamental duties of the Courts, was being actually performed by your High Court and its predecessors, though within the territorial limits of its original jurisdiction. Everyone has, therefore, the right to be proud of such a Court. This Court has not only existed but functioned effectively for about a hundred years as the final arbiter in most cases of disputes and differences between citizens and citizens, as also between the State and the citizens. Let us hope that this Court will continue to discharge its onerous duties in the fear of God and without the fear of man, for all times to come, and thus when future generations of Judges and lawyers and others will assemble to celebrate the recurring centenaries of the Court, they will have ample reasons to be ever so proud of the Judiciary as the bulwark of democracy and as the protector of the rights and liberties of all that knock at the doors of this great Temple of Justice.

Mr. H. M. Seervai, Advocate-General, in proposing a vote of thanks said :

Your Excellency the Governor of Maharashtra, My Lord the Chief Justice of India, My Lord the Chief Justice of Bombay, Members of the Bench and the Bar, ladies and gentlemen,

Before rendering special thanks I would like to thank you all for honouring this occasion by your presence.

I would like to thank our Governor for coming here on what is almost the eve of his departure from this State. I rejoice to think that

he has been able to take part in these celebrations for no Governor has endeared himself so much to the inhabitants of this great State. A man of deep religious nature, he has radiated kindness and charm wherever he has gone so that it can be said of him that he has walked with crowds and kept his virtue and talked with kings and yet not lost the common touch. I welcome the candour of his speech when conformity is so fashionable to-day, even though his speech would involve the elimination of the Advocate-General and all his tribe. I do not suppose he expects me to agree with him, but I am glad that he has exercised the right of free speech which is guaranteed by our Constitution.

I would like to thank My Lord the Chief Justice of India for inaugurating these celebrations. He is no stranger to Bombay for he has been with us before. No man in the judiciary carries a heavier burden than the Chief Justice of India, for on his bearing and foresight depends the respect commanded by the Supreme Court and the High Courts of India. In the discharge of that august task he knows that Bombay will not fail him.

I would like to thank the Chief Justices of the sister High Courts who have honoured this occasion with their presence. In the fine words of Sir Maurice Gwyer it is not without significance that in the happy tradition of our profession all Judges are brethren to one another, and the presence of these distinguished Chief Justices is an unmistakable token that the happy tradition abides with us.

Our thanks are due to My Lord the Chief Justice of Bombay on whom the brunt of these celebrations has fallen. He has laboured night and day to make these celebrations worthy of the occasion and I think he can look with satisfaction on the results he has achieved.

I would like to thank the Attorney General for coming to us and giving us his thoughtful address. He belongs to us in a manner in which he belongs to no other State. He has rendered great service to the administration of law and justice, the greatest of these being his work as President of the Law Commission. The report of that Commission gave effect to the great motto of our country: "Satyameva Jayate": "Truth Prevails." He was resolved to see that in that report truth should prevail.

There are two names which I cannot pass over on this occasion though they have not spoken to us to-day: Sir Jamshedji Kanga and our former Chief Justice, Mr. Chagla. Sir Jamshedji Kanga has been described as the doyen of the Bar; he is that, but in the words which he applied to Mr. Inverarity he is himself "A lawyer of sure and enormous knowledge on whose mind as on a photographic plate facts fall in their true legal relations." He is a tower of strength to the Bench and the Bar. In all our difficulties we have always turned to him and have never turned in vain. As regards Mr. Chagla, to a man of my generation no gathering of the Bench and the Bar is complete without his presence. The keen interest he continues to take in the Court over which he presided with such distinction is a source of comfort to us.

Our thanks are due to the great men, lawyers, judges and officers of the Court who have made the Bombay High Court the embodiment of

justice. My Lords the Chief Justice of India and the Chief Justice of Bombay have looked into the future, and have asked the question: what will people say of us in the year 2062? It is not given to us to look into the future; but we have been told that:

“where the safe ways end,  
known and unknown divide,  
God’s great uncharted passes upward tend,  
and the spirit of man undaunted is undenied.”

If Judges and lawyers show the undaunted courage for which the Bombay High Court has been so famous in the past, if Judges not only stand up against the executive but against the passing fashions of the day, if they refuse to be bludgeoned into sacrificing the *real* necessities of the times by the *felt* necessities of times, then we may be confident that in the year 2062 they will say that we, and those who came after us, and done worthily and well.

Once again I thank you all for the honour you have done us by your presence.

The proceedings ended with “Jana Gana Mana” sung by Mr. V. R. Talashikar.

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On Saturday April 14th the Chief Justice invited to dinner at the Taj Mahal Hotel the Governors of Maharashtra, Punjab and Madhya Pradesh, the Chief Justice of the Supreme Court, Chief Justices of High Courts of different States in India, Judges of the Bombay High Court, members of the Diplomatic and Consular Corps, and leading members of the Bar.

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On Sunday April 15th a large and distinguished gathering was present at the garden party given by the High Court Centenary Celebrations Committee on the lawns of the High Court in Bombay. Mr. Sri Prakasa, the Governor of Bombay, Chief Justice of India, Mr. B. P. Sinha, the Governor of the Punjab, Mr. N. V. Gadgil, Chief Justices of High Courts of different States, Judges of the Bombay High Court, Ministers of the State of Maharashtra, Cardinal Gracias, members of the legal profession, and prominent citizens attended the function.

A cultural programme, consisting of songs and drama, was held at night at Oval Maidan, opposite the High Court Building.

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On Monday April 16th the whole staff of the Bombay High Court was entertained at a garden party in the evening on the lawns of the High Court building. Hon. Dr. P. Subbaroyan, the new Governor of Maharashtra, Chief Justice of India, Chief Justices of different States, and Judges of the Bombay High Court graced the occasion. There was also an Art Exhibition of Paintings, Drawings and Photographs, by members of the staff.

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