

A large, dark-colored statue of Lady Justice stands on a tall, ornate pedestal. She is depicted holding a pair of scales in her right hand and a sword in her left. The statue is set against a large, dark, pointed Gothic archway. Below the archway, the facade of the High Court of Judicature at Bombay is visible, featuring a series of smaller, white Gothic arches supported by columns. The entire scene is set against a bright blue sky.

**POST-  
CENTENARY  
SILVER  
JUBILEE  
1862 - 1987**

**HIGH COURT OF JUDICATURE AT BOMBAY**

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OF  
JUDICATURE AT BOMBAY**

**POST-CENTENARY  
SILVER JUBILEE  
1862—1987**

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## INTRODUCTION

**T**O commemorate the completion of the 125 years of the High Court of Judicature at Bombay, celebrations have been held from 14th of August 1987. Befitting the occasion, this Commemoration Volume is being published.

It includes a short account of the first hundred years of the High Court summed up by Mr. H. K. Chainani, the then Chief Justice of the Bombay High Court, at the inaugural function of the Centenary Celebrations held on 14th of April 1962. A short account of the post-centenary years is also included in this Volume.

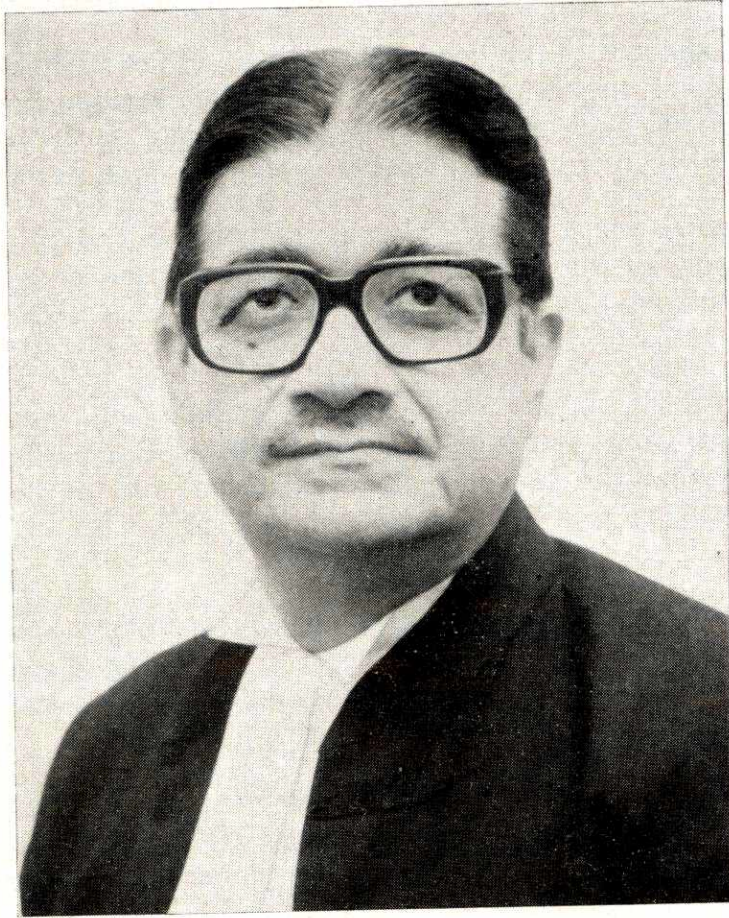
The Post-Centenary Silver Jubilee Celebrations commenced on 14th of August 1987 and an account of the same and the texts of the speeches delivered at the various functions planned as a part of the celebrations are also included in this Volume.

The appendices to this Volume include Tables containing the names of the Chief Justices of the High Court and the Judges of the High Court from 1862 to 1987. Notes on the portraits of the Judges in the court-rooms and on the statues are also included. Full details of this Volume are naturally to be found in the Table of Contents.

In the speeches which have been delivered at the functions organised, the distinguished speakers have expressed their opinions on various problems. It is necessary to add that the opinions expressed by them are not necessarily the opinions of the High Court or of the Judges of the High Court.

Valuable help given by Mr. Atul M. Setalvad, Senior Advocate, and Mr. A. P. Yajnik, Editor of Bombay Law Reporter, in the preparation of the Chapter on the Post-Centenary Years is appreciated. Mr. S. M. Satghare, Assistant Registrar of the High Court, has looked after the organisation of the material in this Volume and has also seen the Volume through the press. Despite the great pressure on the resources of the Government Central Press at Bombay, Mr. G. D. Dhond, Director of the Government Printing, Stationery and Publications, willingly undertook the responsibility of printing this Volume within a short period. He has taken, in the publication of this Volume, far more interest than was strictly required by the duties of his office. The same is highly appreciated.

□



The Hon'ble Mr. Chittatosh Mookerjee  
( Chief Justice of the High Court )  
At present Acting Governor of Maharashtra



The Hon'ble Mr. S. K. Desai  
Acting Chief Justice of the High Court

# ON THE OCCASION OF THE CENTENARY CELEBRATIONS†

By Mr. H. K. CHAINANI

*(The then Chief Justice of the High Court of Judicature at Bombay)*

**T**HE 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

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† From the welcome speech delivered at the inaugural function of the Centenary Celebrations.

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 Pherozeshah 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 tradition, 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 judgements are remarkable for their lucidity and precision, Sir Harilal Kania, who combined strong commonsense 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 Chimanlal 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 encyclopaedia 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 Sahab 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 Vithalbhai 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 rescue 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 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.

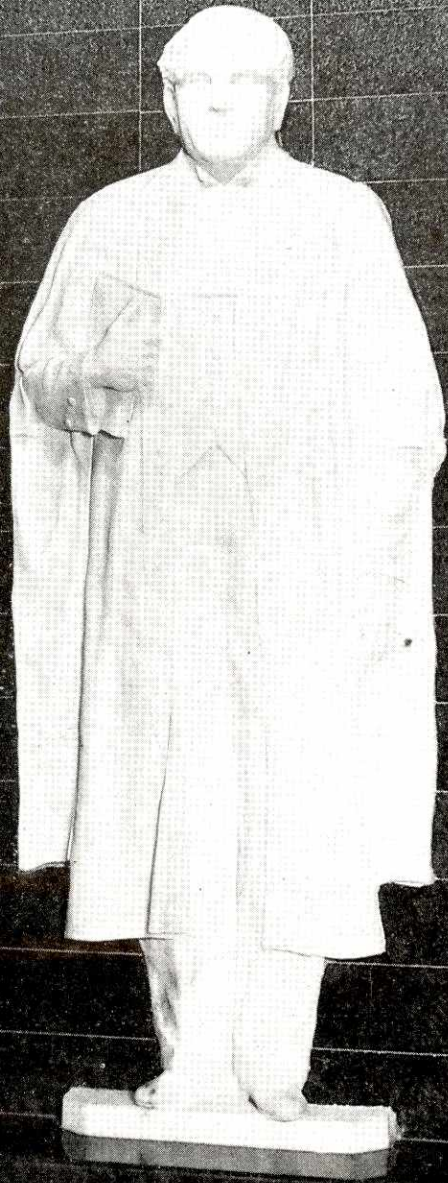
A great tradition of this High Court is that Judges of this Court work as a team in harmony and in friendship. We are all members of a happy family. I have been fortunate in having colleagues, who are both competent and amiable. They are a source of great strength to me and I am grateful to them for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

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Bas-Relief statue of the Honourable Mr. M. C. Chagla, the First Indian Chief Justice of Bombay (1947-1958). Erected by the Chief Justice Chagla Memorial Trust and unveiled by the Honourable Mr. K. Madhava Reddy, the then Chief Justice of the High Court, on 15th August, 1985.



**M. C. CHAGLA**  
First Indian Chief Justice  
of Bombay 1947-1958  
a great judge, a great citizen,  
and, above all, a great humanist

## POST-CENTENARY YEARS: 1962 TO 1987 A REVIEW

THE 25 years since the completion of the Centenary by the Bombay High Court in the year 1962 have seen several changes—some of them significant. The number of judges has increased substantially due to the phenomenal increase in litigation. Bombay also saw in the year 1978 the appointment of its first lady Judge, Mrs. Justice Sujata Manohar.

Bombay has also, as usual, contributed its share of distinguished judges to the Supreme Court of India and another Chief Justice of India. Two more Benches have been added to the Bombay High Court—one at Aurangabad and the other at Panaji in Goa.

The dual system prevalent on the Original Side since the establishment of the High Court has been abrogated and the Original Jurisdiction itself may cease to exist. The jurisdiction of the High Court under Article 226 of the Constitution has been curtailed by the establishment of the Central Administrative Tribunal. These are some of the several events which are covered in the following paragraphs.

### Chief Justices

Brief reference must be made to the distinguished Chief Justices of this Court from the year 1962 to 1987. Mr. Justice Hasmatrai Khubchand Chainani was the Chief Justice of the Bombay High Court in its centenary year. Tragically he died on 28th November 1965 due to injuries suffered in a car accident. He was the Chief Justice of the Bombay High Court from 1958 till his death in November 1965.

Mr. Justice Yeshwant Shripad Tambe, who succeeded Mr. Justice Chainani

as the Chief Justice, retired in September 1967. Thereafter, however, for one year he acted as *ad-hoc* judge at Nagpur. It may be added that he was the first "Nagpur Judge" to become the Chief Justice of Bombay. He was followed by another "Nagpur Judge", namely Mr. Justice Sohrab Peshotan Kotval, who occupied the post of Chief Justice till his retirement in September 1972.

Mr. Justice Kapil Kalyandas Desai succeeded Mr. Justice S. P. Kotval as the Chief Justice, but he held that office only for 30 days, probably the shortest tenure ever.

Mr. Justice Ramanlal Maneklal Kantawala took over as the Chief Justice of the Bombay High Court in October 1972 and retired in October 1978. From 1978 to 1980 Mr. Justice Balkrishna Narhar Deshmukh, the then seniormost Judge of the Bombay High Court, Mr. Justice V. D. Tulzapurkar, his senior, having been in the meantime appointed as a judge of the Supreme Court, became the Chief Justice of the Bombay High Court. He was the second "Service Judge" to have ever become the Chief Justice of the Bombay High Court. Mr. Justice Venkat Shrinivas Deshpande, who hailed from the Marathwada region of the erstwhile State of Hyderabad, succeeded Mr. Justice Deshmukh and retired in the year 1982. It was during his tenure that the Bench at Aurangabad was established. Mr. Justice Dinshah Pirosha Madon became the next Chief Justice and was elevated to the Supreme Court in March 1983.

Mr. Justice Madhukar Narhar Chandurkar was the third "Nagpur Judge"

to become the Chief Justice of the Bombay High Court after Mr. Justice Madon was elevated to the Supreme Court. In the normal course he would have continued till March 1988, but he was transferred as the Chief Justice of the Madras High Court in April 1984.

This also necessitated the reception by the Bombay High Court of a Chief Justice from outside. Mr. Justice Konda Madhav Reddy, Chief Justice of the Andhra Pradesh High Court, was appointed as the Chief Justice of the Bombay High Court in place of Mr. Justice Chandurkar and he retired in October 1985 whereafter he was appointed as the Chairman of the Central Administrative Tribunal at New Delhi.

He was followed by Mr. Justice Madhukar Hiralal Kania who, after first being appointed as the Acting Chief Justice, was confirmed as the Chief Justice and thereafter elevated to the Supreme Court in May 1987.

For a long time thereafter no permanent Chief Justice of this Court was appointed. In the first place, Mr. Justice S. K. Desai, the seniormost Judge of the High Court, was appointed as the Acting Chief Justice and when he went, on 3rd September 1987, as the Acting Governor of Maharashtra after Dr. Shankar Dayal Sharma, the then Governor, was elected as the Vice-President of India, Mr. Justice C. S. Dharmadhikari, the next seniormost Judge, was appointed as the Acting Chief Justice. While Mr. Justice Desai was still acting as the Governor, Mr. Justice Chittatosh Mookerjee, Chief Justice of the Calcutta High Court, was appointed as the Chief Justice of the Bombay High Court and he took office on 2nd November 1987. Within a few days thereafter, that is on 6th November

1987, Mr. Justice Mookerjee was appointed as the Acting Governor of Maharashtra and Mr. Justice Desai returned to the High Court as the Acting Chief Justice.

### **Judges of the High Court**

The phenomenal increase in the litigation, both on the Original and Appellate Sides of the High Court, necessitated increase in the number of judges in the High Court. It may be recalled that on 1st of November 1956 the bilingual Bombay State had come into being. Thereafter on 1st of May 1960, the State of Maharashtra came into being. At that time, some of the Judges of this Court migrated to the new State of Gujarat. There were then 20 judges of the Bombay High Court—16 permanent and 4 additional. At the time of the Centenary of the High Court the number of judges was 17—12 permanent and 5 additional. From time to time, the number of judges has been increased and as on 14th August 1987, the sanctioned strength of the High Court is 48—42 permanent and 6 additional, though on that day there were 46 judges in office.

During the period of Emergency which began in June 1975, two of the judges of the Bombay High Court were transferred by the President. Mr. Justice J. R. Vimadalal was transferred to the Andhra Pradesh High Court in June 1976 and he retired as a judge of that Court. Mr. Justice P. M. Mukhi, who had been transferred to the Calcutta High Court, unfortunately died in 1976 before he could assume office in that Court.

The Government's policy of posting judges from outside as Chief Justices of the High Courts had, naturally, its effect upon the Bombay High Court.

Mr. Justice M. N. Chandurkar, who was the Chief Justice of this Court, was appointed as the Chief Justice of Madras in April 1984 while Mr. Justice K. Madhava Reddy, Chief Justice of Andhra Pradesh, took charge of the office of the Chief Justice of this Court at the same time.

Mrs. Justice Sujata K. Manohar was the first lady to be appointed as a judge of the Bombay High Court, though she was not the first lady judge of a High Court in India. Daughter of a former judge of this High Court and former Chief Justice of the Gujarat High Court, Mrs. Justice Manohar had a brilliant academic career. She was called to the Bar from Lincon's Inn. She was enrolled as a member of the Bombay Bar in February 1958. She took her oath of office on 23rd January 1978.

### **To the Supreme Court of India**

During the period under review, several judges of this High Court were appointed as judges of the Supreme Court of India. Mr. Justice D. G. Palekar, who started his judicial career as a Civil Judge, Junior Division, in the former Bombay State had been appointed a Judge of the High Court in 1961. In 1971, he was appointed as a Judge of the Supreme Court. This is the first case in the history of India where a person who started his career at the lowest rung of the judicial ladder has gone to the Supreme Court.

In the year 1972, Mr. Justice Y. V. Chandrachud was appointed as a Judge of the Supreme Court. He later became the Chief Justice of India in 1978 and retired in that capacity in 1985. Mr. Justice V. D. Tulzapurkar went as a Judge of the Supreme Court of India in 1977.

Mr. Justice D. P. Madon was elevated to the Supreme Court of India when he was the Chief Justice of this High Court. This was the first case of a Chief Justice of Bombay being appointed as a Judge of the Supreme Court. The Second case was of Mr. Justice M. H. Kania who also was elevated to the Supreme Court of India in May 1987 while he was the Chief Justice of this Court.

### **Benches of the High Court**

Prior to 1st of November 1956, there was only one Bench of the High Court of Bombay, which was the principal seat of the Court and which was at Bombay. The High Court's jurisdiction was then the Province of Bombay. After the States Reorganisation Act, 1956 came into force on 1st of November 1956, the principal seat of the Bombay High Court continued to be at Bombay pursuant to the Order of the President issued under Section 51 (1) of the States Reorganisation Act. The then Chief Justice also issued an Order under Sub-section (3) of Section 51 of the said Act, establishing Benches of the Bombay High Court at Nagpur and Rajkot.

After the Bombay Reorganisation Act, 1960 came into force on 1st of May 1960, the Gujarati speaking areas of the then Bombay State were merged into the new State of Gujarat and for the new State of Gujarat, a separate High Court was established under Section 28 of the Bombay Reorganisation Act. The Bench had been earlier established at Nagpur under the orders of the Chief Justice under Section 51 (3) of the States Reorganisation Act, 1956. By Section 41 of the Bombay Reorganisation Act, 1960, it was provided that without prejudice to the provisions

of Section 51 of the States Reorganisation Act, 1956, such number of the judges not less than three, as the Chief Justice may nominate, shall sit at Nagpur. This was the permanent Bench of the Bombay High Court at Nagpur and it had jurisdiction and power in respect of cases arising in the districts of Buldana, Akola, Amravati, Yeotmal, Wardha, Nagpur, Bhandara, Chanda and Rajura. This was the position at the

time of the Centenary of the Bombay High Court.

The then Chief Justice of Bombay issued an order in exercise of the powers vested in him under Section 51 (3) of the States Reorganisation Act, directing that Aurangabad should be a place at which judges and Division Benches of the High Court may also sit with effect from the date of that notification, which was 27th of August 1981. The Order is as follows :—

**“ BY THE HIGH COURT OF JUDICATURE AT BOMBAY**

No. P. 6303/81—In exercise of the powers conferred by sub-section (3) of Section 51 of the States Reorganisation Act, 1956 (No. 37 of 1956) and all other powers enabling me in this behalf, I, V. S. Deshpande, Chief Justice of the High Court of Judicature at Bombay, with the approval of the Governor of Maharashtra, appoint Aurangabad as a place at which Judges and Division Courts of the High Court may also sit, with effect from today.

High Court, Appellate Side,  
Bombay, 27th August 1981.  
(Camp Aurangabad).

V. S. DESHPANDE  
Chief Justice ”

This Order was challenged by a litigant in the Bombay High Court. A Division Bench of this Court held that the Order of the Chief Justice was not in accordance with law. The State of Maharashtra preferred an appeal to the Supreme Court, which, by its final

judgment and order dated 25th of October 1982, upheld the Order of the Chief Justice. Subsequently, however, the President, in exercise of the powers vested in him under Sub-section (2) of Section 51 of the States Reorganisation Act, issued the following Order :—

**“ THE HIGH COURT OF BOMBAY (ESTABLISHMENT OF A PERMANENT BENCH AT AURANGABAD) ORDER, 1984**

In exercise of the powers conferred by sub-section (2) of Section 51 of the States Reorganisation Act, 1956 (37 of 1956), the President, after consultation with the Governor of Maharashtra and the Chief Justice of the High Court of Bombay, is pleased to make the following Order, namely :—

1. *Short title and commencement.*—(1) This Order may be called the High Court of Bombay (Establishment of a Permanent Bench at Aurangabad) Order, 1984.

(2) It shall come into force on the 27th day of August, 1984.

2. *Establishment of a Permanent Bench of the Bombay High Court at Aurangabad.*—There shall be established a permanent bench of the High

Court of Bombay at Aurangabad, and such Judges of the High Court of Bombay, being not less than four in number, as the Chief Justice of that High Court may, from time to time, nominate, shall sit at Aurangabad in order to exercise the jurisdiction and power for the time being vested in that High Court in respect of cases arising in the districts of Aurangabad, Beed, Jalna, Latur, Nanded, Osmanabad and Parbhani :

Provided that the Chief Justice of that High Court may, in his discretion, order that any case or class of cases arising in any such district shall be heard at Bombay.

June 16, 1984.

President  
Signed 26-6-1984. "

It is thus that the Aurangabad Bench today is a permanent Bench established by an Order of the President, though not specifically provided in an Act of the Parliament, as is the case with the Nagpur Bench.

The Parliament passed the High Court at Bombay (Extension of Jurisdiction to Goa, Daman and Diu) Act, 1981. Section 3 of the said Act provided that on and from the appointed day, the jurisdiction of the High Court at Bombay shall extend to the Union territory of Goa, Daman and Diu. From that day, the Court of the Judicial Commissioner would cease to function and was abolished. Accordingly, on 30th of October 1982, which was declared as the appointed day, the Panaji Bench of the High Court of Bombay for the Union territory of Goa, Daman and Diu was inaugurated. Mr. Justice D. M. Rege and Mr. Justice G. F. Couto, who was earlier the Judicial Commissioner, sat on the Bench. The Panaji Bench, therefore, is a permanent Bench having been so provided by the Act of the Parliament. It was, of course, the Bench of the Bombay High Court outside the territorial limits of the State of Maharashtra.

The Goa, Daman and Diu Reorganisation Act, 1987 was passed by the

Parliament and it received the assent of the President on 23rd of May 1987. On 1st of June 1987, the Goa area of the then Union Territory of Goa, Daman and Diu became a full-fledged State of India and it was, in fact, the twenty-fifth State. Section 20 of the said Act provided that from the appointed day, there would be a common High Court for the States of Maharashtra and Goa, and for the Union territories of Dadra and Nagar Haveli, and Daman and Diu. This Court, of course, was the High Court of Bombay. It is thus that from 1st of June 1987, the High Court of Bombay had jurisdiction over two States. Section 26 of the said Act provides that the principal seat of the common High Court shall be at the same place at which the principal seat of the existing High Court is located immediately before the appointed day. Power, however, has been given to the President, who may provide for the establishment of a permanent bench or benches of the common High Court at one or more places within the territories to which the jurisdiction of the High Court extends.

As on 14th August 1987, the sanctioned strength of the Bombay High Court was 42 Judges and 6 Additional Judges. There are, however, 46 Judges

in office. Of these, 30 were in Bombay, 10 were in Nagpur, 4 were in Aurangabad and 2 were in Panaji.

## LEGISLATIONS AFFECTING THE HIGH COURT

### 1. Article 226 of the Constitution of India

The post-1950 years have seen phenomenal increase in the volume of writ jurisdiction, principally under Article 226 of the Constitution. The increase is attributable to several factors and has been helped by increasingly liberal interpretation of the scope and ambit of the power of the High Courts under Article 226 of the Constitution.

The Constitution (Forty-Second Amendment) Act, 1976, which came into force on 1st of February 1976, sought to drastically curtail the jurisdiction of the High Courts under Article 226 of the Constitution. The principal changes sought to be introduced were :

(a) *The insertion of Articles 131A and 226A.*—Result was to divest High Courts of the power to decide questions relating to constitutional validity of Central Laws and conferring upon the Supreme Court exclusive jurisdiction to do so. If any question relating to the constitutional validity of a Central Law arose, the same had to be referred to the Supreme Court.

(b) *The insertion of Articles 323A and 323B.*—These Articles empower the Parliament of the appropriate State Legislatures to establish Administrative Tribunals in regard to matters relating to Government servants, taxes, industrial disputes and several other specified matters and

exclude the jurisdiction of all courts, except that of the Supreme Court under Article 136 of the Constitution in such matters.

The Constitution (Forty-Third Amendment) Act, 1977, which came into force on 13th of April 1978, deleted both Articles 131A and 226A. The jurisdiction of the High Courts to pronounce on the validity of the Central Laws was, therefore, restored.

Articles 323A and 323B remain in force. In exercise of the powers vested in the Parliament by these Articles, the Parliament has enacted the Administrative Tribunals Act, 1985 and the Customs and Excise Revenue Appellate Tribunal Act, 1986, though the latter has not come into force. The Administrative Tribunals Act has come into force and the Central Administrative Tribunal with its headquarters at Delhi and several Benches of the Tribunal with their headquarters in different States have been established and are working. Petitions challenging a wide range of orders passed by the Central Government, from dismissals to orders of fines and including promotions, reversions and transfers, were being filed under Article 226 of the Constitution. Those petitions also urged in support of their reliefs claimed that the impugned orders were in contravention of Article 14 and Article 16 of the Constitution. As a result of the provisions contained in the Administrative Tribunals Act, 1985, the jurisdiction of the High Courts to entertain writ petitions in respect of any matter that can be broadly regarded as a service matter under the Union of India has been excluded. Pending writ petitions have also been transferred to the Administrative Tribunal. The Act has

recently been extended to Central Corporations.

As and when the Maharashtra Legislature passes a law setting up the State Administrative Tribunal, all service matters under the State also will be outside the jurisdiction of the High Court.

## **2. Advocates Act**

As is well-known, in the High Courts of Bombay and Calcutta there was what is known as the dual system. By an amendment to the Advocates Act, which came into force on 1st of January 1977, the dual system on the Original Side of the High Court has been abrogated so that any advocate could both act and/or plead on the Original Side of the Bombay High Court.

## **3. Amendment of the Code of Civil Procedure**

Though Section 122 of the Code of Civil Procedure relating to the power of the High Court to make rules, alter or add to all or any of the rules in the first schedule to the Code, was not amended, by Section 97 of the Amending Act of 1976 all amendments in the Code made by the State Legislatures and the High Courts before 1st of February 1977, the date of the commencement of the amended Civil Procedure Code, stood repealed except to the extent that such amendments were not inconsistent with the provisions of the Code as amended by the 1976 Act. The Bombay High Court, therefore, enacted a fresh set of rules amending the first schedule to the Code which came into force from 1st of October 1983.

## **4. Bombay City Civil Court**

The Bombay City Civil Court had pecuniary jurisdiction of Rs. 25,000. By the

Maharashtra Civil Courts (Enhancement of Pecuniary Jurisdiction and Amendment) Act, 1977 (Maharashtra Act No. XLVI of 1977), published in the Maharashtra Government Gazette dated 14th of October 1977, the jurisdiction of the Bombay City Civil Court was raised from Rs. 25,000 to Rs. 50,000. This was done with effect from 1st of January 1978. Recently, the Maharashtra Legislature passed an Act, being the Bombay City Civil Court and Bombay Court of Small Causes (Enhancement of Pecuniary Jurisdiction and Amendment) Act, 1986 (Maharashtra Act No. XV of 1987). The pecuniary jurisdiction of the City Civil Court is made unlimited. In other words, the words "not exceeding fifty thousand rupees in value" to be found in Section 3 of the Bombay City Civil Court Act, 1948 are sought to be deleted. The jurisdiction of the Small Cause Court is also being increased to Rs. 25,000. However, this Act has not yet come into force. The amendment does not affect pending suits which will be heard and disposed of by the Courts where they have been instituted.

## **5. Presidency Small Cause Courts Act**

By the Presidency Small Cause Courts Maharashtra (Amendment) Act, 1975 (Maharashtra Act No. XIX of 1976), Chapter VII of the Presidency Small Cause Courts Act was substituted by a new Chapter consisting of Sections 41 to 46. By the newly inserted Section 41 of the Presidency Small Cause Courts Act, the Small Cause Court has jurisdiction to entertain and try all suits and proceedings between a licensor and a licensee or a landlord and a tenant relating to recovery of possession of any immovable property situated in

Greater Bombay or relating to recovery of licence fee or charges or rent therefor, irrespective of the value of the subject-matter of such suits or proceedings. The Act came into force on 1st of July 1977 after which date the High Court lost jurisdiction to try suits for possession and licence fee between the licensor and licensee, irrespective of the value of the premises given on licence. In *Nagin Mansukhlal Dagli versus Haribhai Manibhai Patel*, A.I.R. 1980 Bombay 123, the High Court rejected the contention that Section 41 did not take away the jurisdiction of the High Court to try suits for possession between a licensor and a licensee if the value of the premises fell within the pecuniary jurisdiction of the High Court. The contention was rejected in view of Clause 12 of the Letters Patent of this High Court, which provided that the High Court shall not have jurisdiction in cases falling within the jurisdiction of the Small Cause Court or the Bombay City Civil Court.

#### **6. Letters Patent**

The Maharashtra High Court (Hearing of Writ Petitions by Division Bench and Abolition of Letters Patent Appeal) Act, 1986 provides that all applications invoking the jurisdiction of the High Court under Articles 226 and 227 of the Constitution shall be heard and disposed of by a Division Bench to be appointed by the Chief Justice of the

High Court. It also provides that no appeal, arising from a suit or other proceeding instituted or commenced, whether before or after the commencement of the Act, shall lie to the High Court from a judgment, decree or order of a single Judge of the High Court made on or after the commencement of the Act. The Act was brought into force on 1st of July 1987. However, the operation of the Act has been stayed by the High Court in a petition filed before it.

#### **7. Code of Criminal Procedure**

Prior to the coming into force of the Code of Criminal Procedure, 1973 in the Presidency Towns, appeals, wherever such appeals were provided for, from orders passed by Presidency Magistrates lay to the High Court. This was under the Code of Criminal Procedure, 1898. With effect from 1st of April 1974, on which date the Code of 1973 came into force, appeals from orders of Presidency Magistrates, who are now designated as Metropolitan Magistrates, lie to the Sessions Court for Greater Bombay, except in the case of an appeal by a person convicted and sentenced to imprisonment for a period of seven years. The new Code provides for appeals for enhancement of sentences which lie to the High Court. All appeals against acquittal also lie to the High Court as was the position under the old Code.

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High Court Building at Bombay

The building was constructed from designs by Lt. Col. J. A. Fuller R. E. at a cost of Rs. 16,44,528 as against the estimated cost of Rs. 16,47,196. The building was completed in November 1878. It consists of the ground and three upper floors

Photograph by Shri Umakant Shirodkar and Blocks by Shri Ashok Nerkar, Unique Blocks





High Court Building at Nagpur

The building was designed by Mr. H. A. N. Medd who was the Resident Architect from December 1935 to June 1939. It was constructed at a cost of Rs. 7,37,746. The building foundation stone of which was laid on 9th January 1937 was declared open on 6th January 1940



**Aurangabad—High Court Building**

The building which now houses the High Court was declared open on 15th August 1962 to accommodate initially the offices of the Zilla Parishad, Aurangabad. Subsequently it was used by other Government offices. Later with certain alterations and additions, the building was made available for the Aurangabad Bench which started functioning from 27th August 1981



**Panaji—High Court Building**

The building which now houses the Panaji Bench of the Bombay High Court was constructed in 1878 by the Portuguese Government. It originally housed "Relacao"—the High Court under the Colonial regime and later the Judicial Commissioner's office from 16th December 1963. From 30th October 1982, it houses the Panaji Bench of the Bombay High Court

## POST-CENTENARY SILVER JUBILEE CELEBRATIONS

**T**HE High Court of Judicature at Bombay, which was established on 14th of August 1862 replacing the then Supreme Court which had been established earlier in 1824, completed 125 years on 14th of August 1987. The post-centenary silver jubilee celebrations commenced on that day with a function held in the Central Court Room of the High Court. This Court Room had been earlier renovated with marble flooring and a new system of electrical lighting. On that day all the portraits in the Court Rooms and the Bar Rooms and the statues in the Court premises had been garlanded. The Acting Chief Justice paid a floral tribute to the marble statue of Mr. M. C. Chagla, the first Chief Justice of Bombay after independence, which had been installed in 1985 at the entrance of the Court Room of the Chief Justice.

A full Court Reference was held in the Central Court Hall on 14th August 1987. The Acting Chief Justice addressed the gathering and the Advocate General, on behalf of the Bar, made a suitable response. The proceedings have been recorded in the following chapter of this volume.

On the same day in the evening a public function was held in the Convocation Hall of the University of Bombay. The Acting Chief Justice Mr. S. K. Desai presided over the function and in his address recalled briefly the contribution made by the Bombay High Court. The Hon'ble Mr. M. N. Chandurkar, Chief Justice of Madras, Mr. J. C. Shah, former Chief Justice of the Supreme Court of India, Mr. H. M. Seervai, former Advocate-General, and Mr. M. V.

Paranjape, Senior Advocate of the High Court, addressed the gathering. The text of all these speeches have been reproduced in a later chapter of this volume.

Since the Bombay High Court has now, apart from Bombay, three other Benches, references were also made by the Senior Judges of these different Benches in the respective Courts.

It was also in the fitness of things that the celebrations should be held at the seats of the three different Benches. Accordingly, on 28th of September 1987 a function was held at Nagpur, which was addressed by Mr. S. K. Desai, who was at that time the Acting Governor of Maharashtra and Mr. Justice C. S. Dharmadhikari, who was then the Acting Chief Justice. Mr. N. A. Palkhiwala, Senior Advocate, delivered the keynote address while Mr. M. Hidayatullah, former Chief Justice of India and former Vice-President of India, presided over the function and delivered an address.

On 28th of October 1987 a similar function was held at Aurangabad. Mr. Justice C. S. Dharmadhikari, Acting Chief Justice, welcomed the gathering at the function. Mr. Fali S. Nariman, Senior Advocate, delivered the keynote address while Mr. V. S. Deshpande, Chief Justice of Bombay when the Bench at Aurangabad was established, associated himself with the function by presiding over the same.

At Panaji, which had become the capital of the 25th State of India earlier on 1st of June 1987, a function was held where Mr. Soli Sorabjee, Senior

Advocate, delivered the keynote address. Mr. Y. V. Chandrachud, who was the Chief Justice of India when by an Act of Parliament the jurisdiction of the Bombay High Court was extended to the then Union Territory of Goa, Daman and Diu, was pleased to associate himself with the function by presiding over the same. Dr. Gopalsingh,

the Governor of Goa graced the occasion and also presented mementos to those members of the High Court Staff who have served in the judiciary for 25 years and more.

The speeches delivered on all these occasions have been included in this volume.

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## A DAY OF REDEDICATION

**A**T the Reference held at 11-00 a.m. in the Central Court Hall of the High Court at Bombay, on Friday the 14th August 1987, the Hon'ble Mr. Justice S. K. Desai, the Acting Chief Justice, addressed as follows :—

“ Mr. Advocate General,

We meet today to commemorate a historic event, the completion by the High Court at Bombay of 125 years of its glorious existence.

In 1861, the British Parliament enacted the Indian High Courts Act which empowered the Viceroy to establish a High Court in each of the three Presidencies, viz. Bengal, Madras and Bombay. The said Act abolished the Supreme Court and the Sadar Diwani and Fozdari Adalats and vested their original and appellate jurisdictions in the High Court. On 26th June 1862, Letters Patent were issued establishing the High Court at Bombay. The Letters Patent provided for a total strength of fifteen Judges.

The birth of the High Court took place in a very quiet manner. There was no pomp nor pageantry. On August 14, 1862, the seven Judges appointed by the Letters Patent made a solemn declaration in the presence of the Bar and the public that from that day they would sit as Judges of the High Court and with that declaration a High Court at Bombay came into being. The establishment of the High Court was a landmark in the history of this part of the country. It led to the introduction of a uniform system of law and procedure throughout the Presidency of Bombay. It thereby contributed materially to national

integration. The establishment of the High Court also ushered in the Rule of Law.

There was not much statute law before the High Court began its career in 1862. The Civil Procedure Code had been 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, applied the principles of English law subject to justice, equity and good conscience. However, there were obvious difficulties for cases involving Hindu Law. Fortunately Judges of the calibre of Westropp, West, Telang and Ranade embarked on a voyage of laying down and applying the text book principles. They were among the first of many judges of this High Court who knew how to make law bend to the cause of justice.

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, Lokmanya Tilak uttered the words which are to be found engraved outside this Court Room. The cause for which Tilak had undergone great personal suffering ultimately prospered and the country gained independence in 1947. On the midnight of 14th August 1947, in the present Court Room which was the 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'.

Chief Justice Stone was followed by the first Indian Chief Justice, Chief Justice Chagla. From 1947 till September 1958, he presided over the Bombay High Court and it can be safely stated that not only did he conform fully to the great traditions of this High Court but he elevated its stature to the highest pinnacle. Indeed it is difficult in these few minutes to refer to this great personage whom we who joined the Bombay Bar during this period regarded as the father figure. His character was marked by the frankness, simplicity and total freedom from affectation. He departed to pastures new in 1958 and with his departure the doors were closed unto a Court which will always be remembered for its majestic dignity, its independence, its integrity, its learning lightened by a lively wit and above all for its impatience to do justice.

In 1960, on the formation of the State of Gujarat, many of the Judges of the Bombay High Court and several Advocates 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 the gain of the State of Gujarat. However, simultaneously with the parting of the ways with Gujarat, we saw the formation of the greater linguistic State of Maharashtra and the Bombay High Court started having two Benches, its principal seat being at Bombay and the other one being at Nagpur.

This High Court had the honour of supplying to the Supreme Court of India its first Chief Justice. In all the Bombay High Court and the Bombay Bar have given 11 Judges

to the Supreme Court including five Chief Justices.

On 14th April 1962 was celebrated the Centenary of the High Court, the actual date of celebration being advanced by a period of three months presumably to avoid the rains. However, for the present function for commemorating the completion of 125 years, we decided that the event must be noted on the very day on which the High Court came into being and simultaneously with the present reference reference is being made by the seniormost Judges at the other three Benches.

On 14th August 1962 taking the correct day of the Centenary, the Bombay High Court had a Chief Justice and seventeen puisne Judges. Today the number has gone upto forty-six. There has been, however, an important change during the past 25 years, viz., that instead of two Benches only at Bombay and Nagpur we have now four Benches of this High Court, viz., at Bombay, Nagpur, Aurangabad and Panaji. We have to note further that with effect from 30th May 1987 the High Court of Bombay has become the common High Court for the two States of Maharashtra and Goa.

Apart from the above development, we have to note a number of other developments as far as the working of the Courts is concerned. The first is a large increase in filing and of pending matters. As on 1st January 1962 as many as 1938 Writ Petitions were awaiting disposal. Today between the four Benches 19,392 Writ Petitions are to be disposed of. Similarly, as on

1st January 1962, 2,272 First Appeals were awaiting disposal. This figure has grown to 7,184 as on 1st January 1987. This is because filing has increased. In the month of January 1962, 47 First Appeals were filed, 150 Special Civil Applications and 62 Original Side Writ Petitions. In the same month of the current year 150 First Appeals have been filed—an increase of 200 per cent, 596 Writ Petitions on the Appellate Side—an increase of nearly 300 per cent and more than 300 Writ Petitions on the Original Side—an increase of over 300 per cent. Thus at every level we find growth of litigation and consequently of arrears.

We must also note some other developments, one of them being the growth of what is known as public interest litigation and with it the greater participation by the High Court in all aspects of life, even in matters involving political implications. The High Court and of course the Supreme Court as the final arbiter of the judicial process have become Courts of the last resort for the people. The scope of writ jurisdiction has been so enhanced that out of the total strength forty-six judges, nearly sixteen to eighteen are required for doing writ work. The Court is called upon to supervise various aspects of life such as engineering and medical admissions, promotions and dismissals of teachers, transfers of Government servants, allotment of lands and on occasions the Court has even been required to inquire into the probity of Chief Ministers. This has put a lot of pressure on the Court. But I think the last twenty-

five years of our existence will bear testimony to the good work being done by the High Court. These twenty-five years have also seen implementation of the policy of transfer of judges which commenced with the emergency. We have had transfers—actual as well as threatened. We have also had in 1984 and 1985 the implementation of the policy of having Chief Justices from outside the State. We lost the Chief Justice who was with us for nearly seventeen years and would have been making the reference today but for his transfer and we have had for a limited period a Chief Justice from another State.

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. The names of the great Judges are writ on the walls of this Court Room. The names of the great lawyers are to be found in the law reports and in the newspapers. The Court and the Bar have also given rise to great jurists as also to a number of lawyers who have made their mark outside the domain of law. It is often said that Judges live in the past, that they believe in the *status quo* and are more concerned with the prerogatives of the affluent than with the problems of the poor. I do not think that any such criticism is justified. We certainly derive inspiration and guidance from the past. but we live in the present and look towards the future. The old order is giving place to the new and the Judges are neither votaries of the old order nor drawn from the affluent class, The Judges of the High Court with



and never regain. So much depends on Your Lordships.

May I take this opportunity, My Lords, to express our anguish at the uncertainty inherent in the transfer of Chief Justices. Experience has shown that knowledge of local conditions, the ethos of the people of the laws here is essential for proper and effective administration of justice. One is yet to hear of any spectacular results following such transfers. We desire that the whole subject of transfer is reconsidered

and enable the High Court to have one amongst them as its Chief Justice.

May I conclude, My Lords, with what my distinguished predecessor Mr. Seervai said of the distinguished Chief Justice Mr. Chagla and that applies to our High Court :

' Your work has gone much further, for it has been woven into the texture of other men's lives where it will continue to stir them to speech or action as occasion may come by. ' "

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ERECTED TO THE MEMORY  
OF  
THE RIGHT HONOURABLE  
**SIR LAWRENCE HILL JENKINS**  
Kt K C I E BARRISTER AT LAW  
CHIEF JUSTICE OF THE HIGH COURT OF  
JUDICATURE, BOMBAY (1899-1908)  
AS A SMALL TOKEN OF THEIR GREAT  
REGARD FOR THE MANY ADMIRABLE  
QUALITIES OF HIS HEAD AND HEART  
BY  
SOME OF HIS FRIENDS AND ADMIRERS  
OF THE LEGAL PROFESSION  
JANUARY 1932

*A meeting was held on Friday, the 14th August 1987 in the Convocation Hall of the University of Bombay to commemorate the Post-Centenary Silver Jubilee of the High Court of Judicature at Bombay. The Hon'ble Mr. Justice S. K. Desai, the Acting Chief Justice, presided. The Hon'ble Mr. M. N. Chandurkar, former Chief Justice of Bombay and now Chief Justice of Madras; Mr. J. C. Shah, former Chief Justice of India; Mr. H. M. Seervai, former Advocate General of Maharashtra and Mr. M. V. Paranjape, Senior Advocate, addressed. The following pages contain the speeches delivered on the occasion.*

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Statue erected to the memory of the Right Honourable Sir Lawrence Hugh Jenkins, Chief Justice of the High Court of Judicature, Bombay (1899—1908), in January 1932.

## INTRODUCTORY REMARKS\*

*By Mr. S. K. DESAI*

*The Hon'ble Acting Chief Justice*

**M**Y brother Judges, sister Judge and friends,

This is not an occasion for me to make a speech nor am I required to introduce the very eminent persons who are to address us on this day. I must, however, take this opportunity of thanking all the invitees who have graced the occasion and all of you who are sharing with us the pleasure of completion of 125 years of the Bombay High Court. I also take the opportunity of indicating in connection with the report published in the Times of India today that we have at a somewhat belated stage received the grant from the Government. Some time towards the end of last year a meeting had taken place between Hon'ble the Chief Minister and Chief Justice M. H. Kania at which it had been agreed that an amount of Rs. 20,00,000 (twenty lakhs) would be provided for these celebrations at all the four Benches and after some delay the necessary resolution has been issued on 31st July 1987. We received copy of the same on 3rd August 1987. But as it has been said better late than never. We have today with us Hon'ble the Minister of State for Law as also the Chief Secretary of the Government of Maharashtra and they will pardon me if I take this opportunity of saying that apart from such delays which are perhaps to be accepted because of the stringency of funds and drought conditions, what is more distressing is the delay which is taking place in the matter of taking decisions pertaining to the judicial department at the Mantralaya—decisions

which are really in the nature of clearing the proposals made by the High Court, which proposals both under the Constitution and as a matter of propriety they are bound to accept in the ordinary course. The result of the delay has been vacancies at all stages of the judicial cadre. Out of a total strength of 576 Civil Judges, Junior Division, there are 163 vacancies today. As it is, the judicial strength is required to be revised upwards to 800 for this cadre. That is if you want to give expeditious justice at the door-step to the poor and the weak and not only talk about it. The actual strength thus is a little under 500. You can imagine when justice would be delivered to the needy litigant. Apart from this basic judicial cadre, we find delay in clearing proposals at every stage. In Bombay there are 8 vacancies of Metropolitan Magistrates and 9 vacancies of Judges of the Court of Small Causes. Proposals have been made months ago for appointment of 5 Metropolitan Judges and 5 Judges of the Small Causes Court, but they are awaiting clearance at the Mantralaya. In the Bombay City Civil Court there are 4 vacancies and proposals for 3 posts have been sent—again months ago—but halted at the very place. The same is regarding the vacancies of District Judges and Additional District Judges. The time taken for clearance is absolutely unjustified and must cause anxiety in the mind of every sensible person concerned with administration of justice and gives sleepless nights to

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\* At the function at Bombay on 14th August, 1987, to celebrate the completion of 125 years of Bombay High Court.

the Chief Justice, whether permanent or acting. Not merely does the Government not move quickly but gives us no explanation why movement is so dilatory. Wheels of God they say grind slowly; but the wheels of the Maharashtra Government seem to be grinding at even a slower pace and at such a pace that they have halted the wheels of the chariot of justice. The progress in making appointments, rendering facilities for the Courts, putting up Court buildings, building quarters for the subordinate Judges is so slow that it seems to be a mockery of English language to use the word " progress " at all. Assurances are given and are not kept. Schedules are proclaimed and not adhered to. Moneys are promised but given almost so late to be of little use. However, this is not

the occasion for me to make any speech. But sometimes things are so boiling that they must erupt. This is also not the occasion for me to introduce any of the four speakers. They require no introduction to this gathering. We are very happy to have with us Chief Justice J. C. Shah. We always remember him as a Judge of our Court. He is 81 years old and I only hope to be half as healthy as him, mentally and physically, if and when I reach that age. I think the other speakers have been very near to us, are very dear to us and, therefore, it will not be even appropriate to talk about them to you. Without wasting much time since we have got another function at 8-30 p.m. I now request our first speaker Chief Justice J. C. Shah to address us.

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## THE PATH OF JUSTICE\*

By Mr. J. C. SHAH

*Former Chief Justice of India*

I deem it a great privilege to be associated on this occasion with the celebration of the completion of 125 years of this great High Court which was set up on the 14th of August 1862. On the 25th of June 1862 Queen Victoria published the Letters Patent of the High Court and the High Court was set up with 7 Judges. Gentlemen, since those days a number of very distinguished men have sat on the Bench of this Court and that helped to create the tradition, the reputation which this Court carries and holds the respect which it carries amongst the litigating public and the general public of the entire State of Bombay and elsewhere. The High Court has created a sort of a culture of its traditions and if I were to name a few not with any idea of making any discrimination but names of men who come uppermost to the mind, men like Westropp, men like Jenkins, Mahadev Govind Ranade, K. T. Telang, Lallubhai Shah, John Beaumont and last but not the least Mohammed Ali Chagla. These great men have helped in creating the traditions of this Court and the respect which all over India this High Court has created amongst the people for the quality of justice which has been delivered or administered by the Court without fear, without favour, without affection or without illwill. They have been assisted by a Bench of very distinguished lawyers and again I am naming only a few not with any idea of making any discrimination but men like Inverarity, Branson, Chimanlal Setalvad, Dinshaw Mulla, Jamshedji

Kanga, Engineer, Bhulabhai, Motilal Setalvad, Daftary and a host of others. I do not name others who are happily with us, lest they may feel a little embarrassed. Friends, this reputation which has been built up by the High Court on account of its dedicated service to the cause of justice is and has to be maintained at all cost in this land of ours. If I may strike a personal note, I have had the fortune on being associated with the High Court under the regime of two very distinguished Chief Justices Sir John Beaumont who presided in Court between the years 1930 and 1943 and again after short break followed by Chief Justice Chagla who continued from 1947 to 1958. Believe me it was a privilege to see them working in their Courts, the incisive intellect they brought to bear upon the work they were called upon to do and they did. However complex the problem might be, however complex the facts might be, within a short time they reached the central point which had to be decided and without flurry proceeded to deliver judgments not with any bombast, not with any ornamentation of language but in language which was clear, concise and so effective that it was not necessary to read a line over again to understand what it meant on account of ambiguity. It was only with a view to appreciate how succinctly what was stated by them. Chief Justice Chagla was the youngest man to be appointed the Chief Justice of the High Court and was the first Indian to be appointed and had one of the longest tenures in this Court

\* Speech at the function in Bombay on 14th August, 1987 to celebrate the completion of 125 years of the Bombay High Court.

as the Chief Justice. My association with him commenced as early as in the year 1928 when he was my Professor of Constitutional Law, when he was at the Bar and he became a Judge as early as in the year 1941. Ladies and gentlemen, I had occasion to appear before him, to sit with and to decide cases with him. When he was appointed Chief Justice of the High Court, some sort of misgiving was felt by some members of the Bar that it may be that Mr. Chagla was not that familiar with all the branches of the law which the Courts were required to deal with. But within a short time he equipped himself with credit in respect of all the branches. I believe he had very little to do at the Bar with the branch of taxation laws, but his judgments even after this interval and with the swift changes which take place in the law of taxation are still regarded as classical expositions of the law in regard to taxation and it is not only with regard to the branch of taxation but also because of the constitutional law which he was called upon for the first time to administer as the Chief Justice of this Court. The principles which he laid down are principles which still hold good and have rarely been departed from. I, therefore, regarded as a great privilege to have been first associated, having practised before him as a member of the Bar and then having sat with him as a Judge for a number of years from 1949 onwards till I left this Court. Ladies and gentlemen, this Court, as I said, has built up the traditions of fairness, of a desire to do justice, a desire to ensure that no litigant leaves the precincts of the Court without a feeling that he has not had justice. To my mind comes an instance which may be trivial in itself. I was appearing

before a Judge whom I will not name (it was a Division Bench) and before I could open my mouth he remarked "There is nothing in your case." I kept standing. Then he asked me "Why are you standing? Your case is disposed of." I told him "My Lord, I thought I am entitled to be heard before you make up your mind." He immediately apologised and told me "I am extremely sorry, Mr. Shah, that I should have acted in this hurry. We will hear you." And thereafter hearing me for 30 minutes on my case he ultimately admitted the petition which I was making to the Court. That is only an instance of what I am citing as the tradition of this Court that people who come to the Court come for justice and justice which is administered to them is without fear, favour, affection or illwill. Any Court is true to the sentiment which appears at the portals of the Courts "Satyam Eva Jayate." I have no personal acquaintance, no personal association with the High Court since the year 1959, but from reports I have heard that this Court has maintained the old traditions, the traditions of fairness, the traditions which create an impression on the mind of the litigants that when they come for justice they will get justice according to law. I would, however, be failing in my duty if I were not to say as the learned Chief Justice has pointed out also that this Court and the Courts subordinate to this Court are suffering from a staggering load of litigation which makes it impossible for the incumbents of the office of the Judges, whether they are incumbents of the office of the Judge of the High Court or of subordinate Courts, to deal with and dispose of expeditiously the cases which come before them. In my time normally a long

cause used to come up for hearing within about two and maximum of three years. On the Appellate Side appeals used to be disposed of within less than three years. I have no personal knowledge, but the reports are that it takes nearly 10 to 15 years for a long cause to come up for hearing. If that is the situation, then certainly it is on account of the sheer inability of the Judges to dispose of the litigation coming before them. One recent development which was also reported to me causes more apprehension. Not that I have got anything to say against the City Civil Court but I understand that a notification has been issued which confers unlimited jurisdiction upon the City Civil Court. The result is not the saving of the Courts collectively. More time will be taken in the City Civil Court than in the High Court and appeals which will lie as a matter of course to the High Court at least against the final decrees will take an equally long time. Instead of litigation being disposed of within 15 years or 10 years, it will take double the time. If one can think of any ill-advised step, I think it is this ill-advised step which has been taken by the Government to invest, seek to invest the City Civil Court with unlimited jurisdiction. Ladies and gentlemen, the path of justice, the

path of those who tread is strewn with difficulties. There are a number of difficulties which surround and are encountered by the Judges and the lawyers who assist in the administration of justice. To my mind comes a parable of an old Sanyasi who with his disciple started along a path over the mountains. The road was strewn with stones, potholes, the sun was shining brightly and the movement was exhausting. After some time the young disciple asked "Guruji, Yeh Rasta Kahan Jayega?". The ascetic smiled at him benignly and said "Nahin Malum." They proceeded further, went ahead and after some time the disciple asked him "Guruji, Yeh Rasta Kab Khutega" and he said "Nahin Malum". They proceeded further, trudged on longer and the disciple ultimately asked him "Guruji, Yeh Mukt Thairna Kahan Hoga? Manzil Kahan Hogi?". The Guru said "Woh Bhi Mujhe Malum Nahin Hai". This is the path of administration of justice by the Judges. There is no question of where the road leads to, where it is to end, where is the Manzil. It is the duty of the Judges and of the lawyers who are associated in the administration of justice to ensure the performance of their duty and to think of nothing else. I thank you very much.

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## TRANSFER OF JUDGES : TO WHAT PURPOSE ?\*

*By the Hon'ble Mr. M. N. CHANDURKAR  
Chief Justice of Madras.*

I am beholden to my brother Chief Justice Desai for having given me this opportunity and the privilege of participating in this unique and memorable function to celebrate 125 years of the Bombay High Court with which I had been associated as a Judge for about fifteen and a half years and for the brief period of one year as the Chief Justice. Incidentally, Chief Justice Desai is the 25th Chief Justice of this Court and 13th to occupy this office after 15th of August 1947 including Chief Justice Chagla who was the 13th Chief Justice. I wish to thank brother Chief Justice Desai for the touching reference which he made to me this morning at the reference by being large hearted to mention that but for my transfer to Madras I would have been in his place. I am deeply touched. I thank him profusely for this very kind and generous gesture. I have come to believe—having gone to Madras—in a little bit of destiny. It was destined that 125 years of the celebration of the Bombay High Court had to be in the tenure of the 25th Chief Justice of the Bombay High Court and the 25th had to be Justice S. K. Desai, it could not be anybody else.

The High Court having celebrated its Centenary in August 1962, it leaves behind a quarter century which becomes a part of its already glorious history. It embarks on its further contribution in the cause of the rule of law and the strengthening of the democratic structure. The part of the history of the Bombay High Court for the half century

preceding 1962 when the High Court celebrated the Centenary relates to the post-independence period of 15 years from 1947 to 1962. When Queen Victoria signed the Letters Patent of the Charter, in June 1862, again, in the 25th year of her reign, by which the High Court came to be established on the 14th of August 1862, the English Queen little realised that exactly 85 years later her Britannic Majesty's High Court of Judicature at Bombay would become one of the prime High Courts in independent India. The last half of the centenary of existence witnessed the unique ceremony of the last Chief Justice Sir Leonard Stone, the 12th Chief Justice of the Bombay High Court, bringing down the Union Jack at the stroke of 12 midnight exactly 40 years ago on 14th of August 1947. As Mr. Seervai mentioned, today we celebrate not only 125 years of the High Court, but we also celebrate 40th anniversary of independence. We also celebrate the 40th anniversary of the first Indian Chief Justice taking over the reins of administration of justice in the then Bombay Presidency. For 11 long years Chief Justice Chagla tended and nurtured this Court and gave it an identity of its own in independent India. Today he stands immortalised by the statue which stands in one of the doorways of the Court Room in which he sat for 11 long years. Believe me when I say that any Chief Justice who sits in that Court Hall would always be sitting with a feeling that he occupies a seat which had been occupied once

\* Speech at the function at Bombay on 14th August, 1967 to celebrate the completion of 125 years of Bombay High Court.

by a Judge, by a man who really symbolised the Bombay High Court. For a long time Bombay High Court and Chief Justice Chagla were really synonyms and as you sit on that chair at one time occupied by him with the portrait of Chief Justice Chagla looking at the Court from behind you, you are all the time conscious of your shortcomings, of your limited capacity because you know that a Chagla is not born in every generation. It is, therefore, proper that on this occasion we remember and pay tribute to this great Judge who shaped the law of this State in many respects in the earlier years of independence. When Sir Leonard Stone brought down the Union Jack without any rancour in his mind, he said: "I pride in the fact that it is by my hand and at my command that the banner of independence should be raised even upon this Court and all its historic associations." Pertinent observations which he made on that occasion were: "The hills of time stand before us. They are shrouded in the midst of uncertainty and doubt which develop a troubled world. Go bravely forward fearless and undaunted. Carry the torch of liberty high so that this new India may be strong and happy and enjoy the blessings of true freedom and so that you may take your place in the Councils of nations living at home and abroad in mutual trust and concord and at peace." These indeed were prophetic words. Unfortunately the hills of time have brought forth huge moun- tains of pending cases. The world which was troubled then continue- to be troubled much more now than then. The task of making India strong and happy and enjoying the blessings of true freedom has in course of time become an enormous one for which no

effort on the part of Judges and lawyers can become adequate. It is, however, a matter to be proud of that in the sunshine of the constitutional dawn, the Bar and the Bench of this Court have glittered with brightness. This Court has served as beacon light for the multitude of litigants who have thronged the Court. They have come and will continue to come in future to this temple of justice to have their rights vindicated. They have not gone disappointed and I have no doubt that they will not go disappointed in future also. On this momentous day I pay my respectful homage to all those lawyers and Judges who have stood and argued in this Court and who have sat and judged in this Court. To them this Court owes its present glory and its prestige as a premier High Court in India.

On an occasion like this, it is natural for anyone to look back in the past. The Bombay High Court in 1947 was different from the Bombay High Court that it is today. The first reorganisation of 1956, the second reorganisation of 1960 have both contributed to bring about the present size and the shape of the Bombay High Court. As a consequence of the first reorganisation, the eight districts of the old erstwhile State of Madhya Pradesh were joined to the High Court at Bombay, so also Saurashtra. Four Judges of the then Nagpur High Court became statutorily Judges of the Bombay High Court—Justice Mangalmurthy, Justice Mudholkar, Justice Tambe and Justice Kotval. Justice Mudholkar went to the Supreme Court. Justice Tambe and Justice Kotval became Chief Justices of this Court. My particular object in mentioning this is the role which Chief Justice Chagla played in unifying these two different parts of two different

States, in a sense, two different cultures, two different Bars, two different categories of Judges. We always had a fright for Bombay Judges and Justice Shah will excuse me he was one of the few Judges who came immediately after the first reorganisation. The first Judge who came to Nagpur was Justice Bavdekar. You know how fast Justice Bavdekar was. Then came Justice Shah and literally everyone was afraid whether the Bench would be wound up. Many of you must have had experience with Justice Shah. There is a point why I refer to him. Time and again we talk of arrears, time and again we talk of pendency of cases. But if there were Judges like Justice Chagla and Justice Shah, the problem of arrears would never arise in any Court. I remember Justice Chagla coming for three Full Bench matters. He finished all those three in a day and a half—judgments dictated, matter finished, Full Bench breaking up and Division Bench restarting the work. Justice Shah knowing full well that a second appeal lies only on a question of law, the first question he put was what is the question of law. Unfortunately, as I said, Chaglas and Shahs are rarely born. Firstly it is for want of Judges like these that arrears pile up and, if I may say so, the number of second appeals has increased after the amendment to the Civil Procedure Code which was intended to make second appeals rare. Chief Justice Chagla, when it was found that the Bench was in tremor, there was a fear that it would be abolished, a great humanist as he was, made a firm assurance to the Bar saying : " I happen to be the author of the Law Commission's report which says that there should be no Benches of the High Court. But so far as Nagpur

is concerned, as long as members of the Bar do not tell me to close down this Bench, this Bench will continue ". That is the first Chief Justice who brought together these two different parts which were entirely different in several ways.

On an occasion like this, one is tempted to refer to several problems, but for constrains of time. There are problems which face the judiciary about which we have been talking, talking, talking and talking. After sufficient experience of administration in the present office, I have come to believe that a genius is yet to be born who will find a solution to the problem of arrears which is not merely a mathematical problem. It is a problem with multifarious dimensions. Even if you look at it from the mathematical point of view, a time will come when you will say to yourself there is no use thinking of this problem. I will give you a small exercise in arithmetic before I go to the other problems. If there were 30,000 writ petitions pending in a Court—and there is hardly a Court where that is not the figure, in my Court there are 44,000, make a calculation. A Judge is expected to dispose of 650 matters per year. It is a different thing that many of them don't reach that figure and this is an average of some of the figures taken together with the past Judges. In 10 years you dispose of 6,500 writ petitions. For 30,000 writ petitions, you will require at least 30 to 40 years. Going by pure arithmetic, therefore, I have ultimately come to believe that it is no use discussing these things because I am satisfied and convinced that those who discuss these things have not the least intention of tackling this problem. We are talking of delays. We are talking of appointments of

Judges. We are talking of inactions of the Government. But experience has taught me one thing that if the Government wants to do something, it can do it overnight and you will pardon me if I give you a very patent illustration of my experience. When the Government wanted to establish the Aurangabad Bench, it came into being within a week. If the Government wants to make an appointment, it can take two months, otherwise it can take also four years. When I wrote to one of your Judges congratulating him, I wrote to him that it is unfortunate that it took two and half years for your appointment. I wrote to another saying your appointment should have come four years back. In other words, you must ask yourself the question; Is anybody serious about tackling this problem of Courts or is it only a subject on which you keep on talking? People talk but those in whose hands lies the power and the capacity to do something give no commitment whatsoever. These are all problems. But for this occasion, there are two problems which I wish to lay before you having regard to the severe jolts which this High Court suffered in the last 15 or 20 years and indeed the entire higher judiciary suffered in the last 15 or 20 years. You well remember those dark days of emergency when for the first time the transfer of Judges was mooted and the blow fell on Mr. Justice Vimadala. He was able to bear it. He made the best of it. He went to Hyderabad, retired from there. The other Judge on whom the blow fell could not bear it. He suffered a heart attack and he died—Justice Mukhi. Several other Courts had transferred Judges. With a change of Government these Judges were sent back to their Courts. Such of

these who stood the chance of becoming the Chief Justice in the transferred Court continued to remain there. My point today is not restricted to the Judges because it appears that the transfer policy of one-third of the Judges does not seem to be acted upon. I would refer to the transfer of Chief Justices and I would preface the observations which I make hereafter by a very plain statement that having regard to the judicial discipline I have not the least intention of not continuing my full tenure as the Chief Justice of the Madras High Court. What I am going to say is in this background because it is possible for some people who specialise in taking a perverse view of matters to say that because I am affected I am voicing some feelings. Fortunately I have put in three and half years at Madras. There is not much time to go. Soon I will be a free man—free to express my views on many matters on which I cannot speak frankly today. But so far as the interest of the judiciary is concerned, I would refer to certain salient features which are relevant in this context of the policy of transfer of Chief Justices. It is a different matter that I would have been sitting here if I had not gone to Madras. But the problem is what is to happen to this concept which has been in operation now for more than four years because the Government of India declared on 28th of January 1983 about their policy to transfer Chief Justices. It is my considered opinion formed out of experience of judicial administration that this policy needs to be revoked and that is the opinion of all Chief Justices. I can assure you that in saying this, personal difficulties and inconveniences experienced by transferred Chief Justices are completely

left out of consideration. The unanimous view of the Chief Justices is that the present policy of appointing Chief Justices from outside the State has failed in its objective and has proved counter productive though under exceptional circumstances it might be advisable to appoint an outside Chief Justice to a High Court. The failure of the transfer policy relating to Chief Justice is, in my view, apparent. One of the guidelines originally announced on the question of having Chief Justices from outside the State was that for the purpose of elevation as Chief Justice the inter-State seniority of puisne Judges will be reckoned on the basis of their seniority in their own High Courts and subject to suitability they will be considered for appointment as Chief Justices in other High Courts when their turn would normally have come for being considered for such appointments in their own High Courts. Today my learned brother Chief Justice's turn has come. His predecessor has gone to the Supreme Court. There is a clear vacancy in the Bombay High Court. I only wish that he is confirmed in this Office.

These guidelines have been observed more in breach because there are instances where from the same Court two Judges held the office of Chief Justice in two different High Courts. The Chief Justice of Punjab and Haryana was transferred to Patna. The next senior Judge, Justice P. C. Jain, is today the Chief Justice of the Karnataka High Court. There is Chief Justice Seth from Allahabad. He is Chief Justice of Punjab and Haryana. Chief Justice Oza in Madhya Pradesh is also a Judge from the Allahabad High Court. It has appeared in one of the newspapers in Bombay that two States in India have

declined to have Chief Justices from outside. In one of these States a Judge of that Court is continuing as Chief Justice from June 1984—three years as Chief Justice. I have no grievance against him. He is one of my best friends. I have quarrel with the policy, the manner of implementation of the policy which only means that when State Government resists the posting of an outside Chief Justice, he is allowed to remain there for any length of time in clear breach of this policy. Therefore, only such of those unfortunate Chief Justices who are not supported by the State Governments will hereafter be transferred which in terms means that the Chief Justices must develop a political outlook and a political association which itself is destructive of the independence of judiciary. This itself would show that the policy is not being implemented according to its letter and spirit. A rethinking on the question of appointing Chief Justices from outside has also become necessary as a result of difficulties which have been experienced by these Chief Justices. Each State has now adopted the policy of having the regional language of that State as the official language for lower Courts. Consequently, the proceeding in the subordinate Court is in the regional language. It is impossible for a Chief Justice to function effectively in the discharge of his judicial duties if he cannot read the record which is in the regional language. There are States where even judgments of the lower Courts are now being written in the language of the State. Virtually a Chief Justice from outside the State is prevented from knowing anything about the performance of the subordinate judiciary and he has, therefore, necessarily to depend on somebody

else in order to give a correct appreciation of the performance of the Judicial Officer in the judicial field including the District Judges. If the Chief Justice cannot have personal knowledge about the judicial calibre and capability of the subordinate Judicial Officer, how can he, I ask, properly deal with matters relating to promotions of that Officer ? It is, therefore, beyond my comprehension why this very relevant and a telling circumstance is not being appreciated and there is still a persistence to go ahead with the policy of having a Chief Justice from outside. Let me dilate for a moment. Imagine a man from Tamil Nadu coming in the place of Justice Desai. How is he going to deal with the first appeals ? How is he going to deal with the second appeals ? The entire record is in Marathi and he must, therefore, if he is sitting in a Division Bench, depend upon what his colleague tells him is the meaning. Not that the colleague is likely to mislead, but there is a great difference between what you read and what you are told and I say so from experience. In the last three and half years I have almost forgotten my criminal law. I am almost forgetting my civil law because I cannot sit on a second appeal Bench. I cannot sit on a first appeal Bench. I cannot sit on motor accident claim cases. I cannot do any other work in which the proceedings are in Tamil. All credit to the Government of Tamil Nadu who have developed Tamil as the language and provided Tamil typewriters. Judgments are written in Tamil and typed in Tamil. But to me it is Greek and Latin. Fortunately I sit only on a writ appeal Bench because that is the only work that I am expected to do not knowing the local language. But even there, what you call G. Rs. is called G.Os.

(Government Orders) which are all issued in Tamil and I have to depend on my learned brother sitting by my side as to what it means and he tells me what is the meaning of this and then I have to apply my mind to that question after I learn from him as to what is intended to be conveyed by this. Now, there are two things on this important occasion. I propose to take the Bar into confidence. I propose to take everybody in confidence because there are busybodies. There are disgruntled people who are out to denigrate the judiciary by insisting upon transfer of Judges and transfer of High Court Judges and Chief Justices. But let me tell you all this is born not out of their desire to improve the judiciary, not out of their desire to see that justice is meted out to the litigants in the proper form. It is some sort of ulterior motive which tends them to agitate with regard to the transfer. Now, I will give you another instance. A Judge from Hyderabad was transferred to Assam. Now I asked him : "What do you do ? It is impossible to learn Assamese in such a short period. In any case, the language is not such that you can get to grasp its different meanings in the context in which words are used in such a short time." We are preventing a Chief Justice from effectively functioning both in his judicial capacity as well as in his administrative capacity. I will tell you from experience. I have been fortunately associated with administration. That is the case with all senior Judges of any High Court. As you become senior you take part in administration. Justice Desai has been in administration ever since possibly Justice Madon was there or when Justice Deshpande was there. All of us have known every

single Junior Division, Senior Division Judge and every single District Judge. You ask them as to who this man is, what this man is, what is his weakness, what is his character, does he know the law, what are the complaints against him. I can frankly confess it is impossible to remember the names of my Magistrates, of my Civil Judges. With great difficulty I have memorised the names of District Judges. An ordinary man does not know these things. That is why there is a sort of indifference to all this. I don't say the High Court suffered because I went away. It is likely to suffer because my brother might be sent away somewhere. It is time we focus attention on this not out of any selfish motive but out of interest in the administration of justice. This is a matter of vital importance and unless you know the subordinate judiciary, it is impossible to administer a judicial system. It is not necessary for me on this occasion to go into the reasons which led to these transfers. But let me confess. It may be possible that some of us have invited this. I am brutally frank and when I say "some of us" means the Judges' fraternity and when I try and analyse the reasons which have led to these transfers, I am often inclined to resign myself in the cry : "Judiciary, save thyself, from thyself." We have provided possibly—not we, some of us have provided—and when I say "some of us", I mean some Judges have provided—an opportunity to disturb the equilibrium of the judicial administration and if and when this policy is reversed, we may have to exercise more restraint, more care in certain matters which are germane to the judicial administration in the State. Ladies and gentlemen, I will briefly refer to another aspect. Recently I have

found with regard to the public interest litigation that the respect for the High Court is going down. When I say respect for the High Court is going down, you know, the litigants have now started coming to the Court in an unsilent mood because we entertain writ petitions from individuals and you are told on your face : "If you dismiss this case I will go to Delhi." The attitude which the litigants have now developed is because of the manner in which public interest litigation is being dealt with. This has severely affected the High Courts and I had two interesting experiences, if you permit me to say so. It is a delicate matter to which I think each one of you is entitled to apply your mind. A Counsel appears—the normal case of public encroachments on public properties. Man has no right, no title to the public property. He is trying to be removed. When you dismiss the petition, the Counsel happens to be a junior. So, you tell him "I am sorry, we cannot help you" whereupon he says "I am surprised." Sometime ago, a party addressed a letter to the Chief Justice of Madras. "Please look into this matter. Bonded labourers are being maltreated." It was a long memorandum and he had written : "Treat this as a writ petition." I summoned the man after the Government had filed its affidavit. But the gentleman who appears before me in a long simple robe, green in colour, his hair well combed, a mala round his head—for a moment I did not believe that this could be the petitioner because he had described himself as Baba—I don't want to disclose the name. I asked him. He knew English. "Have you made this petition?" He said "Yes". I said "What is your occupation?". "I am

an agriculturist." "How much land have you got?" "That I do not know." "Then who looks after your agriculture?" "My brother looks after the agriculture." "What is the crop you grow?" "I was just trying to test the *bona fides* of this man." "We don't grow any crop. I own a tea garden." "Very well. How much labour do you employ?" "I don't know." "Then who employs labour for you?" "My brother does it." "How much do you pay to your labourers?" "That also I don't know." Now, imagine, it is this kind of man who comes to a Court with a petition, telegrams after telegrams delivered to you at midnight to complain of unfair treatment to labourers when he himself does not know or care to know what are the wages he pays to his own labourers. We have, therefore, to be very careful in this kind of litigation. By all means entertain them but there are certain safeguards which I suggest on this occasion. Safeguards firstly are : These petitions must be routed only through the Chief Justice. It should be for the Chief Justice to decide whether it should be entertained or not and, if so, which Bench shall deal with it because, to our great dismay, we have noticed a distinct cleavage in most High Courts between what are described as now traditional Judges and activist Judges. This cleavage is no good for the judiciary, no good for any Court. It reflects on the image of the Court so much so that this now has become a subject for quite a few conferences—traditional Judges *versus* activist Judges. This cleavage has to be avoided; this splitting of the Court into blocks both looking in two different directions has to be avoided. The unity, the homogeneity, the integrity of the Court is

more important than anything else. It should, therefore, be a matter which will require attention that such petitions must now be routed through the Chief Justice and certain parameters of this public interest litigation must be laid down. Fortunately for me, the Supreme Court in a recent decision shares this view and I am, therefore, emboldened to lay before you this view. And I am very happy that Justice Khalid who has retired has echoed exactly what I am saying. In his judgment he says I quote : "But one is led to think that it poses a threat to Courts and public alike. Such cases are now filed without any rhyme or reason. It is, therefore, necessary to lay down clear guidelines and to outline the correct parameters for entertainment of such petitions. If Courts do not restrict the free flow of such cases in the name of public interest litigation, the traditional litigation will suffer and the Courts of law instead of dispensing justice will have to take upon themselves administrative and executive functions. It is only when Courts are apprised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded or when there are complaints of such act as shock judicial conscience that the Courts, especially this Court, should leave aside procedural shackles and hear such petitions and extend such jurisdiction under all available provisions." But this does not mean that the doors of this Court are always open for anyone to walk in. Pertinent observations : "It is necessary to have some self-imposed restraint in public interest litigation" and out of sheer despair the learned Judge observes as he puts it while concluding judgment : "With a lurking doubt in my mind and with

a question is there something more than meets the eye in this case, this should open our eyes, should open the eyes of our Judges to find that every case brought before it by public interest litigation does not really relate to public interest."

The coming years are going to be a testing time for all judicial functions and judicial institutions. The number of those making demands for justice is going to multiply. Growing industrialisation, population explosion followed by urbanisation giving rise to environmental problems, growing interest of the people in consumerism, tremendous advances in bio-technology, advances in medical science giving rise to several activities unknown before such as teak wood transplant and sale of organs, guardianship problems of children born by scientific methods are going to raise great, social, ethical and complex legal issues. There are going to be challenging tasks before the judicial institutions and the High Courts. Effective functioning and meeting the ever-growing and multi-disciplinary problems will need an active cooperation of both the

Judges and lawyers who by virtue of belonging to the profession of law are wedded to the rule of law. Law is the guardian of two most precious things in the world, justice and liberty as Lord Macmillan put it. Let me conclude with very pertinent observations of Daniel Webster, the great legendary American lawyer : " Justice is the great interest of man on earth. It is the ligament which holds civilised nations together. Wherever a temple stands and so long as is duly honoured, there is a foundation for social security, general happiness and the improvement and progress of our race. Whoever labours on this edifice with usefulness and distinction, whoever cleanses its foundation, strengthens its pillars or contributes to raise its august dome still higher in the skies, connects himself in the name and fame and character with that which is and must be as durable as the frame of a human society. " On this occasion, I once again felicitate the Judges and lawyers of the Bombay High Court and hope and wish that in the years to come this Court will continue to shine brighter and brighter. Thank you.

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# JUDGEMENTS : NEED FOR CLARITY AND ACCURACY \*

By Mr. H. M. SEERVAI

Former Advocate General of Maharashtra

I am grateful to My Lord the Chief Justice for inviting me to speak to you on this great occasion because ever since I joined the Bar in 1929 I have been proud of our High Court, been devoted to its cause and not only that but I have felt great affection for it.

Today we are celebrating three anniversaries. The first is the 125th anniversary of the High Court; secondly, with our fellow citizens all over India, we are celebrating Independence Day; and, coming nearer home, almost to a day we are celebrating an event which gave to this High Court the greatest Chief Justice it has ever had since Independence—Mohammedali Chagla. Eleven glorious years of his Chief Justiceship have enhanced the great reputation of the Bombay High Court, and the public felt fully confident that in a Court over which he presided, justice would be done to the limit permitted by law. It was fit and proper that a tribute should have been paid to him this morning outside the Court over which he presided with such distinction. But we pay that tribute in vain if we do not—judges and lawyers alike—take inspiration from his conduct as Advocate, as Judge and as Chief Justice, to enhance the reputation of this High Court.

I have been at the Bar for 58 years. It is a long time in a lawyer's life, but it has enabled me to take part in two celebrations, in celebrating the Centenary of the Bombay High Court and in celebrating the 125th Anniversary of that Court. On the occasion of the

Centenary, and as part of the celebrations, speeches were made, or rather read out, by Chief Justice Chainani, by the Governor of Bombay Shri Sri Prakasa, by the Attorney General of India, Mr. Motilal Setalvad and by the Chief Justice of India Mr. Justice Sinha. As Advocate General I was assigned the task of making a brief extempore speech proposing a vote of thanks to the distinguished guests. I concluded my speech with some words which I would like to repeat to you today. I said :

“ 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 un-  
daunted 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 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, have done worthily and well ”

\* Speech at the function at Bombay on 14th August, 1987 to celebrate the completion of 125 Years of Bombay High Court.

Well, the courage and resolution of which I spoke—both of the Bench and the Bar—was put to the test during the Emergency, and that test was passed with flying colours. The High Court of Bombay stood firm as a rock for the rule of law, and it refused to countenance the argument, seriously urged by the Government Pleader, that if a detenu was starved to death and shot, this court could offer him no relief. To the credit of the other High Courts, they also stood firm as a rock and they upheld the rule of law. One of the Chief Justices said that “ if I accepted Government’s argument the ghost of Hitler would haunt the whole of India ”. Therefore, our High Court and eight other High Courts reached their finest hour. But it was the Supreme Court which in the supreme moment failed to discharge its duty. It delivered a judgment which in substance said that any one of us could be picked up and shot, and our widows may have the comfort of filing a criminal prosecution for murder after the emergency was over ! That judgment has few defenders now. Two of those who wrote it are heartily ashamed of it, and one has said that the order was incorrect and did not conform to the judgment.

Now, reverting to the Centenary celebrations, I wish to read to you a passage from the speech of the Attorney General Mr. Setalvad. He had been the Chairman of the Law Commission and had personal experience of various Courts, had met Counsel, examined and cross-examined them, so that his opinion on the subject was worth having. He wrote :

“ The completion of the record of useful and distinguished service for 100 years is undoubtedly an occasion for celebration and jubilation.

Is it not also an occasion for taking stock of ourselves ? Here one perceives distinct 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. 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 level. 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 ? ”

I agree with Mr. Setalvad and I share his view that in celebrating anniversaries we should not merely take pride in the glories of the past and its achievements. We should look with a steady eye and an unshaken nerve to the situation as we see it today and see whether it cannot be improved ; and plan hopefully for the future so that the future may reproduce some of the glories of the past.

I have referred to the Supreme Court of India and I would like to refer briefly to the great change which took place in the judicial hierarchy from 1929 when I joined the Bar till today. At that time, except for the brief interlude of the Federal Court, the judicial hierarchy was broadly speaking, this : The Subordinate Judge, the District Judge with practically unlimited jurisdiction, the Chartered High Courts with Appellate and Original Side jurisdiction and

finally the Privy Council. The Privy Council was manned by Judges of the highest distinction. Its personnel was practically interchangeable with that of the House of Lords. Being the final Tribunal for what was then the whole of the British Empire, Boards of the Privy Council took the utmost pains to see that the law was stated briefly, accurately and clearly. Mr. Justice Venkatarama Ayyar has gone on record in a judgment as saying that in constitutional matters there is no instance of the Privy Council having reversed itself except in one case from Ireland where the Board reversed its early decision because facts not available to the first Board were available to the second. You will see with what certainty the law was laid down. No "may be's", no "might be's". Sir Dinshaw Mulla told his son-in-law that a draft judgment was scrutinised line by line, and word by word because the Boards were conscious that they were laying down the law for the whole Empire. The impact of such a final Court on the High Courts and the subordinate Courts was great, for every Judge knew that his judgment would have ultimately to stand the scrutiny of the Privy Council; and no Judge wished to do anything but his best because at no time would he realise when a matter would be carried in appeal.

All that changed with Independence. First, the Federal Court for a few years, and then the Supreme Court of India, took over as the final Appellate Court in this country. It had the widest jurisdiction of any Court in any country. It had the residuary jurisdiction of the Privy Council to grant special leave to appeal. The law declared by it was made binding on all Courts in India, just as the Government of India Act,

1935 had done earlier for the law declared by the Privy Council and the Federal Court. Therefore, a change took place in our legal system. During early days with two of the most distinguished lawyers from Bombay, the Attorney General and the Solicitor General Mr. Setalvad and Mr. Daftary, the early Benches of the Supreme Court were the strongest; and though they might have been unfamiliar with judicial review of legislation and fundamental rights, their reasoning showed clarity, cogency, and deep learning. They talked as lawyers to lawyers and they realised that the essence of law is that the Judge is as much bound by the law as anybody else. Gradually the atmosphere changed. The first inroad was made by Mr. Justice Gajendragadkar who propounded what may broadly and loosely be called the philosophy of the left. "Socio-economic" was a phrase which occurred in most of his judgments. But it must be realised that if Judges were free to propound a philosophy of the left, Mr. Justice Subba Rao was equally free to propound a philosophy of the right. He made no secret of it, so that we reached the stage when we came across the great judgment of *Golaknath* which held that no part of the Constitution could be amended. To the end of his days Gajendragadkar told me that I was very wrong to refuse a judgeship of the Supreme Court, for I would have been a Judge and then the Chief Justice for five years and a half, and the tragedy of *Golaknath* would never have occurred. Well, I said to him that one Judge could not do much, and I honestly believed that I had made a larger contribution to the development of Constitutional Law by my book than I could ever have done by being a Judge of that Court.

I have been spending the last 19 months in one of the most painful exercises I have ever undertaken. First, a research of 9 months in the transfer of power which replaces a brief discussion in the first Chapter. It is now a monograph of 150 pages; and, secondly in bringing the law up-to-date. And never have I been more distressed in my life than in dealing with the judgments of the Supreme Court. Mr. Justice Shah has given a parable which emboldens me to say that some Judges of the Supreme Court seem to possess a magic wand—the open sesame which solves every problem,—and it bears the name of Directive Principles of State Policy. No matter that the Directives confer no rights on a citizen. No matter that no Judge can enforce them without violating his oath and probably being impeached. But it is a solution to every problem. I do not say this to provoke controversy. But I am convinced that if this trend is not reversed, the respect due to the highest Court in the realm and, therefore, due to the High Courts will be lost.

Let me give you two illustrations. Two judgments of the Supreme Court had rejected Government's argument that pension was a mere matter of grace. A Constitution Bench had held that it was a matter of right, something much higher than any directive of State policy. One of our ablest Judges of the Supreme Court heard arguments for days on the Directives of State Policy, the misery of the poor,—the poor broken down pensioner retiring at the end of his life. But all that was required was a judgment of one sentence. "The argument of Government that pension is a matter of grace stands negatived by two judgments of this Court with which we respectfully agree". Eight

pages of the judgment, as reported in the Supreme Court Reports, are occupied by a discussion wholly irrelevant. The Supreme Court says that they are grinding to a halt because of delay. Which Judge should permit an argument when the matter was concluded by the finding of a Constitution Bench especially when the Judge agreed with the decision. That is one illustration.

The second thing which would have filled me with despair but for the fact that I am an optimist and despair is unknown to me, is a "judgment" of five Judges (I would put the judgment in inverted commas, bear it in mind) in *Vasanth Kumar's Case*. Eight petitions were filed challenging the reservation of seats in educational institutions and in public employment to the extent of 66 per cent in educational institutions and 68 per cent in public employment. The overwhelming weight of authority was that reservations could not exceed more than 49 per cent because reservations were an exception and equality was the rule. The Supreme Court heard the petitions for 12 full days. It reserved judgment. It would appear that similar questions from Tamil Nadu were heard for 7 days and judgment was reserved. Mind you, we are in July and August, and October 1982. All the High Courts were anxiously awaiting the decision of the Supreme Court for it alone could resolve the conflict of Supreme Court decisions. As month followed month, and year threatened to follow year, the aggrieved persons took to the streets in Gujarat and in Madhya Pradesh. Arson, rioting, looting took place. On 8th May 1985, a day before Mr. Justice Desai was to retire, the Supreme Court delivered, what?—not judgments. They said so. The Chief Justice said that this was not a judgment. It was a useful

innovation. We are giving guidelines to a Commission to be appointed by the State of Karnataka. Mr. Justice Desai said, this is an essay. It is not a judgment. It is an essay—not exhaustive—and in any event, nothing that I say about the new approach should touch Scheduled Castes and Scheduled Tribes. Mr. Justice Chinnappa Reddy did not say that it was not a judgment, but he did not decide the right of parties. So here we have the highest Court in the realm saying and doing what a law student would know to be utterly illegal—delivering an advisory opinion when the only advisory opinion which the Supreme Court can give is to the President of India. What is more, they disregarded the limitations on the Supreme Court's power under Article 145, sub-article (5) that no judgment should be delivered except by a majority of Judges who heard the matter. There was no majority of Judges for any point and one is struck with amazement that able Judges, eminent Judges should seriously believe that five different sets of guidelines, each set given separately by each Judge could ever help a Commission. Did they not pause to consider the infinite injury which they were doing to thousands of students and to hundreds of thousands of candidates for public employment? For if the original judgments were right, for every 100 seats in educational institutions, 17 students were deprived of

their right to admission and for every 100 posts in Government service, 19 out of 100 applicants were deprived of employment. Petitions filed in 1979 to 1981 hanging fire, elaborately argued, "judgments" delivered, rights not determined. So, for the first time in my book, I have been driven to remind Judges of the judicial oath and to point out the limitation of the judicial function. My time is up. But I will end this talk with giving you the example of one great American Judge when he came to decide the validity of capital punishment. Mr. Justice Blackmun said that cases such as those before him "provide for me an excruciating agony of spirit" because I hold that finite human beings ought not to be responsible for taking finite life. It is against all my philosophy. It is against all my convictions. If I were a Legislator I would vote against capital punishment. But we sit here as Judges and we must remind ourselves that our duty is to administer the law and to resist every pressure to read our own preferences into the laws—a pressure so great that his colleagues had succumbed to it. I think that this is the true nature of the judicial function, and that is why in speaking in praise of Chief Justice Chagla I said that people were convinced that they would get justice to the limit of the law.

I thank you.

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## NEED FOR FIRM STEPS\*

By Mr. M. V. PARANJAPE

Senior Advocate

**W**ELL, when I am standing before you, my feeling is the same as it was when I first entered the High Court. I was very much filled with fear and awe. I am having the same feeling now also. We have assembled here to celebrate our 125th Anniversary. We celebrated our Centenary in 1962 when Mr. H. K. Chainani was our Chief Justice and that occasion was graced by His Excellency the Governor of Bombay as well as the Chief Justice of India. This function today is a family function, it is a small function. While celebrating the Centenary, we took stock of the situation. We looked backward and found out how far we had acquitted ourselves in the discharge of our duties and how far we had justified our existence as a judicial institution and with gratification we could pat ourselves and say that it was a glorious period of 100 years. After 25 years we are again pausing and looking backward to see how have we fared, how far have we fulfilled the expectations of the people. Can we say that we have justified our existence as a judicial institution? Can we say that we have not only maintained but enhanced the traditions of this Bar and the Bench? Can we say that we have enhanced the reputation of the institution in these 25 years? The reputation of a judicial institution will depend upon how far it has been able to do justice not only between man and man but also between man and the State. These 25 years provide a very eventful period. This was a period when events of very momentous nature had taken place. There was emergency. This was the

most trying period for the High Court. During this period High Court was on trial. In fact, I should say, the High Court Judges were on trial and I can say with confidence that they have acquitted themselves extremely well. In 1975-76 the Constitution was drastically amended and High Court's powers were cut down and there again the High Court had to sit in judgment to decide as to how far its own powers were cut down. It was a very delicate task to find out how much of its own powers were cut down, by the amendment. I am mentioning this in order just to take a retrospective view to find out whether we have discharged our duties to the satisfaction of the people. It was during this period of emergency that two conflicting types of cases were required to be decided by the High Court. One type was the interpretation of various laws passed for eradication of poverty. Interpretation of these laws was to be done in the context of the preamble of the Constitution which was changed to socialistic and in the light of the directive principles in the Constitution. These laws necessarily encroached upon rights of the individuals severely for the public good. This required striking a very delicate balance between the individuals rights guaranteed by the Constitution and the necessity of encroachment upon them to give effect to the directive principles and the preamble of the Constitution. We have a look at the history of the last 25 years, and the law reports, we can very well say with confidence that in this sphere High Court has done

\* Speech at the function at Bombay on 14th August, 1987 to celebrate the completion of 125 years of Bombay High Court.

excellent job. Side by side the High Court was also called upon to decide the individual's rights because numerous detentions had taken place particularly of political leaders. The High Court was called upon to decide the *habeas corpus* application to safeguard the individuals freedom and here in this field also the High Court dispensed justice without fear and favour and earned the reputation as one of the premier judicial institutions in the Country. It was during these 25 years itself that further things have occurred. The most important is the transfer of Judges and transfer of Chief Justices. My views on the question of transfer of Judges as well as transfer of Chief Justices are wellknown. I had expressed myself in favour of transfer of Judges long back and that view I do not propose to alter because nothing has happened in between to alter my views. But that time also my view was that it was wrong to transfer the Chief Justice of a High Court if he has a very short tenure left. This was because the Chief Justice performs not only judicial functions but several other functions as the head of the institution. Now, some of the effects of transfer of the Chief Justices have been referred to by the learned Chief Justice of Tamil Nadu. But I would like to make special reference to two aspects. One is that he is called upon to make recommendations for appointment of Judges of the High Court and secondly he is also to look after the administration side of the judiciary of the whole State. Now, in both these respects, if a stranger comes and sits in that chair, he would be very much handicapped or he is likely to be indifferent if he has very short tenure and that is what we have in fact experienced. If a Chief Justice

is available in a given place for sufficiently long period, he imbibes in himself the ethos of that place, the general atmosphere of that place, he knows the people, he knows the Advocates appearing before him, he knows his lower judiciary and, therefore, he is in a better position to make recommendations as is stated by our Chief Justice of Tamil Nadu. So, far as the judicial administration is concerned, he also knows even the smallest things here and there and he can efficiently tighten the administration. The result today, with respect, is that High Court's administration, to say the least, is more in disorder than any other period before. If we look back to the days when Chainani was our Chief Justice, High Court administration was most tight administration. It was difficult to find any fault with the administration. He sat right upto 8 O'Clock' at night looking after the administrative problems. Now, if a Chief Justice is available only for a short period or he is under a cloud, a fear of transfer or he has come to that place for a very short period or he is supposed to go higher up in a short period, hardly he would have any mind to look to these problems. Nor would he have necessary background to look to these problems if he happens to have been transferred to that place. Therefore, transfer of a Chief Justice is a more serious matter and perhaps we may have to have a second thought on this aspect.

Another thing of importance that has occurred during this period of 25 years is splitting up of the High Court. A new Bench was created at Aurangabad. That time again there was furious debate at the Bar. There was a meeting arranged in our Bar Room to discuss

the issue and that time I had expressed the fear that if we have this institution splintered into small Branches, it might lead to undesirable practices and reputation of the institution will seriously suffer. I hope that my fears have not come true today. But some of the rumours that I hear are most disturbing. They do hardly any credit to this institution. They are certainly not complimentary to the fair name of the organisation. Therefore, when we are talking about having more Benches, we must reconsider this issue whether it will be advisable to divide this institution in smaller parts because as the prior experience shows it will affect the administration of justice and the reputation of this High Court that it enjoys today.

Now, lastly, for the purpose of enhancing the reputation of the High Court, we will have to take certain steps. In the past undoubtedly we have discharged our duties to the satisfaction of the public in general and the litigating public in particular, but we must be able to discharge our duties equally satisfactorily also in future. The litigation is increasing enormously. I think today the number of writ petitions is so large that we are not able to cope up with it with the existing number of Judges. Every day it is now impossible for a Division Bench or even for a single Judge to dispose of the entire board of admission matters. I think on an average there is a filing on the Appellate Side of 5,000 Writ Petitions and an equal number on the Original Side. This is in spite of the fact that the Service Tribunals have been created. This shows that the Service Tribunals are not going to have any effect on the work in the High Court. Similarly, several other laws have been passed

to curtail High Court litigation. Reference was made here to the cutting down of the second appeals. Very soon we will have a law whereby the Original Side of the High Court will be abolished; so also Letters Patent Appeals will be abolished, but I am afraid that all these legislative efforts to cut down litigation are not going to make any difference on the quantum of litigation that High Court will have to handle. It is going to increase every day and something will have to be done now only to deal with it. If the Government does not do anything now, it will have to face the consequences very severely and very soon. More number of judges will have to be appointed. But the biggest problem that immediately we will be facing is of accommodation; even now we are facing shortage of accommodation. I don't know how many of the Judges have the occasion to go to the corridors on this side in the High Court Building and that too during the working hours. It is impossible to walk in the corridors during working hours. The place is awfully crowded. We have annually 5,000 writ petitions on the Appellate Side, another 5,000 on the Original Side. Every writ petition is an original proceeding and at least for each writ petition four/five people come to the High Court. This is besides the other litigation and the presence of other litigants in the High Court Building.

All services of the building are overstrained. There is no place in the Bar Room to sit. Bar Room is not only extremely crowded but is extremely noisy. It is impossible to work in the Bar Room. Now, in this state of affairs, if we are to discharge our functions in the next coming 25 years, can we do in this accommodation? Let us pause and consider. Or it is necessary for us

to shift this entire institution elsewhere, where we can have larger accommodation and we can do our work peacefully, quietly and in a better manner. For solving the problem of accommodation, splitting up of the High Court into smaller Benches, is not going to help because our prior experience of splitting up the Benches is not very happy. Therefore, we will have to do something different and that is shifting of the whole of the High Court elsewhere.

Side by side we also may have to do what is known as personnel planning. High Court is the only place I find where the personnel planning is neglected. All of a sudden we find large number of Judges retire in a given year. Similarly large number of District Judges retire in a given year. How are we going to fill up the vacuum so suddenly created. Unless we have got proper personnel planning, it is not possible to organise the judicial system properly. Therefore, my suggestion is that let us have some kind of personnel

planning for the purpose of meeting future challenge when tremendous litigation is going to come which the High Court will have to handle in the near future. Perhaps I may not be there when this happens, but it is bound to happen. It is round the corner as I see it. When I entered the High Court about 38 years back, the High Court litigation was very meagre as compared to what it is today. If the litigation grows in the same proportion in the next twenty five years it will be impossible to have even place to keep those files in the High Court so also there will be no place to seat the number of Judges required, number of advocates that will be enrolled and accommodated number of litigants that will be required to come to the High Court Building. So, let us do something now only so that future contingencies will be met by.

I thank the Chief Justice and all of you for patiently hearing me. Thank you very much.

□

## CONCLUDING REMARKS \*

*By Mr. S. K. DESAI*

*The Hon'ble Acting Chief Justice*

WE are drawing to a close. Before I request the President of the Western India Advocates' Association to give bouquets to all our speakers on behalf of the Bar, I will deal with two or three points made by our speakers.

Mr. Seervai referred to pressures—possible pressures emanating from the executive—regarding appointment of Judges and I think fairness requires me to state publicly, since I always give the other side also as candidly, that to my knowledge in this State there has been no pressure of any type emanating from the Government. Whatever other grievances we may have, at least to my knowledge no attempt has been made—overt or covert—to influence the Chief Justice or the senior Judges or any High Court Judge that such and such an appointment should be made because the executive would like it.

As regards public interest litigation, we have framed guidelines and they are very similar to those suggested by Chief Justice Chandurkar. Madhavrao referred to a grand programme. I do not think there is going to be any grand programme. I do not in fact know what is meant by a grand programme. However, we propose to carry on the celebrations till the end of the year and the plan is to have some functions at Nagpur in September, at Aurangabad in October, at Panaji in November and thereafter wind up in Bombay by the last week in December prior to the Christmas Vacation. But these are tentative plans. Nothing has been fixed. Now, before I ask Mr. C. J. Sawant to give bouquets, I would like to men-

tion, because thereafter there will be only the vote of thanks and nothing more, that we had thought whether at the conclusion of the function we should have either the National Anthem or some other national song. However we decided against it. We have our usual flag-hoisting ceremony tomorrow at 9-30 a.m. and I call upon all lawyers present, all Judicial Officers present, of course, my brother Judges and retired Judges, to join us at the said flag salutation.

Before I ask Mr. Sawant to give the bouquets, I will refer only to one aspect. We receive letters, complaints, that the High Court is composed of groups.

I have received a very distressing letter complaining about the Brahmin group, the Gujarati group, the Parsi group and the Marwadi group. I do not know any such groups. We have never had these groups in the High Court. We do not have any such groups in the lawyers also. As far as this High Court is concerned and this Bar is concerned, we have only the Bombay Bar and only the Bombay Bench. I will request all of you, if there are a few having this mentality, to give it up. It is no use going to flag salutation once a year and saying "Jai Hind" on that day and for the rest of the 364 days think only of your petty caste or petty community. You are required in these days particularly to think Indian, to be Indian and to act Indian at all times. I think I have said more than I ought to have said, but I felt like saying it. I will now request Mr. Sawant to give bouquets to all our speakers. □

\* At the meeting at Bombay on 14th August, 1987 to Celebrate the completion of 125 years of Bombay High Court.



SIR NORMAN CRANSTON  
MACLEOD, K.T.  
BARRISTER-AT-LAW  
CHIEF JUSTICE  
HIGH COURT BOMBAY

*A function was held on 28th of September 1987 at Nagpur to celebrate the completion of the 125 years of the High Court of Judicature at Bombay. The Hon'ble Mr. Justice C. S. Dharmadhikari, the Acting Chief Justice, welcomed the guests. Mr. S. K. Desai, the Acting Governor of Maharashtra, and Mr. M. Hidayatullah, former Chief Justice of India and former Vice-President of India, delivered speeches. Mr. N. A. Palkhiwala, Senior Advocate, delivered the keynote address. The following pages contain the various speeches delivered on the occasion.*

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The bust of Sir Norman Cranston Macleod, KT.,  
Chief Justice, High Court of Bombay (1919—1926)  
in the Central Court Hall of the High Court.

## WELCOME SPEECH \*

*By the Hon'ble Mr. C. S. DHARMADHIKARI  
Acting Chief Justice*

It gives me great pleasure in welcoming you all for today's Function. This function is arranged as part of the celebrations of 125th Anniversary of the High Court of Bombay. The Centenary of the Bombay High Court was celebrated in the year 1962. In the last few years the very structure of this High Court has been changed. On 1st of November 1956 with the States Reorganisation Vidarbha Region of the erstwhile State of Madhya Pradesh became part of the bilingual State of Bombay and then in the year 1960 the State of Maharashtra. With the States Reorganisation the then Nagpur High Court also came to be reorganised. Shri Justice K. T. Mangalmurti, Shri Justice J. R. Mudholkar, Shri Justice Y. S. Tambe, Shri Justice S. P. Kotwal became Judges of the Bombay High Court and the other Judges of the Nagpur High Court Chief Justice Hidayatullah, Shri Justice V. R. Sen, Shri Justice Chaudhary, Shri Justice G. P. Bhatt and Shri Justice T. P. Naik constituted the Madhya Pradesh High Court with its principal seat at Jabalpur. I distinctly remember that on 24th October 1956, just a week prior to the reorganisation of the States I was enrolled as an Advocate of the then Nagpur High Court. As per the practice then prevailing. I had to take oath in the open Court presided over by the President of today's function, then Chief Justice Hidayatullah and the Senior-most Judge of the Nagpur High Court Shri Justice K. T. Mangalmurti. It

appears that the said practice was later on abandoned and now a stage has come when the Bar Council of Maharashtra had to take a decision of introducing the system of allotment of Identity Cards to the Advocates. It is my personal view that the practice followed by the Nagpur High Court had its own advantages.

The Nagpur High Court was established on 9th of January 1936. The first Chief Justice of the Nagpur High Court Sir Gilbert Stone, on the eve of the inauguration of the High Court had said :

" We all of us, upon whose shoulders falls the onerous task of setting on its way this High Court, are conscious that we shall be laying the foundation of an institution that will be charged with the safe keeping of justice in this province for many years to come. We shall bring to that task, some of us the experience gained throughout many years as practitioners, others as Judges, some of us as both, one and all of us as men who have only one professional interest and that is to be fair between man and man, accurate to the best of our abilities in the application of the law, mindful of the fact that the law is the keystone of the arch of liberty. This High Court will hold the scales fairly not merely between subject and subject but between all manner of men, however high or however low they may be.

\*At the function at Nagpur on 28th September 1987 to celebrate the Completion of 125 years of the High Court of Judicature at Bombay

All of us, Bench and Bar, are members of a profession, divided, it is true into two branches : those who have to decide, those who argue with a view to convince. Let us both see to it that we are loyal each to the other, Bench to Bar, and Bar to Bench. Then the tree of justice, of which these two branches are the most important members, will not suffer from the aridity induced by lack of regard. If we achieve loyal co-operation, then this, the most junior of the many High Courts of India, will be able in the future, I have little doubt, to give a good account of itself and may even in time, for time does not stand still, and what was once great becomes small and what was once small becomes great, be able to stand comparison with any other High Court. That will depend not on any material resources but upon the mental and moral equipment of the men who man it ”.

These observations are equally true even today. The Nagpur High Court had great traditions and so also the Nagpur Bar. Three of the Judges, who were elevated from the Nagpur Bar became Chief Justices of the Bombay High Court i.e. Chief Justice Shri Y. S. Tambe, Chief Justice Shri S. P. Kotval and Chief Justice Shri M. N. Chandurkar, who is now Chief Justice of Madras High Court. Shri Justice J. R. Mudholkar was elevated to the Supreme Court of India. On the other hand Chief Justice of the Nagpur High Court Shri M. Hidayatullah became the Chief Justice of India, Vice-President of India and also the Acting President of India. A member of the Nagpur Bar Shri Justice A. P. Sen is now a Judge

of the Supreme Court. An eminent Jurist and a great Judge, Shri Justice Vivian Bose was the first Indian Chief Justice of the Nagpur High Court. On the other hand Shri Chief Justice Chagla was the first Chief Justice of the Bombay High Court. I do not want to compare. But I can only say in the words of Abraham Lincoln that they mutually excelled each other. Another personality, we must remember today, is the late Sir Bhavanishankar Niyogi, a versatile man and who was an Acting Chief Justice of the Nagpur High Court. Therefore while writing the history of the Bombay High Court, we cannot forget the contribution made by the Nagpur Bar and the Bench. To say the least, the Bombay High Court became richer in every respect because of its association with Nagpur and Vidarbha region.

The rule of law and independence of the judiciary is the very essence of any democratic process. Ultimately what is justice ? The word “ Dharma ” which does not convey its total meaning and effect. Etymologically the word “ Dharma ” has been found from the word “ Dhru ”, which means to hold. Holding together the individuals for maintaining stability of the society and the world at large, could be described as the essence of the Dharma. This is also the essence of the rule of law and justice. Adi Shankaracharya has said somewhere that the power of Almighty is limited, in the sense that he too, cannot break his laws the ‘ Niyati ’. This very limitation constitutes his glory and omnipotence, and this is what we understand by rule of law.

In all developed societies a form of Government is chosen, which believes in rule of law than rule of men. In a democratic society existence of rule

of law or obedience to it depends upon the respect for the law rather than fear of its sanction. As well said, "fear is a dark room where only negatives are developed". Protection of an individual against every power is now-a-days the most urgent problem within the general context of judicial protection. As Victor Hugo has said republic means a daily plebiscite of its people to live together. This living together is the essence of rule of law and in my humble view, of all religions also. The Upanishads have proclaimed :

" Law is the King of Kings, far more Powerful than they; there is nothing higher than the law; by its prowess as by that of highest monarch, the weak shall prevail over the strong ".

This dynamic and potential sphere of law cries for fuller exploitation in these unequal times. In democracy ultimately power vests in a common man and a million dollar question before the rule of law and the democracy is as to 'who will watch the watchman'. Bhagini Nivedita analysed the main fabric of the Indian Society. According to her synthesis, harmony and co-ordination, is the foundation of Indian culture. In my view these three qualities are necessary even for orderly development of the judiciary, at least of the Bombay High Court which has branches at Nagpur, Aurangabad and Goa. After

the establishment of the Bench at Aurangabad, Bombay High Court became a Triveni Sangam. There is a saying in Sanskrit that if you commit sins anywhere else you can wash them in the holy water of Ganges but if you commit sins in the holy water itself then where will you wash them ?

Nagpur is the centre of India and is also its cultural capital. We know that things fall apart when the centre cannot hold it. Therefore Nagpur Bar and Bench will have to shoulder major responsibility, in the years to come.

Today we are living in a very strenuous time; these are times which challenge best of our talents. Not only our talents but also best of our resourcefulness and manhood. Therefore, it has become necessary for us to study the past for living in the present and for achieving our goal in future. Hence the topic of the day's lecture " Position and Role of the judiciary and the legal profession Yesterday, Today and Tomorrow " is of vital importance for both the Bench and Bar, and we are happy that an eminent Jurist Mr. Palkhiwala will speak on the subject.

With these words, I welcome you all once again and request Mahamahim Rajyapalji to inaugurate this function by lighting the traditional lamp and then by enlightening us by his inaugural address.

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## INAUGURAL SPEECH\*

*By Mr. Justice S. K. DESAI  
Acting Governor of Maharashtra*

It is my very pleasant duty to inaugurate this function held to celebrate the completion of 125 years of the Bombay High Court. I must say that I am somewhat confused as to the capacity in which I should address you. Since 1 May 1987, Maharashtra Day, I am on an acting binge not that I can be considered to be eligible either for the Academy or the Film-Fare awards. From 1 May to 2 September, I had been functioning as the Acting Chief Justice and from 3rd September onwards I have been functioning as the Acting Rajyapal. However, I have decided to be with you and share my views on a few topics in my substantive capacity as a senior-most puisne judge of the Bombay High Court.

The Bombay High Court today is like a king who has four wives—the Bombay Bench and the Nagpur Bench being the senior ones and Aurangabad and Panaji Benches being the junior ones. I must confess that I am very happy to be once again with the members of the Nagpur Bar and the judges at Nagpur. Please believe me, when I say that we at Bombay in general, and I in particular have the greatest regard and affection for the eminent judges who have hailed from Nagpur and Vidarbha and who have adorned the Bench of the High Court at Bombay or of the Supreme Court. Amongst the latter category are the two brightest jewels of the judicial family : Justice Vivian Bose and Chief Justice Hidayatullah. They will rank among

the foremost judges who have adorned the Supreme Court of India and perhaps also amongst the best in the world. We talk reverentially of great judges of the West e.g. Frankfurter and Learned Hand of the United States and of Lord Macmillan or Lord Denning of the United Kingdom. In my opinion, our great judges, including these two eminent sons of Vidarbha are as great and as deserving of equal respect and reverence as the above four judges who are a few of the many deserving our encomiums. Further I have also had the privilege and pleasure of appearing before three other great sons of Vidarbha. Alas, they are no more with us. I am referring to Justice Mudholkar, Chief Justice Tambe and Chief Justice S. P. Kotval. Let us take this opportunity of paying them our respects. I have had the great honour of serving as puisne judge under Chief Justice S. P. Kotval right till he retired. It is impossible for me to forget his innate culture and courtesy, kindness and charm. I think he represented the best Nagpur has to offer and we at Bombay have learned much from him.

I do not think it would be appropriate to say anything more about the President of today's function Chief Justice Hidayatullah or about Chief Justice Kotval. Perhaps it is possible that some members of the Bar, particularly those at Bombay, may have to complain about these two persons of an administrative error committed by them in 1970 in picking up the then

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\*At the function at Nagpur to celebrate the 125th Anniversary of the High Court of Judicature at Bombay, on 28th September 1987.

principal judge of the Bombay City Civil Court and proposing him to the President of India for appointment as Additional Judge of the Bombay High Court. I had the proud privilege of being sworn-in as the judge of the Bombay High Court by Chief Justice Kotval at his residence on the Ram Navami day which was then a public and court holiday. It is of course for you to say whether I have subsequently modelled myself on Rama or Ravana.

Now a few words about our speaker. What can I say about Nani Palkhivala which has already not been said before? His given name is Nanabhoy but all over India, indeed all over the world, he is affectionately known as Nani. Nani has become a legend in his own life time. He is undoubtedly the country's leading constitutional and tax lawyer, superb public-speaker, an economic and political philosopher, an adviser to governments and industrialists, a former ambassador and an incisive writer. He can appropriately be regarded as one of the top 25 orators in the country. Every year in March, more than 50,000 people troop to the Brabourne Stadium in Bombay and listen enraptured to his explanation about the provisions of the Union Budget where he expounds his economic philosophy. At such meetings according to Dr. P. R. Brahmananda of the Bombay University's Department of Economics and I quote: "He crosses the domain of an expert, transcends narrow expertise and becomes a political, social and moral philosopher." It is almost impossible to say only a few words about Nani Palkhivala. I think I can do no better than refer to what a great jurist, a great judge and a great human being, Chief Justice

M. C. Chagla has to say about him. This is what Chagla wrote about Nani in his autobiography "Roses in December" and I quote: "Today, he is undoubtedly the most brilliant advocate we have in India. He has an unrivalled command over the language which he uses with mastery and skill and which he combines with vast knowledge of law and great powers of advocacy. Apart from being an outstanding authority on income-tax, on which he has written what is truly a monumental book, he has also acquired a mastery over the principles of constitutional law. Indeed, he can handle with consummate skill almost any aspect of law. And it must finally be said to his credit that with all this he has remained essentially modest and humble. Success has not gone to his head, something that is rare with human beings". What Chief Justice Chagla wrote in 1973 remains true even today.

In conclusion, may I be permitted to remind this very intelligent and alert audience about what we are, we ought to be and ideals which we both at the Bar and the Bench should seek to attain. We are the "archaks" and the "sadhaks" of the temple of justice in which temple we must endeavour to dispense justice according to law to the common man irrespective of whether he is rich or poor, highly educated or barely literate and without any consideration as to his religion, language or the local area of his birth. We must continue such endeavours without fear or favour but ever vigilant about those, both from within and without, who are trying to desecrate the temple of justice.

In what way our efforts are to be directed? I am reminded at this juncture of the morning prayer which we all

recited at our school. The same was in Sanskrit and it was as under :

ॐ सहनाववतु । सह नौ भुनक्तु ।  
सह वीर्यं करवावहे ।  
तेजस्विना वधीतमस्तु मा विद्विषावहे ।  
ॐ शांति : शांति : शांति : ।

Freely translated the prayer means let us work together, let us strive together, let us not fight and if we make such joint effort, our power, our glory, the glory of this institution are bound to increase. In this struggle, friends, there may be occasional set-backs but we

must not lose heart. Our task, our duty is to strive to seek and to work hard without expectation of reward. We are only entitled to make the effort and we must go making the effort and continue our ceaseless endeavours irrespective of immediate reward or result. This is what was said thousands of years ago and it still remains the basic truth of all times.

Thank you.

Jai Hind !  
Jai Maharashtra !



# JUDICIARY AND LEGAL PROFESSION\*

By Mr. N. A. PALKHIVALA

I feel very happy and honoured to have been asked to associate myself with the 125th Anniversary Celebrations of the Bombay High Court. First of all, let me express my deep gratitude to the Governor for his most gracious and generous words about me.

What was required to be said about this High Court and its very distinguished Judges, has already been said and, therefore, I may—departing from the current practice at the Bar—come straight to the point.

The subject is "Position and Role of the Judiciary and the Legal Profession—Yesterday, Today and Tomorrow". Justice and the rule of law are perhaps two of the noblest concepts evolved by the wit of man. To the Romans, Justice was a goddess whose symbols were—a throne that tempests could not shake, a pulse that passion could not stir, eyes that were blind to any feeling of favour or ill-will, and the sword that fell on all offenders with equal certainty and with impartial strength. It was said by a great thinker that God is more palpably present in a Court of justice than in a monastery. Ancient Indian culture pays a similar tribute to dispensers of justice. But in our own times there have been a precipitate diminution of this universal admiration and a sharp erosion of the values which ought to actuate the administration of justice.

Doubtless, the law is imperfect, and it would be imperfect even if it were made by a committee of archangels. This is understandable. But according to an eminent writer, the Court is no

longer looked upon as a cathedral but as a casino : if you are dissatisfied with the trial Court's judgment, you double the stakes and go to the Division Bench; if you are dissatisfied with the Division Bench judgment, you treble the stakes and go to the Supreme Court. A number of observations have been made down the centuries about the legal profession, and few of them have been complimentary. They say that when a revolution breaks out in any country, generally the first reform is the execution of all lawyers; and it is often the only reform which subsequent ages do not regret ! G. K. Chesterton, talking of lawyers, said :

" They fight by shuffling papers,  
They have dark, dead alien  
eyes;

And they look at our love and  
our laughter

As a tired man looks at flies. "

Lord Macnaghten, one of the wisest and most learned of judges, observed towards the end of his long life that he had given all his days to the study of the law and was satisfied that there was nothing in it. I asked Sir Noshirwan Engineer, the Advocate General of India in 1947, how he viewed, in the light of his decades of experience, the legal system of administration of justice. His answer was, " I am inclined to the view that it is better to have Kazi justice, where one wise man decides what he thinks is right and that is the end of it. "

The reasons for these somewhat disparaging remarks are not far to seek. If some people in our country believe that the difficulties we face in our

\* Keynote address at the function at Nagpur on 18th September, 1987 to celebrate the completion of 125 years of the High Court.

administration of justice are due to British influence, I would emphatically dissent from such a view. I do not think the British should be blamed for the ailments afflicting our legal system today.

It has become the fashion to talk of Oxbridge (Oxford and Cambridge) as if they were responsible for undesirable influences. Let us not forget that some of the eminent judges of the Nagpur and Bombay High Courts, including Justice M. C. Chagla and Justice Hidayatullah to whom well-deserved tributes have been paid, were the products of Oxford or Cambridge. If we did not have the rules of British jurisprudence, it would be impossible to administer justice in this country. Our history goes back 5000 years. More than a dozen civilizations waxed and waned in different parts of India over these fifty centuries. Which system are we going to adopt as the national system? We fight over everything. We fight on the issue whether towns on the boundary of one State should not belong to another State. What would become of the system of administering justice if we left it to be dealt with by historical antecedents without the influence of any foreign system of administering the law? Further, the rule of law, human rights, equality of all citizens, are not traditionally Indian concepts. If untouchability still continues in practice in our country, if *sati* continues to occur, and thousands flock to the spot where *sati* has been performed, we do have something to learn from other parts of the world.

I would like to give an example of Nigeria to illustrate what happens when the western concept of the rule of law does not prevail. An Air-India plane

was recently detained by the Nigerian forces. Air-India went to the High Court of Nigeria and asked for the release of the plane. The High Court decided that the aircraft should be released forthwith. But defying the Court's order the Government of Nigeria would not release the plane, even after that Government's appeal to the higher Court was dismissed. Some days later, the Nigerian Government issued an ordinance under which jurisdiction in the case was transferred to the Military Court which refused to release the plane. This is what happens when the rule of law does not prevail; and let us not pretend that the rule of law is a concept which can be regarded as a part of Indian psyche.

Please recall the events during the Emergency. Our fundamental right to life and liberty under Article 21 of the Constitution was suspended. Our High Courts, let it be said to their great credit, ordered certain detenus to be set free—those who had been arrested under a mistake of identity, or as a result of private vendetta, or at the whim and fancy of the executive, or without being heard at all. Our Parliament, to supersede the judicial decisions, passed an extraordinary law to the effect that "no citizen shall be entitled to liberty on the ground of natural law, common law or rules of natural justice." This is typical of what can happen in India when the western concept of common law, natural law and rules of natural justice is treated as a pernicious outside influence! Another law passed by Parliament was to the effect that "no police officer shall be *permitted* (as distinct from *compelled*) to disclose to a Court of law the grounds on which an individual is detained", and that if a man was released by a Court because

the detention was held to be unsustainable, he could be re-arrested on the same grounds after he left the courtroom. Such are the laws passed by the Indian Parliament when it is unrestrained by the western concepts embodied in our Constitution. Instead of reviling the system of British justice, we should pay heed to the words of the Rigveda, " Let noble thoughts come to us from every side. "

It is interesting to read what has been said about the present position of the judiciary and the legal profession in Britain and the United States of America. If there is anything critical to be said, it is better to say it in respect of other countries, rather than our own. The reason is that we Indians do not mind other countries being censured, but we do strongly object to ourselves being criticized.

In Britain, Lord Benson, Chairman of the Royal Commission on Legal Services, told the International Commission of Jurists that the public was showing unwillingness to accept high costs, inefficiency, prolixity, incompetence and delay in the legal system; and that the traditional attitude of the legal profession is that " all change is bad, specially change for the better. " You may or may not seek to apply these words to our own country; I am, I repeat, talking of Britain.

Lord Devlin, one of the most famous of living British judges, has pointed to the obsolescence of the British system of meting out justice, mainly on two counts—the adversary system which wastes time and effort, and the system of taking oral evidence.

Lord Gifford, QC, said last year that British judges were ignorant and biased, the bias being the product of their education and social position. In his

book, " Where's the Justice ? ", Lord Gifford observes that a male-dominated judiciary is unable to understand the problems of women. Personally, I think the remark was justified in view of some of the amazingly lenient sentences handed down in England in cases of rape where the rapist was let off lightly on the ground that his career would otherwise be ruined, while the judge thought nothing of the girl's career being ruined as a result of the cruel and wicked crime.

Lord Hailsham, the former Lord Chancellor, has expressed himself strongly about the heavy load of work. He even suggested that judges might have to undergo training and part-time job experience, as is necessary in the case of physicians, surgeons and engineers.

In March 1985, Michael Joseph, a qualified solicitor, published a book under the embarrassing but appropriate title, " Lawyers Can Seriously Damage Your Health ". Can we truthfully say that our present legal system does not seriously damage the health of the nation ?

I have said enough to show that in Britain there has been very outspoken criticism of the system of administration of justice and of the way lawyers conduct themselves.

Let me come to the United States. In that country the legal profession is perhaps more commercialized than in any other country of the world, though India comes a close second. In America you can work on a contingency fee basis—i.e. a fee depending upon the monetary redress awarded by the Court to your client. You will recall how US lawyers rushed to Bhopal to make money out of the miseries of the poor victims of the Union Carbide tragedy.

Ambulance-chasing and acting as scavengers is thought to be perfectly in order. Small wonder that citizens of the States of Massachusetts and Pennsylvania demanded in the 18th century that the legal profession be abolished.

Judge Learned Hand said, "As a litigant, I should dread a law-suit beyond almost anything else, short of sickness and death." Justice Douglas said that 40 per cent of American lawyers were incompetent.

Justice Warren Burger, the former Chief Justice of the U.S. Supreme Court, said that 50 per cent of American lawyers were incompetent (disagreeing with Justice Douglas's estimate of 40 per cent). He believed that America was approaching a disaster area, not just a problem. He further stressed that the American judicial system "may literally break down before the end of this century." He told the American Bar Association—

"The harsh truth is that we may be on our way to a society overrun by hordes of lawyers, hungry as locusts, and brigades of judges in numbers never before contemplated. The notion—that ordinary people want black-robed judges, well-dressed lawyers and fine-panelled courtrooms as the setting to resolve their disputes—is not correct. People with legal problems, like people with pain, want relief and they want it as quickly and inexpensively as possible."

A former Deputy Attorney-General of the United States has warned that the "legal process, because of its unbridled growth, has become a cancer which threatens the vitality of our forms of capitalism and democracy."

In the United States, \$30 billion is spent annually on lawyers, which comes to about  $1\frac{1}{2}$  per cent of its Gross National Product. In India, thanks to our complicated laws, the percentage spent on lawyers may well be  $1\frac{1}{2}$  per cent of our Gross National Product.

There are three grave shortcomings of the present system of administering justice.

*First*, the commercialization of the legal profession. I do not think the legal profession was ever so commercialized as it is today. When I started my practice in 1946 on the Original Side of the Bombay High Court, if a counsel made a factual statement to the judge, it was implicitly believed to be true. You seldom heard of an affidavit filed on behalf of the Government or any public authority, which did not contain the whole truth. But now all that has totally changed. Counsel often make statements at the Bar which are factually incorrect, and affidavits are often filed, even on behalf of public authorities, which do not state the truth. Look at what was going on before the Lentin Commission, and how witness after witness perjured himself. Yet there was no surge of public disgust and outrage. Unfortunately, we accept perjury as a fact of Indian life. The worst danger is not that even persons in high public office perjure themselves. The worst danger lies in public acceptance of such degradation of national character. As a man who loves India not wisely but too well, I ask the question—Why can we not have standards as high as those of mature democracies in the world? After all, our ancient culture is the noblest ever known.

*Secondly*, administration of justice suffers from the intractable complexity

of modern society. Life has become far more complex, and corruption and all round lowering of standards are far more pronounced, than ever before. One is reminded of the remark of Dr. Adenauer, the former Chancellor of West Germany. He said, " In creating man, God hit upon a very poor compromise. If He had made man more intelligent, he would have known how to behave; if He had made man less intelligent, he would have been easier to govern. " This remark neatly sums up the dilemma of democracy.

*Thirdly*, while all the time we emphasize our rights, we do not lay a corresponding stress on our responsibilities. It is true that eternal vigilance is the price of liberty. But it is true, in even a deeper sense, that eternal responsibility is also part of the price of liberty. Excessive authority, without liberty, is intolerable; but excessive liberty, without authority and without responsibility, soon becomes equally intolerable. De Tocqueville made the profound observation that liberty cannot stand alone but must be paired with a companion virtue : liberty and morality; liberty and law; liberty and justice; liberty and the common good; liberty and civic responsibility.

If I were asked to mention the greatest drawback of the administration of justice in India today, I would say that it is *Delay*. There are inordinate delays in the disposal of cases. We, as a nation, have some fine qualities, but a sense of the value of time is not one of them. Perhaps there are historical reasons for our relaxed attitude to time. Ancient India had evolved the concepts of eternity and infinity. So what do thirty years wasted in a litigation matter against the backdrop of eternity ? Since we live in eternity, the

waste of decades is of no significance. Further, we believe in reincarnation. What does it matter if you waste this life ? You have many more lives in which to make good.

I am not aware of any country in the world where litigation goes on for as long a period as in India. Our cases drag over a length of time which makes eternity intelligible. The law may or may not be an ass, but in India it is certainly a snail and our cases proceed at a pace which would be regarded as unduly slow in a community of snails. Justice has to be blind but I see no reason why it should also be lame : here it just hobbles along, barely able to walk.

A law suit, once started in India, is the nearest thing to eternal life ever seen on this earth. A charitable trust, with which I am connected, filed a suit to recover possession of its building. It took 30 years to get the final decision of the Supreme Court. Even after that, the trust has been unable to recover full possession, because there are obstructionists' notices in the Small Causes Court (in respect of some floors) which would take another decade to dispose of. The Guinness Book of World Records gives its longevity award to a suit that was filed in Pune in 1205 A.D. and was not settled till 1966 ? When the editors of Guinness made an inquiry from the officials in New Delhi, they were told that there was no record of this extraordinary litigation, but it was admitted that in our High Courts we have more than 500,000 cases pending which are ten to thirty years old. If litigation were to be included in the next Olympics, India would be certain of winning at least one gold medal !

The fault is mainly of the legal profession. We ask for adjournments on the most flimsy grounds. If the judge

does not readily grant adjournments, he becomes highly unpopular. I think it is the duty of the legal profession to make sure that it co-operates with the judiciary in ensuring that justice is administered speedily and expeditiously. It is the one duty of which are totally oblivious.

Sometimes judges are asked to intervene on humanitarian grounds, e.g. in the case of encroachments on public property. Courts of law are there to enforce the law. But in matters relating to encroachments and similar cases the Courts are expected to *prevent* enforcement of the law. Lawyers who would not allow homeless persons to stay with them in their own houses or build a hutment next to the wall of their own building, act as great champions of the downtrodden in such disputes. Double standards have become common in the legal profession.

We take cases in mind-boggling numbers to the Court of law. Small wonder that we have colossal arrears in courts. The total number of cases pending in the Supreme Court is in excess of 1,54,000, while cases pending in the 18 High Courts alone number a million. In the subordinate Courts the number of pending cases is beyond count. Do we not have to blame ourselves as members of the legal profession for this state of affairs? Lawyers are entitled to earn their living, but not at such an unbearable cost to society.

What are the ways in which the problem can be even partially tackled?

*First*, we must educate our lawyers better. We produce ethical illiterates in our law colleges, who have no notion of what public good is. In India the number of advocates today is about three lakhs. We have the second highest

number of lawyers in the world, the first being the United States which has seven lakh legal practitioners. These large numbers result in a lot of lawyer-stimulated litigation in the two countries. By contrast, the number of practising lawyers in Japan is less than 14,000. About 30,000 students appear for law examinations in Japan and only about 475 succeed, i.e. less than two per cent. So stiff is the examination they have to go through! No wonder that in Japan very few cases are filed and disputes are mostly settled out of Court.

*Secondly*, we must improve the quality of public administration which is today at an all-time low. In the last 45 years India was perhaps never governed so badly as it is governed today. We have too much government and too little administration; too many civil servants and too little civil service; too many controls and too little welfare; too many laws and too little justice. It has been said that in the State of Bihar nothing moves except the River Ganges!

In the UK there are 29 million taxpayers, while the number of tax references to the High Court there is only around 30 annually. In India there are 5 million taxpayers, while the number of references made to our High Courts annually is over 6,000, plus more than 1,000 writ petitions. The exceptionally large number of tax cases is not because the Indian people are more litigious than the British, but principally because the quality of tax administration is so poor. Nothing happens to the officer who makes an assessment which no reasonable man would ever dream of making.

Few persons know about the administrative scheme announced during the

tenure of Mr. V. P. Singh as the Finance Minister. Under the administrative incentive scheme, if a show cause notice is issued by an officer asking the citizen why a certain amount should not be collected from him in addition to the amount of tax admitted to be due, the officer and his colleagues are entitled to a reward which may go up to five per cent of the amount specified in the show cause notice, irrespective of the final result of the case. To illustrate : a show cause notice was served on ITC alleging that a sum of Rs. 806 crore was due from that company by way of excise during a period of five years in which the company's total profit was Rs. 70 crore. On the alleged excise dues of Rs. 806 crore, the officers' reward could go upto Rs. 40 crore. This matter is still pending in the Calcutta High Court.

*Thirdly*, the citizenry must be better educated to evolve a higher standard of public character. Ancient Indian culture must be taught in schools and colleges. The synergic effect of the different cultures, the amalgam of which is called Indian culture, is bound to prove of great ethical value. Will Durant said that just as continuity of memory is necessary for the sanity of an individual, continuity of the nation's traditions and culture is necessary for the sanity of the nation.

*Fourthly*, we should consider making arbitration compulsory in commercial matters. Arbitration has four great benefits :

- (a) *Speed*. It is far speedier than litigation.
- (b) *Finality*. The arbitrator's award cannot be challenged except on certain narrow grounds.
- (c) *Cheapness*. It is cheap because lawyers have to be

engaged on far fewer occasions and have much shorter time to carry on with their presentation of facts and legal arguments.

- (d) *Justice*. The final outcome of an arbitration is as likely to be marked by justice as litigation is in a Court of law. Generally speaking, parties who have a good case prefer arbitration; while parties whose case is weak or non-existent prefer litigation.

My own experience of national and international arbitration renews my faith and confidence in arbitration as an alternative superior to litigation. If I were appointed the dictator of this country, in the short period between my appointment and my assassination I would promulgate a law making all commercial disputes compulsorily referable to arbitration !

To sum up, a Court of law is a Rolls Royce of 1908 vintage, the year of the Civil Procedure Code—stately and solemn; while arbitration is a Maruti which will take you to the same destination in much less time, with higher efficiency and dramatically less fuel consumption.

Ladies and Gentlemen, I have used up the time allotted to me. If we were not living in a prohibition state, I would ask you to raise a toast to the glorious traditions of the Bombay High Court, to the eminent judges who have adorned that Court, and to the forgotten, noble traditions of the legal profession. I would ask you to drink a toast " To the judiciary and the legal profession who are the trustees, not of civilization, but of the possibility of civilization ! "

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## SOME REFLECTIONS AND RECOLLECTIONS\*

By Mr. M. HIDAYATULLAH  
Former Chief Justice of India and  
Former Vice-President of India

I am very happy to be with you today to participate in celebrating the 125th anniversary of the establishment of the Bombay High Court. Incidentally this year marks the end of fifty years from the establishment of the former Nagpur High Court. Although I did not belong to the Bombay Bar or the Judiciary I can claim to be closely associated with many Chief Justices and Judges of Bombay who had earlier sat in the Nagpur High Court with me.

When I enrolled as an Advocate in 1930 there was only a Judicial Commissioner with two or three Additional Judicial Commissioners. That court had made a great name and the Indian Appeals contain praises of the judgements of the Judicial Commissioner Sir Henry Drake-Brockman and the Additional Judicial Commissioner Stanyon and others. The Privy Council was always appreciative. In *Maina Bibi versus Chaudhuri Vakil Ahmed* 52 I. A. 145 a large extract from the judgment of the Subordinate judge is quoted and described as an exposition to which the Judicial Committee did not wish to add anything. Justice Mahmood's judgment in *Mahammad Allahdad Khan's* case was respectfully adopted by the Privy Council as its own.

Today things are different. Lawyers are told not to insult the Judges' intelligence by citing House of Lords cases which are also described as 'crutches' and where quoted are ridiculed as recently in a case involving Section 5 of the Limitation Act. In my Mahmood

Memorial Volume Contribution I said this :—

"Syed Mahmood acknowledged ability in others. He praised Halloway and West JJ in *Sirbadharai versus Raghunath Prasad*, Dwarkanath Mitter J. in *Durga Prasad versus Munsif* and in *Gobind Dayal versus Inayatullah*. Spankie J.'s dissenting view was heartily accepted by him. It is only the great who can recognise greatness in others. Sir T. Muthusami Ayyar, the first Indian Judge and himself a great Judge journeyed to Allahabad to meet him (Mahmood)."

Talking of great judges one of my two great favourites and whom I admire, is Lord Mansfield who set free by a writ of *habeas corpus*, a black slave who was held in irons on a ship lying in the Thames bound for Jamaica. The order was :—

"The air of England is too pure for any slave to breathe. Let the black go free." (1771) 20 St.Tr. 1.

The other is Lord Atkin, whose words in *Liversidge versus Sir John Anderson* (1942) A.C. 244, should be inscribed in gold and placed on the Bench in every High Court and the Supreme Court just as the order in *In re Dillett* case was placed before every member of the Judicial Committee. It will serve to remind them of the importance of the writ of *habeas corpus* in Article 32 of our Constitution. These are the words :

"In this country, amid the clash of arms, the laws are not silent. They

\*Speech delivered at Nagpur at the function to celebrate the 125th Anniversary of the High Court of Judicature at Bombay, on 28th September 1987.

may be changed but they speak the same language in war and peace. It has always been one of the pillars of freedom, one of the principles of liberty for which we are now fighting that the judges are no respecter of persons and stand between the subject and any encroachments on his liberty by the executive, alert to see that any coercive action is justified in law. In this case I have listened to arguments which might have been addressed acceptably to the Court of King's Bench in the times of Charles I."

Two instances I shall give which show how some of us behaved during the Emergency. We used, invariably in the past, to pass an uniform order whenever a member of Parliament or Legislature was unseated by a successful Election Petition. I can claim to have originated the format as Chief Justice of the Madhya Pradesh High Court. The order was :—

"The member shall attend only the minimum number of days to keep his seat going but shall not take part in the proceedings or vote or draw remuneration."

However, when a powerful Minister was involved pages and pages were written to negative every part of the above order and to keep the Minister in chair. The second instance is of the case in which a writ of *habeas corpus* was asked for. Article 21 was suspended but not Article 32 which confers powers to issue the writ. Article 21 reads :—

"No person shall be deprived of his life or personal liberty except according to procedure established by law."

Arguments were heard that so long as this article was suspended both life

and liberty had no protection of law. I have wondered what would happen if that Article is deleted by an amendment and the amending Act is placed in the 9th Schedule.

Article 21 is only the enunciation of the most important Human Right and it does not need to be enunciated. What is said in Article 21 is that this Human Right can be modified by law. It is to be noticed that Article 32 is not dependent on Article 21 and cannot be suspended except under Martial Law. In other words Article 32, as I said elsewhere, was in full bloom, and it spoke the same language, Emergency or no Emergency. Yet the only judge who said this lost his chance of becoming the Chief Justice of India.

The Supreme Court did not speak the language it has used against private industries carried on for profit against Government; it has carefully kept Government out. In England, in the same context, namely absolute liability for harm by nuclear radiation, such as happened in Chernobyl, the Government has been made absolutely liable by Act of Parliament. In our country private companies 'carried on for profit' have been made absolutely liable but the language used, astutely avoids Government. This absolute responsibility was established by claiming 'ancillary and supplemental powers' *suo motu* under Article 32. It was claimed that the Supreme Court enjoyed supplementary powers *even to grant compensation*. Article 140 was ignored ! It reads :—

"140 *Ancillary powers of Supreme Court* ! Parliament may by law make provision for conferring upon the Supreme Court such supplemental powers not inconsistent with any of the provisions of this

Constitution as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by or under this Constitution."

It seems that when it was a case of a private company Article 32 included all " ancillary and supplementary powers " without a Parliamentary law and when it was the case of liberty of a person wrongfully detained, Article 32 could not speak, because Article 21 was suspended.

Article 21 in recent times has been used as a veritable *Omar Aayyar Zambil*. A *Zambil* means a wallet and according to Muslim tradition Omar had a *Zambil* from which he could take out anything. All activism comes from Article 21. Courts have embarked upon reform of society, institution, precedents without waiting to see what is open to Courts, what to Legislature, and what to the Executive and without giving a chance to the other two limbs. According to justice Kirby, Chairman of the law Reform Commission, the problems " far outstrip the present capacity of our Law makers, and those who advise them. " A list, incomplete though it is, may be given of the problems :—

- (1) Criminalising 'ecocide'—Making destruction of environment a Crime.
- (2) Forming of foetal tissue.
- (3) Human tissue transplantation.
- (4) Death for legal purposes.
- (5) Nuclear Accidents.
- (6) Destruction of ozone layer.
- (7) Dangers of pesticides and herbicides.
- (8) Right to procreate.
- (9) Right to die.
- (10) Euthenasia.
- (11) Genetic Engineering.

- (12) Greenhouse effect.
  - (13) Nerve gas, Neutron bombs.
  - (14) Surrogate mothers.
  - (15) Terrorism.
  - (16) Test-tube babies.
  - (17) Rights of unborn.
  - (18) Vasectomy and Womb—renting.
- and so on and so forth.

It is said that a wise judge grabs at Jurisdiction. I must admit that our Supreme Court has sometimes, in the past, done well in increasing its jurisdiction. But sometimes it has failed to do so, as in the *habeas corpus* case mentioned above and sometimes it has overshot the mark and assumed jurisdiction which only a law made by Parliament could create. All these three aspects can be illustrated from the exposition of Article 12 of the Constitution done from time to time by the Supreme Court. That Article defines ' State ' and names certain authorities which are included and then says that the expression includes all local or other authorities within the territory of India or under the control of Government of India. How to find such authorities ? A local authority normally are councillors elected by a distinct local government area to perform some governmental functions. We know municipal corporation and we know several corporations and bodies who are invested with certain statutory powers to issue binding directions and they have power to make binding rules and regulations having the force of law. A broader test was indicated in relation to corporations and they were to be treated as ' State ' if they were acting as an instrumentality or agency of Government. This was the leading case of *R. D. Shetty versus International Airport Authority* (1979) 3 SCC 489. In this case a number of governing

circumstances were mentioned but caution was expressed and the cumulative effect of all surrounding and existing circumstances were to be considered. A list of corporations (not complete) which were held to be 'State' is to be found at page 5 of the Constitution of India, 1986 (Eastern Book Co.).

Recently the Supreme Court, anxious to expand the concept of 'State' in a welfare State to private corporations examined the matter *de novo* at great length. In a judgement of thirty-one paragraphs, the discussion ranged from paragraph seven to the end and then the attempt was abandoned. Let me quote from the judgement the reason :—

"We do not propose to decide finally at the present stage whether a private corporation like Shriram would fall within the scope and ambit of Article 12 because we have not had sufficient time to consider and reflect on this question in depth. The hearing of this case before us concluded only on 15th December, 1986 and we are called upon to deliver our judgement within a period of four days, on 19th December, 1986. We are therefore, of the view that this is not a question on which we must make any definite pronouncement at this stage. But we would leave it for a proper and detailed consideration at a later stage if it becomes necessary to do so."

Actually only the Chief Justice, who in his judgement praised the expansion of the 'horizon' of Article 12, was retiring but the others were there to carry on. When the Chief Justice in a hurry to retire to contest the Presidential election left the Court pronouncing his opinion with which two other

colleagues agreed, Justice Bachawat and I pronounced our dissenting opinion many days later. This is the well-known Passport case. But dissents in the Supreme Court are a story of the past. Today the Court is mainly a two-judge court because the Benches are of two judges who find it more easy to agree.

I wish they had finished their judgement at paragraph 6 and not written the longest judicial *obiter dictum* in legal history creating perhaps a record to be included in the book of Guinness. And now I shall not be serious as I have been. You all know what an *obiter dictum* is but when I was a student of law at Cambridge one under graduate asked another.

"What is this expression *obiter dictum*?" His friend answered it means that a judge is talking through his hat. I may tell you that he used a ruder word than 'hat' but I have suppressed that word. Anyone of you can ask me and I shall whisper it in his ear. That reminds me of a story which concerned the famous F. E. Smith later the Earl of Birkenhead and Lord Chancellor of England. The story is this :—

"A woman was suing another woman for slander. She was asked by counsel to repeat the words. The woman said : 'Oh ! I cannot'. "But you must" insisted her counsel, "the case depends on them." The woman replied "But they are not for any decent person to hear." Her counsel said, "well in that case just step up to the judge and whisper them in his ear."

Judges were not full of learning all the time. They were full of humour and occasionally showed this even in their judgements. A judge refused to fine a man for kissing a pretty girl against

her will. His reason in the judgement was :—

“ Nothing but the court’s overwhelming sense of dignity prevented the court from kissing her itself. ”

Today some judges are very anxious to announce from the Bench and off it that they are doing justice. No attempt has been made to make litigation cheap, speedy and final. There is on the other hand attempt to establish this cell and that cell. We have now epistolary cell in the Supreme Court, Legal Aid cells, Dowry cells, Dowry death cells and we may soon have a Sati Cell ! I know that pride is being expressed for oneself for the innovations to help the poor. Of course, there is no real originality in any of the ideas, although this was claimed very much. You have only to read Sir Leslie Scarman’s (now Lord Scarman) Hamlyn Lecture given as far back as 1974 in which he suggested everything. He begins by saying :—

“ When freedom was found to leave the problems of the weak and socially exploited unsolved, the law changed direction under the guidance of thinkers Jeremy Bentham and John Stuart Mill. Then came the changes in the substantive law e.g. the nineteenth century development of the rights of men, women and children in the field of employment, property and family life. ”

Much legislation then followed. Examples of such legislation may be given :—

- (1) Laws erecting social security.
- (2) Laws bringing secular law into family life,
- (3) Setting up new-style decision making bodies.

- (4) A. P. Herbert’s Act and the development of the court Welfare Officer.
- (5) National Insurance Scheme.
- (6) Legal Aid.
- (7) Council on Tribunals set up by the Tribunals and Inquiries Act, 1958, and so on.

The question of Legal Aid costing £450,000,000 to the Exchequer is being reconsidered by the present Lord Chancellor. The Lord Chancellor’s Advisory Committee on Legal Aid had identified the areas where legal aid was necessary. Lord Scarman quotes the famous aphorism of Lord Acton that a powerful and wide-ranging apparatus allowed to operate extra-legally, sooner or later leads to abuse of power. In India the Legal Aid Boards are having cases sent to them by the court as in the Shriram Case earlier referred to here with directions that the state bear the cost. This is providing work to Legal Aid bodies. The truth is often to be found in the doggerel :—

“ They asked me where my assets were,

I said that there was nothing there,  
And lighting up my wife’s cigar,  
Went off to luncheon in her Car ! ”

Legal Aid is often wrongly bestowed or is a sham.

Justice Maule was a very witty judge. He was once trying a murder case when the prisoner produced, through his attorney, a doctor’s certificate which said that the prisoner’s life would be in danger if he attended the court. The judge observed !

“ I do not wish to do anything to prejudice the defence, but judging by the depositions in the case, I should imagine the doctor’s belief to be well-founded. ”

It was before this judge that a case for bigamy was tried. The prisoner said that his wife had run away and he had not seen her for five years, so what could he do and married the other woman.

Justice Maule : " Prisoner at the Bar, I will tell you what you ought to have done and if you say that you did not know, I must tell you that the law presumes that you did. "

Then he explained the various steps for getting separated from his first wife and what each step would have cost him and concluded thus :—

" Altogether you would have had to spend £ 1,000 or 1,200. You will probably tell me that you never had 1,000 farthings of your own in the world but prisoner that makes no difference. Sitting here as a British judge, it is my duty to tell you that this is not a country in which there is one law for the rich and another for the poor. "

And here in lies the rub and no one has attacked the evil at the source. These are heavy court fees, heavier lawyer's fees, lengthy procedures, delaying tactics, apathy of judges to push through the work and too much talk in and outside courts by judges who speak of poverty and poor litigants in a populist way.

The final thing I shall speak of is the craving for other jobs. These are the Law Ministership, the offices of President and Vice-President and membership of Parliament. One Chief Justice resigned from the Supreme Court, contested the election and failed. Two retired judges of the Supreme Court contested Presidential elections and also failed miserably and one Chief Justice escaped by a whisker to fail also. If the opposition had not had a beating in the Presiden-

tial election and was not prepared to face another, one more retired Chief Justice would have joined the band of failures. Three times after I retired as Chief Justice of India I declined to run even at the instance of Mr. Jaya Prakash Narain, Mrs. Gandhi and the entire opposition. This was when Fakhruddin Ali Ahmed, Sanjiva Reddy and Giani Zail Singh were elected. In the last election I was the Vice-President. I was elected as Vice-President when I was unanimously selected.

In the United States Charles Evans Hughes an Associate Justice of the Supreme Court resigned in 1916, contested the Presidential election and failed. He, however, returned to the Supreme Court as Chief Justice in 1930 to succeed Taft. Taft was President for 13 years 1901 to 1913 and then became Chief Justice from 1921 to 1930. Hughes and Taft both said that they valued their Chief Justiceship more than Presidentship. An Associate Justice (I think it was Justice Roberts) moved an informal resolution before the judges of the Supreme Court that no judge should, after being one, aspire for such office. None has offered himself since. I wish our judges will follow this example and not disgrace the judiciary.

Worse still is the craving for ministership and membership of Parliament. The membership is, of course, only a stepping stone. One Supreme Court judge and one High Court resigned from the Court and got into Parliament. They canvassed for this with the Executive. Before this judges working for short spells resigned, entered politics and became Law Ministers. Two others did not accept judgeship even after being nominated. All this degrades the office

of a judge but, of course, the lure is there.

You will notice that I have said nothing on the subject of Public Interest Litigation which was described as my 'magnificent obsession' by some one. Actually it is more an obsession with the Superior Courts who are more inclined to do this work and accumulate enormous number of cases. My obsession is with the magnificent backlogs of cases in the Supreme Court and the High Courts in India. I was worried about the clearance of these cases instead of attending to letters treated as petitions without even an affidavit. You do not need a petition now to move the Supreme Court under Article 32 and no do not need a proper petitioner.

Anyone with interest *pro bono publico* can do this provided Article 21 is not suspended. Then even if the matter can be dealt with under Article 32, it cannot be heard. Public Interest Litigation was hoped to yield some results. Some have come but others have not. Most of the evils are back again.

I am sorry if I have said some hard things, but truth is always hard. I want things to be properly understood. I am glad that judges like the present Chief Justice and Justice Khalid are slowly bringing the courts back on the right tracks. I thank you for this honour. Perhaps this may be the last time I shall be with you at such an important function.

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*A function was held at Aurangabad on 28th of October 1987 to celebrate the completion of 125 years of the High Court of Judicature at Bombay. The Hon'ble Mr. C. S. Dharmadhikari, the Acting Chief Justice, inaugurated the function while Mr. Justice V. S. Deshpande, former Chief Justice of Bombay, presided. Mr. F. S. Nariman, Senior Advocate, delivered the keynote address. The following pages contain the speeches delivered on that occasion.*

←

Statue erected to the memory of the Right Honourable Sir Dinshah Fardunji Mulla, Member of the Judicial Committee of the Privy Council, sometime Acting Judge of the High Court and Law Member of the Council of the Governor-General of India and author of numerous legal works of distinction

Unveiled by the Honourable Sir John Beaumont, Chief Justice of Bombay, on 12th November 1937.

# THE LIGHT THAT LIGHTS\*

By the Hon'ble Mr. C. S. DHARMADHIKARI  
Acting Chief Justice

It is my proud privilege and pleasant duty to inaugurate this function, held to celebrate completion of 125 years of the Bombay High Court. Centenary of Bombay High Court was held in 1862. In the last few years the very structure of this Court has been changed. On 1st November 1956 with the States reorganisation, Vidarbha Region and Marathwada region became parts of Maharashtra and it is my firm belief that because of the association with these regions the Bombay High Court became richer in every respect. After the formation of Aurangabad Bench and earlier Bench of Nagpur High Court, it became a Triveni Sangam.

Marathwada region is a replica or a pocket edition of India i.e. Bharat. We find living memories of Shalivahan (शालीवाहन) Chalukya (चालुक्य) Rashtrakoot (राष्ट्रकूट) in this region. Deogiri port represents Janardhan Swami, and Apegaon, Paithan and Jamb (जांब) remind us of Dnyaneshwar Maharaj, Eknath Maharaj and Ramdas Swami. Gora Kumbhar, Sant Namdeo and Bhawani Maata are also from this region. So, also we have a famous Gurudwara at Nanded. Alamgir chose this land for spending his last days because this was a punyabhoomi-land of Saints. You will not find such a humble Samadhi or Kabar of any King in the world as is the case with Aurangajeb. Milind Mahavidyalaya is a living memory of Dr. Babasaheb Ambedkar and a modern Saint-Sanyasi Swami Ramanand Tirth also hailed from this region. Therefore in every

sense Marathwada is a Punyabhoomi and Thirthkshetra. There is a saying in Sanskrit :

“अन्य क्षेत्रे कृतं पापं पुण्यक्षेत्रे विनश्यती,  
पुण्यक्षेत्रे कृतं पापं वज्रलेपो भविष्यती ॥”

“If you commit a sin anywhere else, it will be washed in the holy land but if you commit sin in the holy land itself, it is stuck diamond hard.” Where will you wash it ?

Court building is known as “Nyaya-mandir” and Judge a “Nyayamurti”. The quality of justice depends not on the material resources but upon the mental and moral equipment of the men who dispense it. Common man's confidence is the foundation of judiciary. Whenever public opinion was suppressed or oppressed not only in this country, but elsewhere in the world, it is the judiciary which protected the dignity of a common man. Sant Eknath in his own words described ‘Nyayamurthi’ by saying :

“जगाचिचे नेत्री दिसे तो संसारी,  
परी तो अंतरी स्फटिक शुद्ध ॥’

The people of this region expect that personalities with such qualities to adorn this Bench. As well said by Emerson “Rings and Jewels are not gifts, they are apologies for gift. Only gift is a portion of thyself.” This is what a common man expects from us ! As a mark of inaugural function you had asked me to light this traditional lamp. This is not a mere formality or ritual, but there is a definite design behind it. We have seen mercury lamps

\* Inaugural Speech at Aurangabad, on 28th October 1987 at the function to celebrate the completion of 125 years of the High Court of Judicature at Bombay.

on the road and every where. They are very powerful. Still they have to borrow its energy from the power house. It's light is borrowed and second hand, whereas this Jyoti has not to borrow the sufferings or light from anybody else. There is another difference between these two. You cannot light another lamp with the aid of mercury

lamp, but with the aid of this Jyoti you can light several jyoties to remove the darkness. While inaugurating this function I hope that with the joint efforts of the Bench and the Bar, we will be able to remove the darkness of injustice for ever, atleast in Marathwada region. With these words I am going to inaugurate this function.

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# “ 125 YEARS OF THE BOMBAY HIGH COURT : HOW MUCH LONGER WILL IT LAST? ”\*

By F. S. NARIMAN  
Senior Advocate  
Supreme Court of India

ON birthdays and anniversaries there is always great temptation to reminisce. I know that it should be resisted. We must look forward, not back, if we want our High Court to survive. I believe there are reasons to think that we will survive with glory—and that is why when I was offered the choice of a subject, I selected this subject.

Without prescience how does one predict the future ?

A contemporary historian has given us the clue : “ Whoever supplies memories, shapes concepts and interprets the past—will win the future. ” My task this evening is then that of a catalyst—to activate the memory, to give shape to and unfold our past—in the optimistic hope that this great institution which was established in 1862 will celebrate with enthusiasm and renewed hope its bi-centennial in the year 2062 : though none of us will be around to witness the event.

But first let us remember that what matters in any society is not the mere existence of judges and lawyers. Every society has had in one form or another Judges, Courts and lawyers. They prove nothing. It is their quality, their approach and their independence that really matter.

When we look back—when I look back since the time I was enrolled as a member of the Bombay Bar in November 1950—I can testify that the quality, approach and the independence of this

High Court—of both its essential limbs (Bench and the Bar)—have been quite remarkable. It fills me with a sense of pride; and an abundant measure of confidence in the difficult times and tasks ahead.

When we speculate on the survival of an institution like the one we honour today we cannot forget the importance of the past and of the great traditions of this Court.

Two concepts : the supremacy of law and the establishment of a judiciary to administer it originated in the United Kingdom—it was nurtured and cherished in the Americas (Canada and the United States)—it took root in the former penal settlement of Australia, and later in New Zealand. It came to British India first in the form of the East India Company’s Courts and later as the Courts of the British Crown. It was also introduced in what was the Colony, and later the Dominion, of Ceylon, and in the Peninsula of Malaya (which then included Singapore). After the Second World War, these concepts were incorporated into Constitutions of the newly emerging independent countries in the Continent of Asia.

Those who decry everything ‘ British ’ have searched in the *Shastras* and have hearkened back to the times of the Emperor Asoka to look for the roots of judicial independence in our ancient heritage. They look in vain. It could not be otherwise. Indian history—ancient

\* Keynote address at the function held at Aurangabad on 28th October 1987 to celebrate the completion of 125 years of Bombay High Court.

and medieval—with a few exceptions, is the history of a succession of monarchs and not of institutions.

There could not possibly be a tradition of judicial independence in a country different parts of which were ruled by different potentates exercising absolute powers over their subjects. The judiciary in Indian States for instance (States of the Princes—the Nizam, the Maharajahs and Rajahs) were in a sense independent. In these Indian States there were judges of integrity who decided cases as between citizens impartially—but they could afford no redresses against the excesses of the King.

This aspect was poignantly emphasized a couple of years ago at a seminar held in Bombay under the joint auspices of the International Bar Association and LAWASIA—a seminar whose theme was the Administration of Justice in 2000 A.D. The then President of India (who inaugurated the seminar) graphically described the conditions under which Judges functioned in the erstwhile Indian States. The ardent young Zail Singh who was a keen nationalist was put in jail on innumerable occasions by the Ruler of one of the princely Patiala States. On one occasion, in his youthful exuberance, he protested to the Judge against his fresh detention on the evidence of a tutored witness who had deposed to his allegedly illegal activities on each of the previous occasions when he had been imprisoned ; demanded that he should be permitted to cross-examine this procured witness and for that purpose to bring a lawyer from British India. The Judge (who was a kindly man) adjourned the Court and asked the young Zail Singh to see him in his Chambers. In Chambers, the Judge asked him why he was so impetuous and when informed

that it had become intolerable to be detained, times out of number, on the false testimony of the same person, the Judge said :

“ How foolish you are Zail Singh ! What’s all this talk about cross-examination of the witness produced by the Police ? They have only acted because the Maharaja has asked them to. Don’t you know ? If he asks me to acquit you, I will acquit you. If he asks me to convict you, I will convict you. So, let’s have less talk about lawyers from British India—and get on with the case. ”

The tradition, then, of judicial independence in British India (and since 1947 in Independent India) is essentially an English plant—but it has taken root and flourished in purely Indian soil.

Lord Goff, in his G. S. Pathak Memorial Lecture delivered in Delhi last year recalled that when he was at the London School of Economics, a brilliant young German colleague (who had studied both systems of law) described the difference between the German and English in these words :

“ In Germany the professor is God ; in England the *Judge* is *God*. ” So it has been in India. Judges because they are judges are looked upto : much more is expected from them than judges in other countries.

A famous jurist Professor Otto Kahn-Freund has coined the metaphor of building bricks about the institutions of the law. The prestige of the High Court of Bombay has been what it is because we have had in the past and are fortunate that we continue to have in the present many judges and advocates who by dint of hard work and integrity have helped to erect and

maintain the temple of the law—brick by brick. The High Court of Bombay is architecturally a unique and beautiful building from without—but it has made its mark because many of its Judges and lawyers have over the years—over a century and a quarter—helped to strengthen it from within.

The richness of our Court—its Judges (famous, and on occasions infamous), its lawyers—great and small—and the important cases that were dealt with in the High Court have all been compiled in Mr. P. B. Vachha's admirable work on the judicial history of Bombay. It was published when we celebrated our centenary in 1962. It is not the official history of the High Court but it is the authoritative one.

In writing the history of the Bombay High Court, the author followed the advice given to India's great historian Ferishta by Ibrahim Adilshah when Ferishta migrated from the Nizamshahi Court at Ahmednagar to the Adilshahi Court at Bijapur—

“ Write ” said the monarch, “ write without fear or flattery ”.

Vachha has written—but not left out the scars and wrinkles, the deficiencies and blemishes. In it you will read that the inauguration of the High Court on 14th August 1862 was not attended with any pomp or ceremony customary on such occasions. Just a quiet, unnoticed declaration made by the judges that “ as judges appointed by the Charter of the High Court, they would now sit as judges of that Court from 11-00 a.m. to 2-00 p.m. ”. Vachha was conscious of the metaphor of building bricks as applicable to the institutions of law. He writes with feeling and with erudition of the eminent judges who sat in the Court, of the great and eminent advocates who appeared before them. In that excellent chapter headed “ Conflicts between the Executive and the Judiciary ”, you will find

that this Court built up from the start a tradition of being truly independent of the Executive. You will read that when in 1903, the then Government of Bombay deliberately impeded and interfered with the course of justice in a suit filed in the High Court of Bombay by a pleader practising in the Court of Kolhapur claiming damages for malicious prosecution and wrongful imprisonment, against the Political Agent there, and when in that suit a Commission was issued to the then Political Agent at Kolhapur for examination of certain witnesses and when this Commission was returned unexecuted, the then Chief Justice Sir Lawrence Jenkins and other Judges submitted a strongly-worded petition to the King-Emperor protesting not only against the conduct of the Political Agent, but against the action of the Government of Bombay in instructing the Political Agent at Kolhapur to return the Commission unexecuted. All this and more, is now recorded history.

The institution is always greater than the men who for the time being are in charge of it—but this is as well : because institutions are not mortal : they can be neglected, they can be destroyed. But they do not die.

At times a colossus bestrides an institution and the impress of his shadow makes it look greater than it is. I was fortunate to have entered the Bar (in November 1950) when such a Colossus presided in the High Court.

M. C. Chagla was a great Judge. He was not only a consummate leader but a person whom one and all, his own colleagues and members of the Bar, instinctively looked up to. As a student of the Law College I saw him preside in the first Prohibition Case,—it excited great attention and the court-room including the gallery above that of the Chief Justice's Court was packed to overflowing on almost every single

day of the hearing of the case which lasted two weeks. I remember also seeing for the first time C. K. Daphtary who was defending the case on behalf of the Government. He was their Advocate-General, and though at the receiving end he was at his best. At times, but only at times, Daphtary could not restrain his penchant for playing to the gallery—when Chief Justice Chagla asked him in the course of arguments about the nature of the intoxicants which were declared prohibited under the Bombay Prohibition Act, Daphtary described them and then with a mischievous twinkle in his eyes added :

“ And then, My Lords, there are substances other than liquid refreshment which also intoxicate—and power is one of them ”.

This quip was widely reported in the Press the next day : the consequence was that the then Chief Minister of Bombay Mr. Morarji Desai reportedly sent a relay of stenographers to attend the Court to record verbatim the future “ transgressions ” of his Advocate-General—a situation which caused great amusement to Daphtary.

Chagla was not only erudite but uniformly courteous. He never lost his temper, never indulged in rhetoric or cheap jokes at the expense either of lawyers appearing before him or at the expense of clients whose cases were being espoused. He was never at a loss for words—he had the consummate skill of assimilating the facts, condensing legal arguments into a few short paragraphs and of applying the law to the facts in beautiful well-chosen prose. In this he emulated the man who brought him on the Bench at such an early age—Chief Justice Sir John Beaumont—whom he greatly admired and respected. He was a man whose heart was easily moved by circumstances of a client’s distress or poverty : he was a man of learning but he was also a man of compassion. He was Judge to his finger-tips never letting his personal opinion about a lawyer influence in any way the decision in the case.\*

My own disastrous first appearance before him (he was sitting with Justice Gajendragadkar) and the manner in which he treated a junior of only a year’s standing always endeared me to him.\*\*

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\*The incident in which Mr. K. L. Gauba filed a suit in the City Civil Court comes to my mind. In that suit Mr. Gauba claimed that the Chief Justice of Bombay had no right to direct NO PARKING signs to be put outside the Judges’ Garages and along the inner entrance to the High Court building contending that its precincts were within the jurisdiction of the Municipality and not of the High Court. The case necessitated the Registrar on the Appellate Side and the Prothonotary and the Senior Master on the Original Side going through the records of a hundred years to determine how the matter lay. Chief Justice Chagla was required to give evidence and like the old soldier he was, attended the City Civil Court before the Judge before whom the case was being tried. Gauba put several questions to Chagla—questions which were personal and acrimonious and caused him much mental anguish. A few months later I witnessed Mr. Gauba arguing on behalf of a client an appeal in Chief Justice Chagla’s Court—an appeal concerning the interpretation of one of the Articles in the Schedule to the Limitation Act and whether that applied to a summary suit filed on the Original Side of the High Court. There was not a trace of resentment or bitterness in the cases—nor for that matter any over-anxiousness or over-politeness. Chagla heard and decided the case as he would have heard and decided any other case with any other counsel appearing—a tribute to his extraordinary judicial behaviour.

\*\* When only a year at the Bar, Nani Palkhiwala had entrusted me with an appeal under the Bombay Requisition Act, so that I should look up the law. Palkhiwala had another engagement before the Income Tax Tribunal. As luck would have it, the appeal reached hearing before Chief Justice Chagla and Justice Gajendragadkar—about the strongest Bench one could imagine in the country at that point of time. I shuffled into the Court and weakly mentioned that Mr. Palkhiwala was appearing in the matter and would hopefully be arriving in Court in a short while. The Chief Justice said that they did not know what the matter was about, that this was a great opportunity for me to begin. Of course, I knew, it was not since from what little I knew, it appeared to be a pretty hopeless appeal. I stated the facts, read the legal provisions, and did not have much more to say—the solicitors and clients were wringing their hands in despair behind me. Fortunately, one of them had the good sense and helpfulness to fetch Palkhiwala post-haste before I made a perfect mess of the appeal. Palkhiwala arrived whilst judgement was being delivered in the appeal (my argument having concluded in about half-an-hour and the other side not called upon)—and Palkhiwala interrupted the judgement to mention (more felicitously than I could)—the interpretation which our clients were canvassing for. Chagla who did not like interruptions when he was dictating judgement, permitted this one, listened to Palkhiwala, gave an answer to the interpretation, and said “ Mr. Nariman very ably put forward the same point and we rejected it ” —I knew I had done nothing of the sort. Chagla then went on to add, “ I don’t think, Mr. Palkhiwala, you can add anything more to what Mr. Nariman has so well presented “. I knew how “ well ” I had presented the point I But not a smile escaped Chagla’s lips and he made it appear that he was dead-serious in the compliment he paid to a junior whose face he had never seen and whose name he never heard before.

Chagla's contribution to the early constitutional development of the law in the country was considerable and his judgements were respected throughout the country. After he ceased to be a Judge, he practised in the Supreme Court of India. There too he was brave and intrepid and gave leadership to the Bar in issues that concerned it. I remember at the time of the supersession of the three Judges of the Supreme Court—the supersessions brought about to instal Mr. Justice A. N. Ray as Chief Justice of India. He organised an All-India Convention of Lawyers on the Independence of the Judiciary. As Chairman of the Organizing Committee in his policy statement, he said :

“The issues involved affect not only the legal profession but the general public as well. The Rule of Law is one of the pillars on which democracy is based. The Rule of Law requires that all executive actions of the Government should be in accordance with law and that there should be an independent judicial authority which can be approached whenever executive action transgresses legal limits. A judiciary which is controlled by the Government cannot obviously control the Government in respect of the latter's illegal acts. The independence of the judiciary is thus vital to the Rule of Law which it is itself vital to the maintenance of democracy”.

He never forgot—and he never let others forget—the ignominious majority judgement of the Supreme Court in *ADM Jabalpur* which effectively snuffed out the lamps of liberty during the dark days of the 1975 Emergency : known then by many and later acknowledged by almost all right-thinking people, to have been a

“phoney” Emergency. In that majority judgement the Supreme Court reversed the judgements of the High Court of Bombay and eight other High Courts: I have often asked myself how this could have happened ?—especially after the almost single-handed effort made by C. K. Daphtary, then President of the Bar Association. When it was rumoured that Chief Justice Ray would set up a Constitution Bench to hear and determine the Liberty Cases (including *ADM Jabalpur*—a decision of the High Court of Madhya Pradesh) Daphtary did a singularly unusual thing.

His only excuse was that we were then living in unusual times. Some of us at the Bar felt that the Bench hearing this very important matter should consist only of the senior-most Judges of the Court. Daphtary went into the Chambers of Chief Justice Ray and told him so. The Chief Justice (not unnaturally) asked Daphtary as to since when did the Bar claim the right of suggesting Judges who should constitute a Bench to try a particular matter? Quick as a flash Daphtary responded :

“You may be right Chief Justice. But when I once made a similar request to Chief Justice S. R. Das he never took it ill”.

The message went home. The Constitution Bench consisted only of the five senior most Judges of the Court, but to no avail. The Supreme Court reversed the judgements of the Bombay High Court and the eight other High Courts in *ADM Jabalpur* and not only put its imprimatur of approval on the 1975 Emergency but declared that Courts were powerless to help the citizen who was deprived of his liberty. The right to life said Chief Justice Ray was the gift of the law and by the law (i.e. by suspension of Art. 21) could be

taken away. The other Judges who agreed with him did not quite put it that way—but they didn't disagree with what he said. Two of the Judges constituting the majority on the Bench were Chagla's proteges and friends—and he was bitter to the end that they could not (or would not) see the wood for the trees ! Although a friend and admirer of Y. V. Chandrachud whom he himself recommended for appointment as Government Pleader and then invited to become a High Court Judge at a very early age, he set his face against Chandrachud's appointment as Chief Justice of India when his turn came as the senior-most puisne Judge. He even risked a citation for contempt giving expression to his views in an open letter in the National Press. If he had a fault it was that he placed institutions on a pedestal higher than men—even those for whom he had affection.

Last year the Chief Justice of the New York Court of Appeals addressed members of the International Bar Association at its session in New York. He said that when he was first appointed Chief Justice of the Court of Appeals he proudly showed his wife the table of Justice Benjamin Cardozo, his most illustrious predecessor in the office. He said to his wife in a reverent voice :

“ See, this is Cardozo's table which I now use ”

His wife replied (not very reverently)

“ Yes ”, “ and after fifty years and five more Chief Justices, it will still be Cardozo's table ”.

You will pardon me Chief Justice if having come to the Bar in 1950 and practised in the High Court for twenty-two years before I went over to Delhi, I remember the Chief Justice's Court in Bombay as the Court in which Chagla sat.

Not I—but we all (Judges and lawyers) remember Chagla with affection and profound respect. His shining example in the past I know has inspired many Judges and innumerable lawyers in this High Court. I mention him in the hope that he will continue to be an inspiration for the future. Two decades ago, a distinguished American Judge William Douglas, a frequent mountaineer in the Himalayas said in the course of the Tagore Memorial Law Lecture of that year :

“ The judiciary has no army or police force, no control over the purse strings of the Government. These were passed over the years to other hands. ”

He then concluded that the strength of the Judiciary was in the command it had over the hearts and minds of men, but he warned that “ respect and prestige did not flow suddenly ”, “ they flourish with Judges with independence and courage ”.

I am proud to have belonged to a High Court where independence and courage flourished—not only when times were good, but even during the Emergency of 1975, when times were bad; when the threat of transfers loomed like a dark cloud over the High Court.

In a short but incisive biography of six contemporaries (Six Men), that great broadcaster Mr. Alistair Cooke has written about the Duke of Windsor—a man whom romanticists have idolized as the man who gave up the English crown for the sake of the woman he loved. Alistair Cooke is critical in his character portrait of King Edward VIII. He ends his portrait by the observation that it was said of the Duke of Windsor that he was always at his best when the going was good. Our Judges, our

lawyers, I am proud to say have been at their best when the going was *not* so good.

When a warrant was issued in 1976 for the arrest of a leading member of the Bombay Bar, 200 lawyers stood up to be counted as those who befriended him; undeterred by the consequences, they gave their names as those appearing in the habeas corpus petition filed on his behalf.

Without a free, fearless and independent Bar, the Judiciary would soon cease to be independent. A free legal profession and an independent judiciary go hand in hand. Laws which suppress the freedom of lawyers (and other citizens) to freely criticize their Government—or even tend to do so—are a grave threat to the independence of the legal profession. And since in many countries it is the Bar which supplies the Judges, necessarily a threat to the independence of the judiciary. At times, however, lawyers are also a danger to an independent judiciary—more so, some of the politically motivated ones.

It was *they* who advised (I believe wrongly) the issue of the Proclamation of Emergency in June 1975 which led for a while to a curtailment of civil liberties and threats to the independence of Judiciary—and it is to me a matter of deep regret that it was a Lawyer—President who appeared to be in such a hurry to sign that Proclamation.

There was a time not very long ago when Judge-packing became a question of political policy. It was in 1973 at the time of the first supersession—when breaking with precedent Ray was appointed Chief Justice in preference to three judges

senior to him. The late Mr. Mohan Kumaramangalam, an influential figure in the ruling party, wrote a book justifying the supersession; so did a prominent politician in this State Mr. A. R. Antulay. Each of them suggested that in the choice of judges it was important to appreciate “the way a judge looks at life” and emphasized the vital need to take into account the outlook of the Judge. From that time on, it became fashionable to speak about the “philosophy” of judges; Judges who did not know they had a philosophy acquired one : some forward-looking ones even mounted party platforms and mouthed cliches on the absolute supremacy of Parliament. We witnessed for a while the sorry spectacle of judicial dignitaries jostling for recognition on the political bandwagon. There were not many of them but enough to cause anxiety. It was they who encouraged Court-packing.

But at the same time there were men of integrity and calibre who stood up—many were from this Court. They made it known by their judgements that they would not be pushed around. During the 1975 Emergency there took place the “tragedy of transfers”—tragedy, because what was constitutionally conceived as a good thing earned a bad name by misuse—like family planning.

In May 1976 sixteen High Court Judges—Judges from Bombay as well who had given decisions unpalatable to the Executive were ordered to be transferred in quick succession. There was consternation amongst the Justices of the High Courts, some of them got the message to fall in line : but many of them, many brave ones in this Court, I am proud to say, carried on fearlessly—

some of them suffered, one of them succumbed to a heart attack. A second batch of transfers was proposed. It is no secret that the largest number were from Bombay. The second batch was again approved in consultation with the Chief Justice of India. They were judges whose decisions irritated one or another influential politician. It is now acknowledged that if this batch of transfers had gone through, it would have destroyed the judiciary. It is not widely known—though it is no secret—that the second batch of transfers was stopped not at the instance of the judiciary; but at the instance of the then Prime Minister Mrs. Gandhi. She got the feedback that it was impolitic—that it was politically unwise—to push through these transfers. It was Justice Gajendragadkar, a distinguished Judge of this Court, later Chief Justice of India, who played no small part in influencing the Prime Minister. He was then Chairman of the Law Commission of India.

History abounds with examples of Institutions about to be destroyed from within, and saved despite themselves. In his Memoirs Justice Douglas of the Supreme Court of the United States records that the only judge in modern times who asked for a private telephone line to the White House was Justice Frank Murphy : he also records that it was the White House that rejected the request !

In the developing countries of Asia where State action dominates almost every field of activity and the levels of tolerance are always at danger levels, there is a feeling amongst those who govern that an independent Judiciary—that is a Judiciary which adjudicates without fear or favour between citizen and State—is an unnecessary evil. This feeling is engendered even in those

countries with a written constitution and with virtually unlimited judicial review—like India.

Two centuries ago, the great democrat Edmund Burke gave the answer to the question as to why in a democracy—the higher judiciary is invested with power to decide finally all disputes between citizen and State :

“ Men trained in the law augur misgovernment and sniff the approach of tyranny in every tainted breeze. ”

That they sometimes don't, is evidence of their frailty and inadequacy—it is no reflation on the institution. It was this facility of auguring misgovernment that sent a once-powerful Chief Minister of Maharashtra packing : by the decision of judges of this very High Court.

In developing countries like India, there have been increasing demands on the legal system. The responses of the Court have been encouraging as witnessed by a spate of decisions in public interest litigation and in the field of human rights where happily our Court—has shown that though lodged in a splendid building, its doors are wide open to the needy, the humble and the poor. All varieties of social problems which were ignored at Governmental levels are now being subjected to a variety of legal remedies and enforced through Courts. I am proud of our Court—not only the Court of the past but of the High Court of the seventies and eighties. Its pronouncements have been irksome to those in authority.

The reactions in the corridors of power to this Court's recent orders and decisions are reminiscent of Laski's famous quip (though uttered in a somewhat different context) “ It is not injustice that worries me, it is Justice that hurts ”.

Very often it is Justice that hurts those who exercise executive power in this vast sub-continent of States which we call India.

There are, and always will be pressures on the Judiciary, even in stable democracies.

Give an Administrator a chance to dismiss a Judge and he will. In a recent book (*Judgement in Berlin* by Herbert Stern), the author (a retired Federal District Judge from New Jersey) relates his days as a Judge in the United States Court for Berlin; the United States as an occupying power, convened the United States Court for Berlin, a Body that had existed only on paper since 1955; its Judge is appointed by and serves at the pleasure of the U.S. Ambassador to West Germany. Mr. Herbert Stern, a Federal District Judge from New Jersey was selected in 1978. A group of Berlin residents objected to a scheme for construction of Military Housing in a park-like area previously used for recreation. They sued the U.S. Government in the United States Court for Berlin. Such a case could only be heard if the occupying authorities consented, and since that consent had not been given, it was a virtual certainty that Judge Stern would have dismissed the Complaint for lack of jurisdiction. But not content to rely on its obviously strong position, the U.S. Ambassador Mr. Walter Stossel wrote informing Mr. Stern that his Court did not have the jurisdiction. This implied that he had no choice but to accede to Ambassador's request. The issue of Judicial Independence was needlessly—but squarely—raised. The Judge attempted to persuade his Government to withdraw the letter.

When this proved unsuccessful, he concluded that a ruling in favour of the

U. S. Government's Motion to dismiss the Civil Case would be perceived as a surrender to outside pressure. As a result, he declared that he would not rule to dismiss as long as the letter was in the Court. Early next morning, another letter came to his Hotel Room informing him that *he* had been dismissed. Lacking tenure in Berlin, although retaining life tenure as a Federal Judge at home, Stern's concern was ensuring the independence of his Court. Before leaving the Court, he addressed the Government's lawyers in the case before him and said :

“ Imagine if I sat here and was not an Article III (Life Tenure) Judge in another life ? Suppose my children's education depended on the goodwill of the Ambassador ? *Is that the kind of Judge you want, the kind of Judge that can be told how to decide cases, even for you ?* ”

That is not the kind of judges we want—fortunately I believe that is not the kind of judges we have. At least as of now. If the High Court is to survive this anniversary and look forward to the bi-centennial it is important for us to continue to have the right kind of judges—judges that cannot, that will not, be told how to decide cases.

But if this High Court is to survive—survive with glory into the 21st century we must grapple with and tackle some of our own domestic problems the besetting problems of Corruption, of Caste, and of Costs—the three major C's. Justice Megarry in his delightful book of 'Miscellany at Law' has recorded that bribery and corruption is so rare in English tradition that when in a debate in the House of Lords, the Lord Chancellor referred to a judge taking a bribe, the reporter in Hansard was

so shocked that he wrote "bride". Taking a *bride* he could believe—taking a *bribe* was unthinkable. But that was twenty years ago.

In his autobiography Chief Justice Gajendragadkar similarly recalls an incident on the Appellate Side of the High Court when one of the stalwarts Hormazdiar Coyajee (father of Mr. Justice N. H. Coyajee) was arguing before a Bench consisting of Justice Rangnekar and Justice Maclean. It was an appeal from the judgement of a District Court. Coyajee said :

" My Lords, this is one of the cases in which Court fees having been paid, the decree had to be passed ".

Justice Maclean asked what this meant :

" Surely, Mr. Coyajee, " said Maclean, " in every case, Court fee has to be paid ".

Rangnekar, the more experienced, the more worldly-wise, whispered into Maclean's ear that the Judgement under appeal was delivered by a judge whom Coyajee believed to be corrupt. Coyajee's mode of presentation was the sly suggestion that the decree was illegally procured.

Justice Gajendragadkar recalls this incident as an anecdote. But in this one hundred and twenty-fifth year of the High Court of Bombay this is no longer just an amusing story. Corruption has permeated all facets of life—including the subordinate judiciary; and it is no use pretending that it has not reared its ugly head on rare occasions even in the echelons of the higher judiciary.

Justice Cardozo once confessed that the hydraulic pressure of great events do not fail to influence Judges—" they do not idly pass them by ". So it is with

the canker of corruption. It must be rooted-out—not by the dilatory and virtually impossible process of impeachment (which requires the intervention of politicians) but by a new methodology to be devised *by judges for judges*.

Impeachment is a powerful but blunt instrument—it is the heaviest piece of artillery in the arsenal and because it is so heavy it is unfit for ordinary use. In United States they have the same problems with superior Judges in the State and Federal Courts. Under the Judicial Council Reforms and Judicial Conduct and Disability Act passed in 1980, the primary responsibility for disciplining Judges rests with the Council of Judges in each circuit and ultimately in a select body of superior Judges known as the Judicial Conference. Neither body may remove the judge from office—but they may request that he voluntarily retire or direct that no cases be assigned to him for a limited period. When more severe action is warranted the Judicial Conference sends on the case to the House of Representatives to consider impeachment. It is time this High Court along with the other High Courts in the country considered the adoption of some machinery to correct errant justices of the superior Courts—a self-regulatory machinery which does not in any way compromise the independence of the Judiciary.

Then there is the problem of Caste. Take appointments to the subordinate judiciary. They are of great significance, because a large number of High Court Judges are drawn from the cadre of District Judges. Under the Constitution though appointments to the posts of District Judges are made by the Governor (that is the State Executive)

it is always done in consultation with the High Court. The subordinate judiciary in the State is entirely under the control of its High Court—as one of the judgements says “under its care and custody”. The power to confirm, the power to promote, the power to determine seniority of service to these Judges, rests entirely with the High Court. Whenever the Executive has interfered it has come to grief.

But then there have been complaints, more frequent of late, that some High Courts when dealing with the subordinate judiciary—nay, that some Judges even when deciding cases—act on the basis of caste, to subserve parochial interests. Many years ago Lord Davey said of English Judges that though they were all impartial “not all have the power of divesting themselves of prejudice”. So with some of our Judges. We must *be aware of*, and then *beware of* these trends—if we mean to plan for the survival of this High Court as a great and prestigious institution of democracy.

Corruption and caste are matters for the Judges to resolve, the problem of costs (and delays) are for the legal profession. We lawyers must make a concerted effort to find a solution. Prominent lawyers practising in the High Courts must be accessible to all—to those who can afford them, and those who cannot. The legal profession is service-oriented. It cannot survive unless it is seen to be of service to those who need them. In addition to being accessible to all, the lawyer must also be proficient and competent : he is the fuel in the engine of justice. It is the quality of the fuel that determines how effectively the engine will work.

But he is something more than the fuel in the engine. The lawyer who practises functions as a catalyst between those who judge and the vast majority of those whose cases are to be judged. A catalyst as you know is an agent which causes activity between two or more forces without itself being effected. Though his functions have vastly varied this is still his main function. A lawyer can fulfill this function only if he is *efficient* and *honest*—each attribute is as important as the other. An inefficient but honest lawyer is not much use to either to his client or to society. An efficient but dishonest one is positively dangerous.

Way back in 1859—before even this High Court was born—an Act was passed by the State of Jersey ; its provisions are extracted in one of the Volumes (Vol. 13) of Moore’s Privy Council Cases (at p. 263). The preamble to this Act is worth quoting—for the sentiments it expresses are as applicable today and will continue to be applicable in the future, as they applied more than 125 years ago.

“ Preamble :

Considering that the interests of justice require admission at the Bar of all those who offer *substantial guarantees of capacity* ;

And that the monopoly of the profession of advocates limited by considerations other than those of capacity is a bar to intellectual emulation, indispensable to the useful exercise of that profession ;

And that the profession of advocates being a *public* function depending above all on the *confidence of suitors* it behoves that the public be not exposed

to place the protection of its interests in the hands of those who cannot show proofs of *undoubted special capacity.*"

We must remain a bit like surgeons, to those who do not know us. Both professions are the subject of mystique, making life-and-death decisions, using skills that others do not have or understand. The patient being wheeled into the operating theatre and the litigant being directed into the Court-room are submitting themselves to those who can make them or mar them—bring them into the light or leave them in perpetual darkness. The victim in both situations—we call him the client, doctors call him the patient, but in our hands he is the victim—the victim should feel confident that he is in hands that are safe, directed by skill and learning —uninfluenced by greed and avarice. Survival of the High Court depends as much on lawyers as on Judges. The High Court cannot be expected to continue into the twenty-first century if it is not served by advocates who believe that they serve whilst they make their living, and who practice their profession not only with competence but with a conscience.

No celebration of the High Court can be complete if it ignores the subordinate judiciary. Recently in Delhi, a graduate of an American University called on me. He said that he was collecting the data on subordinate Courts in our country for his thesis—just imagine : a foreigner with a scholarship from a foreign university interested in how the administration of law works (or often does not work) at the grass-root level in this country. He was undertaking a task of stupendous proportions and I gave him all the help I could. In our almost obsessive concern with the

higher Judiciary we have too long neglected the Judges who function at the lower levels.

It was the Privy Council who realised the importance of District Judges in our scheme of administration of justice. How often we read how their Lordships preferred their judgements to those of the High Court who reversed them—complimenting the District Judge concerned on his lucidity and conciseness. Alas, in our preoccupation with the Writ jurisdiction and with the plethora of Administrative and Constitutional Law, the District Judge is ignored : until he has the good fortune to be promoted to the High Court. At the District level where the District Judge should know much more about how the administration works our Constitution has deprived him of all jurisdiction to enquire into the acts of district officials. That I think is a pity. It was a mistake not to associate the District Judges with that branch of law which in the post-constitutional period has been called administrative Law. Contrast the position in the United States—the District Judge there is still a very important functionary and has jurisdiction to supervise the acts of officials within his jurisdiction. At a seminar held in Kashmir last month to celebrate the bi-centennial of United States Constitution, a District Judge—Judge Kane—informed us of the width and ambit of his power in his circuit. As a District Judge he had power to fix his Board and carry on matters taken up from day-to-day. He told us that just two weeks ago he had fined a lawyer \$15000 for delaying proceedings without cause ! So long as we don't give the subordinate judiciary a place it deserves it will continue to function as it does; almost as a

step-child in the important business of administering justice according to law.

As a digression in the end permit me to return to the subject of pressures on the judiciary.

Different countries have different ways of dealing with such pressures—a former colleague of mine on the Human Rights Committee of LAWASIA recalled the Japanese way at a seminar in Tokyo in July 1982. About 90 years ago, an Imperial Russian Prince Nicholas Alexandrovitch travelled in Japan. In the City of Ote (near Kyoto), he was assaulted by a Japanese Policeman with his sword. Fortunately, his life was saved. The policeman (Sanzo Suda) was arrested and was tried for attempted murder—Article 116 of the Japanese Criminal Code—under which the maximum sentence was life imprisonment. But the Japanese Criminal Code also provided in another Article (Article 292) that anyone who assaulted “ the Emperor, Empress or a Prince ” would be punished by death. This was really intended for the protection of the Imperial Family of Japan—though that was not expressly stated. Imperial Russia was at the time very strong, militarily and politically, and the relations between Russia and Japan had soured (The incident took place only 10 years before the Russo-Japanese War). The Japanese Cabinet fearing reprisals from Russia, sent as message to the Court to punish the accused under Article 292—that is to sentence the policeman to death and not life imprisonment. But Mr. Kozima (the newly appointed) Chief Justice of the Supreme Court of Japan strongly resented this political intervention. He asked the Magistrate to decide the case according to law. The Magistrate

taking no notice of the Government pressure, convicted the policeman under Article 116, i.e. to imprisonment for life. The Government appealed—Chief Justice Kozima rejected the appeal holding that the special provision of Article 292 applied only to the Imperial Family of Japan. We are told that after this case—famous in Japanese Judicial History—there has been no interference by the Government of Japan with the Judiciary.

In times of stress, a brave judge though sometimes in a minority of one has changed the course of his country’s judicial history.

So too the dissentient Judge—the one who speaks for the brooding conscience of future generations. Let me remind you of *Liversidge* versus *Anderson* (that infamous decision given in times of war which the majority in ADM Jabalpur relied on in times of peace). It is now forty years since the decision in *Liversidge* was rendered—the majority view was buried by the House of Lords (in 1980). Lord Atkin’s dissent has been finally vindicated. When it was delivered, however, the popular view was the majority view. And it is necessary to recall the context in which the House of Lords heard the case. The argument took place in September 1941 and the speeches were delivered on 3rd November. It was a low point in the war. The Balkans and Crete had been over-run; the invasion of Russia had carried the Germans close to Leningrad and Moscow; the British summer offensive in the Western Desert had failed; the Japanese menaced the Malayan Peninsula in Singapore; Pearl Harbour was to follow in the next month and the United States were not yet in the War. Lord Wright’s

speech (the majority view) reflected the atmosphere :

“ All the circumstances of national safety to which this House adverted in *Rex versus Halliday* are present in this war, only with vastly increased urgency and gravity, because German methods for effecting the prisoners infiltration among British or allied subjects of their purpose and schemes have been immensely more subtle and ingenious than in the last war. Even a Judge may be allowed to take notice of the import of words like Fifth Columnists and Quislings and the like. ”

But Lord Atkin would not take notice. Instead, he reminded his colleagues in that oft-quoted purple passage that in England “ amid the clash of arms, the laws are not silent; they may be changed, but they speak the same language in war as in peace. ” Brave words, heroic words. But not at that time. Lord Atkin suffered, his colleagues refused to speak to him because in his dissent, Atkin had hit hard—and he knew that the consequences of what he had said would hurt—

“ I view with apprehension the attitude of Judges who on a mere question of construction when face-to-face with claims involving the liberty of the subject show themselves more executive-minded than the executive . . . . In this case I have listened to arguments which might have been addressed acceptably to the Court of King’s Bench in the time of Charles I. ”

On 2nd November 1941, he wrote to his daughter Gaven :

“ I am giving off my dissenting judgement in the Home Security

Cases tomorrow; and haven’t spared the others. I hope I shall be on speaking terms with them afterwards. ”

He was not. He was criticized by his senior colleague Lord Maugham, in an unprecedented open letter to the Times. He was requested by the Lord Chancellor (Lord Simon) to delete his scornful reference to the Humpty-Dumpty attitude of his colleagues on matters of statutory construction. He was upbraided, almost branded a traitor. But Atkin remained tight-lipped. He refused to be drawn into controversy over his dissent. He refused to go to the Press. He was amply rewarded—first in private; much later by posterity.

Dr. C. K. Allen the author of “ Law and Orders ” which contained a forceful account of the administration of Emergency Regulation 18 B, and who was always a vehement champion of the individual against the encroachments of executive power, wrote three days after the Judgement to Lord Atkin :

“ Dear Lord Atkin, 05-XI-1941

I expect that this is a very improper letter to be written even by a non-practising member of the Bar, but I cannot refrain from saying that it will be remembered as not the least distinction in your great judicial work that you alone among other judges have raised your voice against a gross abuse of power. Such *cries in the wilderness have strong and long echoes*. There is no real answer to the simple point of language on which you took your stand ”.

In 1980, Lord Diplock spoke for posterity. “ For my part ” he said in his speech in the House of Lords (in the

Rossminster Case) : " I think the time has come to acknowledge openly that the majority of this House in *Liversidge versus Anderson* were expediently and at that time perhaps excusably wrong and the dissenting speech of Lord Atkin was right. "

The cries in the wilderness (you see) do have " strong and *long echoes* " .

Judicial independence is a byword in every democracy. In British India with the establishment of the High Courts from the middle of the 19th century the concept of an independent judiciary took root. But till 1947, one-third of the area of this sub-continent was being administered by what came to be known as the Princely States: the judges in those States, often described

as the Jee Huzoor Judges, were required to function in the time-honoured tradition of judicial subservience, so characteristic of Moghul and pre-Moghul times.

When we framed our Constitution, we chose the British model, not the other one. It is this model, though originally Western, that we must cherish and preserve. It is preserved more by example than by words. There will always be assaults from without on the Independence of the Judiciary. *But on this anniversary I would ask you to remember—the citadel never falls except from within.* It is upto us—lawyers, judges, citizens—to help maintain the Independence of this citadel we love and cherish—the High Court of Bombay.

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## FUTURE IS NOT BLEAK \*

*By Mr. V. S. DESHPANDE  
Lok Ayukta and former Chief Justice  
of Bombay*

**W**E have had Just now a very very inspiring and illuminating speech, reeling out quotations after quotations from eminent jurists and authors connected with their efforts in reaching the highest points in pursuit of justice. It has indeed been a treat to us.

Very feeling references were made to the great Chief Justice of this High Court Shri Chagla, and one of the stalwarts of Bar Shri Jamshedji Kanga who have done so much to enrich the traditions of this Court inherited from the English judiciary.

The judges and advocates of this Court have tried throughout, to live up to these traditions and high standards of probity, hard work and independence during the last 100 or more years. This is what has enabled this High Court to retain the confidence of the litigants and public at large.

Many of us of the present generation had a good fortune to witness the performance of these great judges and advocates during the earliest part of our careers, including a few amongst us who were formerly practicing in Hyderabad Courts. All of us have also tried to imbibe these good traditions to the best of our ability to become the effective instruments in securing justice to the clients. The keenness to live up to these great traditions appears, however, to have been on wane during the course of last 20 years and magnitude of several problems facing judiciary has virtually out-weighted what little

contribution we have been able to make during this period.

Shri Nariman's feeling references to the performance of Shri Chagla in a few cases brought to my mind the memory of the farewell Reference accorded to him on the last day of his sitting as Chief Justice. The Central Hall was packed to its capacity and the galleries were seen over-flowing with his admirers. His colleagues, on his both sides happened to be his own appointees. Doyen of the Bar, Jamshedji Kanga, Munshi and several other seniors were seen standing in the front row inspite of age. The deep respect the bar and the Bench bore for him was reflected on the face of the gathering. Speeches of Seervai and Chandrachud, the then Advocate General and Government Pleader, could not avoid betraying the wrench of separation inspite of their efforts. Chagla himself was seen to be on the verge of breaking point more than once. The hall that was accustomed to hear the words of logic and reason had to be a witness that day to this mute emotional upsurge. Memory of this event should lead us to have an introspection to see if any of his qualities can be emulated by us.

Judiciary in India is now facing a few very serious problems threatening its very survival. Our High Court, being part of it, is equally afflicted by the very same maladies. There has been a deterioration in our standards of performance and attachment to the

\* Speech by Mr. V. S. Deshpande, Lok Ayukta and former Chief Justice of Bombay, at the function at Aurangabad on 28th October 1987 to celebrate the completion of 125 years of the High Court of Judicature at Bombay.

cherished values. It is adversely affecting the quality and quantity of our disposal. This drift appears to have been set in from late Sixties onwards. That is perhaps why the subject of today's talk includes a question : How long the High Court would last inspite of its glorious past. All this, however, need not make us diffident or pessimist about the future. English judiciary, of which we speak so much in glowing terms, had also its dark period and black spots. Its traditions still continue to be a source of inspiration to the judges and the lawyers in different parts of the world. I am tempted to refer to one such black spot set in its history, not with any intention to denigrate it but to draw inspiration from its capacity to wipe out its adverse effects of their such lapses and continue to keep its flag flying inspite thereof.

This instance took place during the hey-day of the achievements of the English people just after the First World War. Lloyd George was then the Prime Minister of England. The victory that England achieved in the war under his leadership followed by his performance at the Versailles Treaty had enhanced his prestige and reputation not only in England but all over the world. Lord Reading, the Viceroy of India from 1921 to 1926, was a very close friend of his. Lord Reading then held the office of Lord Chief Justice of England. His reputation as a lawyer K. C. and Attorney General was indeed very high. He continued to have that reputation even as Lord Chief Justice. Unlike the Chief Justices, who had preceded him, he dabbled in politics and accepted a few political assignments while he was still holding that high judicial office. Lloyd George decided then to appoint him as Viceroy of India. The

Viceroyalty, however, could not last beyond more than five years and also did not carry any pension. Lloyd George was, therefore, keen to ensure restoration of this high office to Lord Reading on his return from India after five years. This, however, was not just possible. Appointment to this high office was governed by several traditions and conventions aimed at ensuring the independence of judicial system. These conventions firstly required offer of this office on its falling vacant to be made first to the Attorney General of the day and permit appointment of somebody else only on his declining the office. Secondly, the contention did not permit such appointment of any one for a fixed period of five years. Lord Hewart was then the Attorney General of England. He was known to be very ambitious and keen to accept this high office and occupy it. There was absolutely no possibility of his vacating it just to oblige the Prime Minister or Lord Reading as and when they would need. Even if someone else were appointed in disregard of the conventions and traditions and Lord Hewart's claim, no self-respecting judge would agree in advance to vacate it to oblige the Prime Minister or Lord Reading. Such a course would not only be humiliating for him but also destructive of the faith of the public at large in the independence of judiciary which has been the cornerstone of the English Justice.

Notwithstanding all this Lloyd George could still find a judge who agreed to accept this office on such humiliating terms of vacating it as and when asked to do so. In fact, he could be persuaded to handover an undated letter of resignation to facilitate enforcement of the condition.

Strangely enough, the then Lord Chancellor Lord Birkenhead learnt about this long after the arrangements were finalised, though as Lord Chancellor he was entitled to be consulted. He wrote to the Prime Minister before the arrangements were announced in an attempt to prevent this attack on what he demonstrated to be the independence of judiciary and the good name of the British justice. He also drew the attention of the Prime Minister to the injustice involved to Lord Hewart in any such contemplated arrangement and breach of the conventions and traditions involved therein. The Prime Minister rejected the protest of Lord Chancellor summarily by informing that the matter had already been finalised. Lord Reading was sent to India as Viceroy and Justice Lawrance (I am not sure of his name) was appointed as the Lord Chief Justice in his place. As a result of some other intervening circumstances, Lloyd George lost the confidence of the House and was, therefore, driven to resign as Prime Minister after a year or so. The arrangement contemplated by him obviously could not be effectuated. He, however, appointed Hewart as the Chief Justice of England before vacating the office without any information to Lord Chief Justice then occupant of the high office. The said Chief Justice learnt about his resignation from the papers when he was on his way from his residence to the Court.

Graphic account of this incident could be read in the life of Lord Birkenhead recorded in the Volumes of "Lives of Lord Chancellors of England" and also in the biography of Lord Hewart.

Lloyd George, Justice Lawrance, Lord Reading and even Lord Birkenhead who protested but acquiesced in the

arrangements, cannot be said to have covered themselves with glory in this sordid affair involving attack on the independence of judiciary. The same could be said about the judges and the high ranking authorities in England who, as narrated by Shri Nariman, treated Lord Atkin with some amount of disrespect because of his dissent in the detention matter of *Liveridge versus Anderson*. All this only demonstrates that human nature is the same everywhere and people are tempted to ignore the good traditions and higher stakes for smaller personal gains to suit the exigencies of the time. Importance of these events lies in the fact that English people did not allow such black spots to impair overall reputation of their judicial institutions. The lesson to us is that we also can improve our lot with a will and determination to do so.

I would like to refer to two instances before I close. I had occasion to appear as Assistant G.P. in the High Court in one jail petition. Accused was convicted for offence of cheating and was sentenced to five years rigorous imprisonment. He had secured a scooter from his owner by representing to him that he was an income-tax officer and required it for some urgent temporary work. He was, however, found to have made himself scarce with the scooter. A complaint was lodged with the police, investigation was made and accused was traced and the scooter was recovered. Accused pleaded guilty before the trial Court. Ordinarily he could have been let off with a sentence of six months rigorous imprisonment. But he had eight previous convictions to his credit which resulted in the heavier sentence. I had read both the judgments. They were exhaustive.

I thought that there was nothing in this case to warrant admission or interference. The Chief Justice had read the papers very carefully. As soon as the case was called out, he verified from me whether I had examined the records. Really I had not. He then himself took the trial Court's records in his hands and carefully perused previous conviction sheets. He asked me whether I had noticed that all these previous convictions were of the same date and happened to have been imposed by the same Magistrate. These sentences were found to have been imposed by a Magistrate in Lucknow. Chief Justice asked me to secure the original records of these sentences from the Magistrate by writing to the Commissioner of Police, Lucknow or Home Secretary of U.P.

On receipt of the records it was discovered that the eight cases arose out of a single incident of a day on which the accused had collected subscription of Rs. 2 from each 8 persons for a charitable institution with which he was found not to have been connected in any way. It was clear that the police, had out of ingenuity thought of instituting eight cases, presumably to enhance the record of their achievements. As soon as the case was called out, I told Chief Justice what the position was. The learned Chief Justice informed me that this is what he had also suspected after reading the story of the incident and perusing the conviction sheet. By this time more than six months had lapsed. The learned Chief Justice was good enough to reduce the sentence to what was already undergone and directed release of the accused. But for the consciousness and industrious approach of the Chief Justice the accused would have remained rotting in jail for about five years.

Second instance is about the ideal performance of another stalwart of Bombay High Court Shri Bhulabhai Desai in what is now popularly known as INA trial. In this case in which he undertook the defence, the accused were Shanawaz Khan, Dhillon and Saigal. He undertook the defence at the instance of Pandit Nehru. He was very sick. He was a heart patient, suffering from diabetes and high blood pressure. There was a swelling on his chest and legs. His doctors advised him against accepting this onerous work. In fact one of his doctors was attending on him throughout. But he accepted to lead the defence along with several other eminent lawyers in India out of sheer sense of duty. His performance in that case as defence lawyer has earned him good words from eminent lawyers all over the world.

On a certain day an important witness was to be cross-examined. Bhulabhai Desai was keen to undertake the cross-examination himself. But his health was very bad. On that day doctors insisted that he should not only not go to the Court but should not do any work. The points were then discussed between himself and other panel members. A line of cross-examination was chalked out and he named the advocate who should cross-examine the witness according to the line then determined. Bhulabhai refused to stay at home. It was, therefore, agreed that he would sit in the adjoining chamber for being available for consultation in case of need during the proceedings in the Court.

Unfortunately, another lawyer undertook the cross-examination as soon as the occasion arose. Within 10/15 minutes of commencement of the cross-examination some trouble developed

resulting in acrimonious debates on some ticklish point between the members of the Military Tribunal and the lawyer. Bhulabhai rushed to the Court as soon as he learnt about this in disregard of the medical advice and dictates of his own health and took the reins of the defence in his own hands. Bhulabhai died three or four months after this trial was over. The dedication, the sense of duty, and attachment to the cause of litigants really distinguished him from many other advocates. In fact,

it is these qualities of head and heart and such sense of accountability that has made the performance of this High Court so glorious. There is no reason why the future of this Court also should not be so with the same amount of dedication and sense of accountability on the part of judges and advocates of the present generation. I believe in the innate goodness of the advocates and the judges and trust that they will not flinch from their duties and sense of justice in days to come.

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*A function was held at Panaji, Goa, on 5th of December 1987 to celebrate the completion of 125 years of the High Court of Judicature at Bombay. The Hon'ble Mr. Justice S. K. Desai, the Acting Chief Justice, welcomed the guests at the function which was graced by the Governor of Goa. Mr. Y. V. Chandrachud, former Chief Justice of India, presided over the function while Mr. Soli Sorabjee, Senior Advocate, delivered the keynote address. The following pages contain the speeches delivered on that occasion.*

## WELCOME SPEECH

*By the Hon'ble Shri S. K. DESAI*

*Acting Chief Justice, Bombay High Court at Panaji, Goa  
on 5th December 1987, on the occasion of Celebration of  
Completion of 125 years by the Bombay High Court*

**O**N behalf of the Bombay High Court, I welcome you all to this function held at Panaji to celebrate the completion of 125 years of the Bombay High Court. This is the last of the three functions held at the Benches of the Bombay High Court. The celebrations at the Benches started at Nagpur, then at Aurangabad and finally we are at Panaji, not that because it is the least of the 3 Benches but the last. Historically and chronologically, Nagpur was the first of the Benches of the Bombay High Court, thereafter came Aurangabad and finally Panaji. At every Bench we have chosen as President and/or Chief Guest, persons who have been closely connected with that Bench and Chief Justice Chandrachud was the obvious choice for this function inasmuch as the Goa Bench had been inaugurated by him.

It has been said and repeated a number of times in the course of these celebrations that 125 years ago, on 14th August 1862, seven Judges holding their office as Judges of the Bombay High Court under a Charter issued by the Crown, which original Charter is still available for perusal in the High Court at Bombay, declared that from that day they were the Judges of the Bombay High Court. This was the only ceremony on that day and they thereafter proceeded to do their work without any fanfare or publicity. A different culture used to prevail in those days. A brief announcement in the Times of India on the next day is the only record commemorating the occasion.

In these 125 years, the Bombay High Court has seen many changes. It may interest you to know that at some point of time, I think in the remote past, the Bombay High Court had Appellate Jurisdiction over Zanzibar (in Africa) and till some time between the first and second world war, also over Aden. It was thereafter the High Court for the State of Bombay was constituted and when linguistic States were formed, we lost the area of Gujarat including Kathiawar (Saurashtra) but when these areas went out of its purview, we had the addition of the Vidharbha area of the Madhya Pradesh State and the Marathwada area of the Nizam Territories added as part of the linguistic State of Maharashtra. Right from the inception with the addition of these areas, we had a Bench at Nagpur. The Aurangabad Bench came subsequently and later on the Goa Bench and from May of this year, the Bombay High Court is the High Court for the two States of Maharashtra and Goa. There are other High Courts for more than one State. There is, e.g. the High Court of Punjab and Haryana at Chandigarh and at Guwahati there is a High Court having jurisdiction over seven small States, each of them perhaps in size as large as either North Goa or South Goa and perhaps having less population.

A very relevant aspect of the working of the Bombay High Court has been the desire of the Judges, not only both during the pre-independence period as also during the post-independence

period to do justice, justice even by bending the law sometimes. The British and Indian Judges prior to 1947 had developed the law, personal law in particular, to see that women and widows were given justice and even after independence, law has been moulded to give protection to the workers and the weaker sections and all those who have felt or who feel the imprint of the bureaucratic boot. All these people have flocked to the Court to seek amelioration of their conditions and the Court has tried, we cannot do more than try, its utmost to be a shield and to protect the weak and the oppressed from the oppressor. The Bombay High Court has not been found wanting even when fascist tendencies threatened the democratic fabric of our country. All governmental improprieties have come for judicial scrutiny irrespective of the party label. It is very important to bear in mind that abuse of power does not become acceptable nor corruption condonable because it emanates from the so-called opposition. We make no distinction between oppressions from whatever source it emanates.

Whenever we talk of the achievement of the Bench, it has to be borne in mind that the Bench does not and cannot work in isolation and the contribution of the Bar to the success of the Bench must be acknowledged. Whatever has been achieved has not been achieved by the Bench alone, it has been achieved by the Bench and the Bar. I am quite certain that in the past whatever has been achieved will be equalled by the future and in that future not merely the Bar at Bombay but Bar at all the four Benches, including the Bar at Goa will play its role. I am confident of that.

Today's two speakers need no introduction and I think it would be absurd on my part to seek to introduce them. I have known and admired Chief Justice Chandrachud when he was Government Pleader of the Bombay High Court, a Judge of the Bombay High Court and then from a distance when he adorned the Supreme Court, first as a Judge and thereafter as the Chief Justice. Irrespective of occasional criticism which has been lavished on him my admiration for him has not whittled down but indeed has grown over the years. It is my belief that perfection is only given to God and we only can strive what it is for us to do and if we have worked with a clear conscience then we have to answer to none nor are we required to hang our head down for any reason. These are the days when the Judges are being castigated as being anti-poor and it is said that the reason for this is because they come from the upper strata of the society. I know as a matter of fact that Chief Justice Chandrachud did not belong to any upper strata or any upper class or privileged class except that of intellect. Most lawyers practising in Bombay, almost all of them on the Appellate Side and many of them from the Original Side, came from the middle class, which class in my opinion is the back-bone of our country. Judges from the Bar at Bombay mainly hail from the middle class. As far as I know, in Bombay, we have no Zamindars or privileged classes and securing justice from the High Court has never been the prerogative of any one class, caste, community or religion.

Our key-note speaker Shri Sorabji is known to me for the last nearly 40 years, from our student days in the Government Law College at Bombay.

Law, literature and music have been his interests. One more can be mentioned, horse racing but he gave it up with the growth of his practice and definitely when he shifted from Bombay to Delhi. Indeed I now realise a possible reason why he shifted from Bombay to Delhi. It was sometime in the middle of seventies and when he saw that the Bombay High Court was to certain extent losing its stature by having persons like S. K. Desai as Judges, he thought it wiser to leave Bombay and settle down in Delhi. I had the privilege right from the time of the Law College to know and be a colleague with him and Fali Nariman although both were one year junior to me. Although in the seventies they left Bombay to seek pastures new at Delhi, they have maintained their ties with Bombay both personally and through their children. I think it would be no exaggeration to say that today these two are amongst the giants of the Supreme Court Bar which was earlier dominated when we started our legal practise by other giants from Bombay, viz. Sir Nusserwanji Engineer, Shri M.C. Setalvad and Shri C. K. Daphtary. We always try to belittle those who are with us and in my opinion, Nariman and Sorabji may be regarded as giants of both the Bombay High Court and of the Supreme Court Bar in future by future generations.

Finally and lastly there is no question of introducing Governor Gopalsinghji to

you. However, it will be extremely ungrateful on my part to refrain from observing that we are honoured by his presence here. In my opinion, Goa, whether Union Territory or a State, has been fortunate in having in him a Governor, an erudite Governor, who represents, in my opinion, the best of India's culture. I do not know whether you know that he was born of Hindu parents but as was customary in those days, being the eldest son, became convert to Sikhism. At that time it was not regarded, no one thought of Sikhs as a separate nation. As he has put it humorously on a number of occasions, he was born in the majority community and thereafter attained a permanent minority status. The main function of the Governor which he does independently of the Government and in his own right concerns the field of education and he is the most qualified in that field amongst the various Governors of the country. To repeat Sir, we are honoured by your presence and I have now to request you to formally inaugurate this function in the first place by lighting a lamp and thereafter distributing mementos to commemorate this occasion to four members of our High Court staff who have been with this Bench since its commencement and who in all have been for 25 years with the judiciary at Goa. Sir, may I now request you to light the lamp and bless us.

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# TRADITIONS OF ETHICS AND LEARNING \*

*By SOLI SORABJEE*  
*Senior Advocate*

I feel greatly honoured to have been invited to participate in the 125th Anniversary Celebrations of the Bombay High Court and to deliver a keynote address on this occasion.

I am thankful for the kind words and sentiments expressed by Acting Chief Justice S. K. Desai. The memories of our association at the Bar are very pleasant. I am surprised that he could not guess that one of the reasons for my shifting to Delhi and staying on is my gambling instinct in which I fully indulge by taking bets about the fate of SLPs in the Supreme Court, which incidentally is more difficult to predict than spotting a winner at Mahalakshmi.

Nonetheless, to me the Bombay High Court has been and will always be 'my High Court'. Although I have shifted to New Delhi since April 1977 and my appearances in the Bombay High Court have been few and far between, when arguing before the Supreme Court the expression, "may I refer to the judgment of 'our' High Court or 'my' High Court" not infrequently breaks through.

What are the reasons for this soft spot, or rather this attachment or, to be more precise, this affectionate admiration for 'my' High Court?

Well, let me confess candidly that I am a person who is much enthralled and captivated by the past. I find it delightful to transport myself into the events of the past, the spirit of the past, the values of the past. It used to be my

favourite pastime to saunter through the corridors of the High Court and pause by the Court-rooms late in the evening before returning home. At that time after the daily hustle and bustle and the heat and dust of forensic battles of the day had ended a solemn stillness pervaded the magnificent and awe-inspiring edifice which, if stones could speak and walls could tell their tales, would unfold a great epic : of courage and honour, ability and industry and, above all, compassion and humanity, without which justice becomes a hideous mockery. How fervently I wished that by some break through in science and technology or mastery of spiritual or yogic powers, one could look back into the past and see and hear the great judges of our court, John Jardine and Lawrence Jenkins, Telang and Ranade, Badruddin Tyabji and Narayan Chandavarkar, Macleod and Martin, Beaumont and Kania. How thrilling it would be to observe in action the giants of those days : the eccentric Austey, the legendary Inverarity, resourceful Chimanlal Setalvad, imperious Jinnah, prodigious Bhulabhai Desai, the inimitable Jamshedji Kanga and the soft and suave Coltman. Dull indeed would he be of soul if he could pass by a sight so 'thrilling' in its majesty.

The second reason is simple. The happiest and most exciting and the formative years of my professional life have been spent in the Court-rooms, the library and the bar association of the Bombay High Court.

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\* Keynote address at the function at Panaji, Goa, to celebrate the completion of 125 years of the High Court of Bombay

I joined in 1953 at a time when it can be said without fear of exaggeration that the Bombay High Court was one of the finest and ablest judicial tribunals not only in India but in the Commonwealth, including Britain.

What a galaxy of judicial talent was there; what an inexhaustible fund of judicial resource and strength we experienced; what a spectacle of dignity and decorum was witnessed.

There was Chief Justice Chagla, who epitomised the quintessence of justice in every aspect. Gajendragadkar, whose erudition and powerful and distinguished personality were second to none, Tendolkar who possessed a razor sharp intellect and had a rasping voice. Rajadhyaksha, a great gentleman and a model of patience and courtesy, and J. C. Shah, tall and handsome, whose grasp and understanding were exceptional.

There were giants at the Bar at that time also. Of the old guard there were Jamshedji Kanga—a veritable institution—Noshervan Engineer, Maneksha, Mangal Desai and K. T. Desai on the Original Side; A. G. Desai, G. N. Thakore, H. C. Coyajee, Dharap and Jahagirdar were dominant figures on the Appellate Side.

In the wake of the old guard were Seervai and Palkhivala on the Original Side and on the Appellate Side Tarkunde and Chandrachud, before they were elevated to and adorned the Bench.

It is not the mere brilliance and learning of all these judges and lawyers which has imparted greatness to our Court, but the fine traditions they handed down over the ages.

What were these traditions? Let me start with the Bar because substantially

it is from the Bar that Judges are appointed and members of the Bar would carry their traditions, or the lack of them, to the Bench.

Now the first and foremost tradition of the Bombay Bar has been its independence, its fearlessness displayed in its willingness to appear in unpopular causes for unpopular persons, though that might lead to loss of briefs, hostile and vituperative criticism and even ostracism. This is what may be called the Thomas Erskine tradition. Tom Paine had written a book called the "Rights of Man" which contained some offensive remarks about William II and George I and was prosecuted for seditious libel. Erskine accepted the brief for Paine. Great pressure was put on him to refuse the brief. Lord Loughborough went out of his way to meet him as he was walking home and said: "Erskine, you must not take Paine's brief". Erskine replied: "But I have been retained and I will take it." He did take it and when he came to address the jury he used these memorable words: "I will forever, at all hazards, assert the dignity, independence and integrity of the English Bar, without which impartial justice, the most valuable part of the English Constitution, can have no existence. From the moment that any advocate can be permitted to say that he will, or will not, stand between the Crown and the subject arraigned in the court where he daily sits to practise—from that moment the liberties of England are at an end."

This tradition was put to a severe test during the Emergency. It was sad to find quite a few lawyers avoiding to take briefs against the government. Their ingenuity in trotting out excuses was remarkable. But there were a few

who, unafraid of the consequences, unhesitatingly appeared for the detenus, for the journalists and newspapers which were the victims of censorship and also for other victims of emergency, very often without charging any fees.

Uprightness was the immaculate major premise of our Bar. Uprightness in its dealings with the Court, with the client and with fellow members of the Bar. It was unthinkable that counsel would utter an intentional falsehood in Court, or deceive and mislead the court by suppressing vital facts or documents in the case or by not citing judgments which were directly on the point though they militated against his submissions. Such conduct would be regarded as dishonourable and a breach of trust and confidence between the Bench and the Bar so essential for effective administration of justice. It could be difficult and inconvenient at times to put this principle in practice but that was no reason for not upholding this tradition.

Let me give a personal example. The constitutionality of the Bombay Land Requisition Act—an old enemy of mine—was challenged. The matter came up for hearing before a Constitution Bench presided over by Chief Justice Subba Rao, a true citizen's judge. As my arguments progressed in the matter it was clear that in the judges' view the Act imposed unreasonable restrictions on the fundamental right of property guaranteed under Article 19 (1)(f) inasmuch as there was no provision for prior hearing before passing the requisition order, no appeal and, to cap the climax, the declaration of vacancy was made fully conclusive. The other side was called upon. At that time the theory of mutual exclusivity of fundamental rights

prevailed in the Supreme Court and the view taken in *Bhanji Manji* and other cases was that if there was requisitioning of property under Article 31 (2) of the Constitution, Article 19 (1)(f) was inapplicable. Justice Subba Rao had in the second *Kochunni* case attempted to explain away these observations and was certainly not in favour of that doctrine. But to my acute discomfort there was an old unreported judgment of the Supreme Court in the case of *Sitabati* where the Bench had reaffirmed its earlier view that requisition legislation could not be challenged on the anvil of Article 19 (1)(f). I expected the other side to place the judgment but my learned friend was blissfully unaware of it. What should I do? The instructing solicitor disapproved of my drawing the court's attention to this judgment. The client of course could not understand why I should cite a judgment against me. But after a few moments of anguish I had no doubt what the correct course would be. My junior, A. J. Rana, fully concurred with my decision. I cited the judgment, made a frantic attempt to distinguish it and a yet more frantic attempt to have a larger bench constituted but that was of no avail. In any case that night I slept better than I would have if I had concealed the judgment from the court and had not been true to the traditions of the Bombay Bar. Mind you, there was nothing exceptional or heroic in what I did. Any member of the Bombay Bar, conscious of its high traditions would have done the same, in any case at that time in the mid-sixties.

There have been, to my knowledge, occasions in one of which I was personally involved, when motions for recording compromise have been

decided on the bare but solemn statement of counsel. Indeed in some cases counsel's statement did not support the claim of his client.

Confidences between members of the Bar were regarded as sacred. If without prejudice talks for settlement had taken place between counsel but the matter was not settled it was unthinkable to mention the talks and terms of proposed settlement to the Court. If you had acceded to the request of your learned friend for an adjournment, you did not turn around in court if the judge was disinclined to grant the adjournment. You supported it even if the judge castigated you for it.

And whilst rudeness and offensive behaviour with the Bench was out of the question, excessive deference bordering on servility and obsequiousness were equally out. If the Bar felt that a certain judgment was erroneous, its views were expressed in terms of forthright but dignified criticism. The subject of attack was the judgment, not the judges. There were no irresponsible and inexcusable outbursts for impeachment or removal of judges who had delivered the judgment according to their lights.

If the Bar does not respect the judges, that will give a handle to those who are inimical to an independent judiciary to indulge in mud-slinging against it. It was with shock and anguish that I read the statement reported to have been made by Law Minister Shri P. Shiva Shankar that the Supreme Court has become a haven of smugglers and has been a stumbling block to the economic progress of the people. One can ignore and treat with silent contempt such statements when they are made by irresponsible and ill-informed politicians but they are not expected from

a seasoned and experienced lawyer who has also occupied the judicial office for some time in the High Court of Andhra Pradesh.

Full and meticulous preparation of the case was the hall mark of the Bombay Bar renowned for its ability and industry. The report of arguments in the ILR reports bears ample testimony to this.

Above all, there was recognition of the fundamental fact that the lawyer was practising a noble profession and was not a trader who operated on the principle of demand and supply entitled to charge extortionate fees on that basis. Even after making allowance for inflation the fees of leading seniors of those times appear ridiculously low when compared with the fees charged by some present day juniors.

A few words about the high judicial traditions of our Court. First and foremost is the tradition of judicial independence and courage. The history of the Bombay High Court is replete with instances of the valiant stand adopted by it throughout its history in the face of executive threats and encroachments. Vaacha's "Famous Judges, Lawyers and Cases of Bombay" provides valuable information and insight into this aspect. Whatever faults may be laid at the door of our High Court, it could not be seriously said that the judges of the Bombay High Court were the King's judges, lions under the throne, who did the bidding of the executive. On occasions these lions have roared so boldly and loudly that many a ministerial occupant had to leave his throne in disgrace. Former Chief Minister of Maharashtra, Antulay, was one of them. The performance of the Bombay High Court during emergency fully vindicated this tradition.

The other tradition of our High Court has been that of impartiality, of deciding cases according to law without reference to the personal prejudices and predilections of the judge. True, there have been lapses but they only prove the general rule.

Next is the tradition of dignity and decorum maintained both in and outside the Court. And last but not the least, the tradition of learning and erudition which is reflected in the leading judgments of the Court on subjects ranging from Constitution to customs and Hindu Law to stock exchange transactions.

But you will rightly ask, " what about the present ? " We cannot survive on our past laurels. The past is relevant in so far as we can make it useful to the present and a guide to what may come. What does the future hold ?

Today is an occasion for celebration of a historic event. Yet we would be doing a disservice to ourselves and the very institution we revere if we avoid honest introspection, a genuine stock-taking and if we indulge in cosmetic window-dressing.

It is my considered opinion, and I say this not for effect or sensationalism, that if the *raison d'être*, the very purpose of Courts, judges and lawyers is to provide speedy, effective and inexpensive justice, then the system has *miserably failed* to deliver the goods. Indeed it has started cracking and the cracks are pretty visible. The time has long past for compiling statistics of arrears in Courts and setting up Commissions to go into this problem. A parallel extra legal or para legal agency, whose first tenet is contempt for the rule of law and judicial process, has been set up and is doing well.

It is a notorious fact that the common man has become utterly cynical, almost contemptuous about courts and administration of justice. He prefers to seek justice by taking the law in his own hands or relying upon specialised agencies which promise prompt results by recourse to extralegal means. Forcible dispossession of persons from premises has become a sophisticated art. The reason is the unbearable burden of litigation, the excruciating delays, the crushing costs and the general harassment involved in ' going a-lawing '.

Two instances come to my mind. The owner of a flat in Bombay had gone abroad for two years for further studies. During the period of his absence from India he had obliged a friend of his by permitting him to stay in his flat on the clear understanding that when he returned to India he would have the flat for his own occupation. He did not charge any amount to his friend except out of pocket expenses for maintenance of the flat. After completing his course of studies he returned to Bombay. He had given previous intimation of his return to his friend. On his return he was assured by his friend that he would vacate the flat in a couple of weeks. This couple of weeks became a couple of months. In the meanwhile the owner of the flat stayed for the first two weeks with the members of his family. Then he stayed in a hotel. Thereafter he stayed in a sanitorium. After that he consulted me about the legal prospects of success. I told him that he had a clear-cut case and there would be no difficulty in obtaining a decree for ejectment. Then he asked me the question : How long will it take ? I told him, optimistically speaking it would be at least a couple of years. Then he left.

After sometime I met him and asked him what he had done in the matter. He said he had no confidence in the legal system and was not at all sure whether the whole thing would be over in two years. Since the other person had behaved in a dishonourable fashion he had every moral right to occupy the flat which he did forcibly leaving the other person to take legal proceedings which could go on at a leisurely pace. Mind you, this person was a law-abiding citizen but the enormity of the situation was too much for him to bear.

The next instance took place in Delhi. What happened here was that my friend, whom I shall refer to as A allowed a friend of his to occupy his son's flat as a gesture of friendship. The licensee thereafter went abroad and has been abroad for two years. Despite repeated requests he has not vacated. The flat is lying vacant and A's son who wants to come and settle down in Delhi and get married is unable to do so. Whenever he comes to Delhi he has to stay with his friends. A also decided not to take recourse to the usual legal remedies because of delays uncertainties and took law in his own hands. These two instances are symptomatic of the ineffectiveness of the system and are ominous portents of the state of future events.

Delay in the disposal of criminal appeals and the continued incarceration of the appellants because the Court has no time to hear their appeals is a hideous mockery of justice. When the person succeeds how is he to be compensated for the slice of his life taken away from him ? The monstrosity of the situation is evident yet we have got so used to it so as to become apathetic and indifferent.

Judges of Andhra Pradesh and Madhya Pradesh High Courts reacted to this intolerable situation by resolving amongst themselves to sit in turns on the criminal bench during the long vacation and dispose of the pending criminal appeals. Madhya Pradesh High Court achieved good results. I know judges are over-worked. I am conscious that despite the recent increase in judicial emoluments their remuneration is still inadequate. Yet, on a matter concerning human liberty, I trust that the Madhya Pradesh and the Andhra Pradesh examples will not only be emulated but bettered by our High Court. Surely the sacrifice of a week or two of the vacation is not asking too much.

The primary responsibility for these ills lies with the legal system which needs to be thoroughly overhauled. But the legal profession whose standards and values have reached an all-time low has to bear substantial responsibility for this malaise. The crux of the problem is that by and large lawyers seem to have forgotten that as professionals they are for the people and the people are not for their aggrandisement. A spirit of crass commercialism seems to have overtaken the profession.

It is not suggested that professionals live on love and fresh air and should not charge proper fees for their services. What is objectionable and scandalous is that there is no limit on the unaccounted fees in cash extracted by some, and that too in the 'cause' of personal liberty. Nor is there any limit to the stratagems employed to delay and defeat a just claim and tire out an honest litigant. There is no trace of any compunction about telling a deliberate lie to the court for getting an adjournment for personal convenience

or to further harass the opposite side. It is a measure of the steep decline in professional ethics that today it is almost universally believed that a lawyer is a liar. Dr. Johnson's famous defence of the lawyer to Boswell would appear fanciful in the present context. Worse, Dick the butcher's resolve in Shakespeare's Henry the Sixth, "the first thing we do, let's kill all the lawyers", may not remain a theatrical flourish for long.

The judiciary is the weakest of the three branches of government. It has neither the power of the purse nor that of the sword. Its ultimate strength lies in the respect and confidence that it inspires and commands with the public. Let us frankly acknowledge that the high judicial traditions are under severe strain. Litigants would take the anxiety of judges about clearing arrears oft proclaimed at seminars and conferences more seriously if they were more strict about granting long adjournments for counsels' mutual convenience and were more punctual and regular in court attendance. Judges would also inspire more respect and confidence if they abstained from populist pronouncements under the full glare of publicity and declined attendance at meetings and conferences under the auspices of controversial organisations.

It is not suggested that judges should behave like Sir Mathew Richard Sausse, the first Chief Justice of Bombay, who never entered the government House, nor joined a club nor attended any dinner or social function, never read newspapers and whose only recreation was a solitary ride in the evening along the sea beach. But surely judges must avoid hobnobbing and frequent mingling and over familiarity with ministers and influential politicians in the

corridors of power, and attending indiscriminately luncheon and dinner parties given by all and sundry.

It must always be remembered that a form of life and conduct far more severe and restricted than that of ordinary people is required from judges. *They have to present a continuous aspect of dignity.*

Today there are rumours circulating about judicial improprieties and there are dark hints and whispers of corruption having touched the High Court. Twenty years ago a person who levelled such allegations against a judge of the High Court would have been rightly regarded as a potential inmate of a lunatic asylum. Today, most regretfully, he is listened to without disbelief. I do not and cannot believe that any person who occupies the seat of justice in our High Court would be so vile as to defile it and sow the seeds of destruction of this great institution because of the lure of filthy lucre. It is the bounden duty of the Bar to look into these rumours and scotch them when they are without any basis, but are floated on sheer surmise and suspicion, frequently by disgruntled litigants. But if, God forbid, there be truth and substance in the charge of corruption, then it is the solemn and inescapable duty of the Bar to take firm steps to nip this cancer in the bud before it gallops and lethalses the system. And remember, it is difficult for a judge to be successfully corrupt without the active co-operation of lawyers who, when properly identified, should be extirpated root and branch from our midst.

We must also apply our minds to an alternative procedure to Impeachment, which is cumbersome and can be politically manipulated. The Law

Commission should make an in-depth study of the subject.

There is another area in which our High Court can make its signal contribution. The High Court as the guardian of the Constitution and protector of fundamental rights of the people of India has a special role to perform in our constitutional scheme. And the effectiveness of its role should be measured by its extension of the fundamental rights to the downtrodden and the needy. Before public interest litigation, fundamental rights were by and large the luxury of the rich and the affluent. The under-trials would, but for public interest litigation, still be languishing in jails for periods longer than the maximum period of the sentence which may be passed on their conviction. Migrant labourers would have continued to be deprived of the basic amenities of life to which they are entitled under the maze of socio economic welfare legislation.

Public interest litigation is not the preserve of the Supreme Court alone. Our High Court should take the lead in translating fundamental right into living realities for the disadvantaged and exploited groups, regardless of the elitist and puerile criticism of the institution of public interest litigation. Of course, like public policy, public interest litigation if not properly handled can like an unruly horse run wild. But with a good jockey in the saddle it can be kept on the right track.

When I have surveyed the scene, I lament with the poet :

It is not now as it hath been of yore—  
Turn wheresoe'er I may,  
By night or day,  
The things which I have seen I now  
can see no more.

But that is being defeatist. There is a ray of hope for the future provided we all, the Bar and the Bench, make a concerted and determined effort to preserve and maintain the high traditions associated with our High Court and restore them to their full bloom in cases where they have been damaged and, more important, transmit them to successive generations. To the extent that we are successful in doing so, the glory and greatness of our High Court is secure. To the extent that we are successful in instilling in the members of the legal profession, especially the younger generation of lawyers, the true spirit and ideals of the profession and make them imbibe the high traditions, we have nothing to fear.

Tradition is in Carlyle's words, an enormous magnifier. It grows in the human memory and in the human imagination when awe, reverence and affection, and all that lies in the human heart, is there to encourage it.

But traditions are not like instant coffee. It takes an endless amount of history to make even a little tradition. They are not taught but imbibed and absorbed over a period of time. It all depends upon the men and women who will man the institution, work it, cherishing its abiding values. I am reminded of the concluding address of Dr. Rajendra Prasad in the Constituent Assembly on 25th November 1949 which has a ringing appeal and an abiding relevance today. He said : " If the people who are elected are capable and men of character and integrity, they would be able to make the best even of a defective Constitution. If they are lacking in these, the Constitution cannot help the country. . . . India needs today nothing more than a set of honest men who will

have the interest of the country before them. ”

I hope that when we celebrate the 150th anniversary of our High Court in 2012 AD—there is a sporting chance that some of us gathered here may be around, certainly not in 2062—we shall do so with greater pride and satisfaction. And we shall be able to say that we found “ law dear and left it cheap;

found it a sealed book and left it a living letter, found it the patrimony of the rich and left it the inheritance of the poor; found it the two-edged sword of craft and oppression and left it the staff of honesty and the shield of innocence ”.

May we all dedicate ourselves on this unique occasion to the realisation of this lofty ideal.

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## KEEP THE FLAG OF JUSTICE FLYING HIGH \*

*By Mr. Y. V. CHANDRACHUD  
Former Chief Justice of India*

I must thank the Chief Justice and the High Court for doing me this honour of presiding over this function. Life is a series of coincidences, some good and some not so good; and it was a very happy coincidence that the Goa Bench of the Bombay High Court was inaugurated when I was the Chief Justice of India. As I stand before you, my mind goes back to the year 1962 when a memorable function was held to mark the centenary of the High Court. Chainani was then the Chief Justice. My wife sang the welcome song which was composed in Sanskrit by a lawyer, L. V. Deshpande, who was practising on the appellate side. I was a year old judge then. Today I am no more a judge but the 25 years of judgeship were crowned with excitement. It is a pleasure to be here to see the Goa Bench growing in stature and experience. I and my wife regard it an honour to have been invited to this function, which is one of the concluding functions of the 125th anniversary of the Bombay High Court. We owe a deep debt of gratitude to this great High Court. Whatever has been worthwhile in our lives is closely associated, in a measure small or big, with the Bombay High Court.

It was said in the welcome speech that the keynote addresses at the 125th anniversary functions were arranged to be delivered by eminent lawyers of the High Court : Seervai, Palkhivala, Nariman and Sorabjee. I have been

associated with them for the past many years, an association which brings to mind some of the happiest memories. I was the Government Pleader when Seervai was the Advocate General and it was a most educative experience to instruct and assist him. Palkhivala and I became part-time lecturers at the Government Law College, Bombay, in 1949 and we left together in 1953. What a happy coincidence that we had a band of bright students who later achieved excellence and eminence at the Bar. Two of them, only to mention two because they have delivered keynote addresses at the 125th anniversary, are Nariman and Sorabjee. The good fortune to teach outstanding students does not cross the path of every teacher. One must be grateful to Providence for such happy coincidences.

But, what a sea change has overtaken life ! The honorarium for part time professors was Rs. 285 per month but the honour was not measured in terms of the honorarium. The committee which selected Palkhivala and me consisted of Chief Justice Chagla, Justice Gajendragadkar, Justice Tendolkar, Amin who was the Advocate General and Choksi who was the Government Pleader. I have always believed that in the process of teaching, I learnt more than I taught. It seems that bright young lawyers are not any longer interested in accepting assignments which do not bring enough money. Probably, nothing is desired or

\*Address at the function at Panaji, Goa, on 5th December, 1987 to celebrate the completion of 125 years of Bombay High Court.

done which does not yield an attractive monetary gain. How you perform and what means you adopt, fair or foul, are matters of secondary importance : how much you earn in the current measure of merit.

There is a prevailing feeling of frustration that all that was good has vanished from life, that baser instincts have occupied the field. That, I think, is an unduly pessimistic view of life. The Bombay High Court has unquestionably produced eminent lawyers and judges but it is not right to level the accusation that the lawyers of today are a band of sharp, commercial operators or that the judges have no sense of social commitment. The very atmosphere we breathe is polluted by corruption at various levels and the tides which engulf other spheres of life do not pass the lawyers and judges by. We must therefore fasten our seat belts, not with a view to isolating ourselves from the rest of the society but in order to minimise and, if possible, to eliminate the impact of forces which have destroyed the purity of public life. It is unfortunate that today, in the legal world, there is increasing evidence of decreasing dedication. Political friendships have become a convenient short cut, almost a pass-word, for achieving personal ambitions like appointments, transfers and promotions. Why read Seervai on the Constitution, if an out-of-court friendship with some one in the corridors of power, can fetch you a seat from where you can deliver sermons on the constitution without knowing what that great document means and contains ? Shall we, ladies and gentlemen, not resolve on this land-mark occasion that we will apply ourselves more honestly and assiduously to our task, casting populist slogans aside and

leaving politics and the politicians untouched. A judge's philosophy must be reflected in his judgments, not in slogan-mongering. Surely, a judge too has the freedom of speech and expression but his speeches and writings must show some depth of learning and a careful study of the subject. That is the line which divides intellectuals from others. And judges have to be intellectuals, first and foremost. Accent on intellect and social commitment are not antithetic. Judges of the past are maligned in a cavalier fashion but any one who has appeared before them or read their judgments will know that the profundity of the older generation of judges did not impair their sense of social values. Even in old times, a landlord or a Railway Company had a difficult time when opposed to a tenant or the widow of an accident victim. And, it was seldom that women did not get law's protection which they need most.

With the staggering, though inevitable, expansion of High Courts, the sense of oneness and unity is disappearing and with it, the sense of institutional pride and loyalty. In Bombay, we all used to meet outside the Chief Justice's chamber at 10-45 a.m. and leave for our courts at 10-55 a.m. to be in time at 11-00 a.m. Today, probably, there is not enough room for 30 and more judges to meet in the morning or sit over a common lunch table. Judges have become strangers to each other and if you do not know your colleague well enough, tensions and misunderstandings tend to grow in your working life. Once, in 1980, the Chief Justice of a very large High Court was unable either to identify or recollect the names of his colleagues who were being introduced to me.

It is a sad reflection on the present times that even punctuality and regularity in attendance are not regarded as prized virtues. A Chief Justice of one of the largest High Courts told me that he never comes to know which judge is absent and for how many days, for no official intimation of absence is sent at all. And casual leave has become a matter of right. In one of the northern High Courts, casual leave is taken for a week or two by many judges at the same time, to extend the Christmas or summer holidays. There was a time when the Government wanted to prescribe rules for casual leave for the judges. Chief Justice Chagla opposed that move strongly on the ground that judges do not take casual leave except for unforeseen reasons and that if rules are framed to provide for casual leave, judges will be encouraged to take casual leave as a matter of course. Chagla's experience was different. Gajendragadkar and J. C. Shah took only half a day's leave when their daughters were married. Bavdekar, that great stickler for discipline, used to sit in the court with high fever on, taking his medicine every two hours. In the Supreme Court, lawyers used to compliment the judges by saying that one could set one's watch as judges entered the court room, punctual to the minute. Not all of these commitments have vanished. But there is a decline in the high standards set by our illustrious predecessors on the Bench and at the Bar. That decline has to be arrested because the public expects an uncommon standard of behaviour from the judges. The public is not prepared, and very rightly, to condone the conduct of judges by the test that every one else acts wrongly, so why not the judges. Judgeship demands the

highest standards of behaviour, both in and out of court, and no amount of erudition can take the place of integrity and correct conduct. A lawyer being required to be carried in a drunken condition on the shoulders of his learned friends is bad enough. But no one takes it to heart. But when that happens to a judge, the very credibility of the judiciary as a whole comes under a cloud. An inebriated judge is a vulgar spectacle.

It is disconcerting that the administrative control of the Chief Justices over their courts and their brotherly authority to correct an erring colleague are diluted over the years. The result is a lax administration against which various charges are made at will and an unregulated court which is the target of plausible public criticism. It is true that the Chief Justice is only the first amongst equals but then, every one must behave with an equal commitment to the cause of the court—to its independence, its integrity, its sense of propriety and its overall image. Do unequals not require an unequal treatment ?

Sorabjee spoke of high fees charged by lawyers. Personally, I think that what fees the lawyers charge is a non-issue, so long as clients are not made to pay fees when none are due or can be charged. The court is more concerned with the assistance which the lawyers give to it, no matter whether they have charged high fees, low fees or no fees. Even an amicus must render the most competent assistance that he or she is capable of. The complaint really is that even after paying high fees, sometimes astronomical, the client does not get the return of his money. I do not think that this complaint is universally true. Most of those who have acquired

a name for charging high fees are highly competent and conscientious. I only hope that junior lawyers will not emulate the seniors in the matter of charging high fees only. You may charge good fees to those who are in a position to pay them. But, all those who come to you for advice are entitled to equally competent treatment, no matter how much they have paid you. When you take a case you take a cause.

Lawyers who are famous for the fees which they charge can make up for their love of lucre by taking up legal aid briefs systematically. Many of them accept free engagements offered by legal aid societies but almost none seeks a free brief. The legal aid movement has now come of age and, after considerable controversies, there is near unanimity about the need and utility of that system. But, it is unfortunate that the response of the busy lawyers is not encouraging. They do not mind doing a free case but, by and large, they do not go out of their way to seek and work out a free brief. They have neither the time nor the enthusiasm nor the sense of commitment to do so. And so long as competent seniors do not regard that they are under a social and professional obligation to participate actively in the legal aid movement, the message of that movement will not travel beyond the narrow confines of court rooms. The poor and the needy who cannot afford to engage the stalwarts of the Bar must have the assurance that they will be able to secure their assistance through legal aid societies. The failure or the non-fulfilment of the purpose of legal aid consists in its inability to afford that assurance. The indigent must be afforded cheap access to justice and every

litigant, rich or poor, is entitled to quick justice.

Sorabjee suggested that justice may become quicker if judges sat in the vacation to dispose of cases. My experience does not bear out the feasibility of that experiment. Judgeship is a tiring, fatiguing job. It draws heavily on the intellectual and physical resources of the judges, such of whom are sincere and earnest. Add to that the strain arising out of the political overtones which many important cases have and the wanton criticism of privileged persons which the judges have no platform to answer. Besides, judges in higher courts have much longer hours of work than are occupied by sittings in the court. One has to sit at home over the desk for as many hours as one sits in the court room. If vacations are curtailed, there is a fear that vacations will begin when the court reopens. True, that vacations should not be too long and holidays not too many but, holding sittings during the vacations has proved counter-productive in the past.

The pace of justice can be quickened by adopting many other measures like shortening the length of oral arguments and filling the vacancies promptly. Oral arguments have become longer and longer over the years because of the inability of judges to control the court proceedings. The conditions of service of the judges were ridiculously unsatisfactory until a year ago. The result was that good talent at the Bar was kept out, save for honourable exceptions. The fall in standards of judicial excellence led to a fall in the pace of work and the diminishing of the authority of the judges. The lawyers, by force of their superior equipment, assumed control of the court proceedings and judges,

not too well equipped, lapsed into a position of silent spectators (and listeners). That explains why, talking of the Bombay High Court of old times which I can claim to know closely, judges like Chagla, Rajadhyaksha, Bavdekar, Gajendragadkar, J. C. Shah, Tendolkar, K. T. Desai and Mudholkar (to name but a few) were unquestioned masters of their courts. They ruled the court, not the senior lawyers howsoever eminent they were. The intellect and equipment of the Bench could be matched with those of even the outstanding members of the Bar, like Jamshedji Kanga, Bhulabhai Desai, Inverarity, Coltman, Motilal Setalvad, C. K. Daphtary, N. P. Engineer, K. M. Munshi, G. N. Thakore, H. C. Coyajee, A. G. Desai, K. N. Dharap, K. A. Somjee, Purshottam Tricumdas, K. G. Datar, A. S. R. Chari, Manerikar and S. V. Gupte (not to mention those who are fortunately in our midst). Matching talents of the Bench and the Bar bred mutual respect and trust. No lawyer ever thought that the judge had not understood his point. And no good lawyer believes that he must argue until he succeeds. The conditions of service of judges have now been improved considerably and mid-seniors in the age group of 40 to 45 years ought to come forward to accept judgeship. Service in the cause of justice is an imperative social commitment. After all, it was as true in old times as it is today, that even high emoluments cannot compare favourably with professional earnings. There has to be a certain amount of willingness to make a sacrifice. Now, the sacrifice will not be too great.

The delay in making judicial appointments is to be deprecated. The delay inevitably occurs due to political inter-

ference at various stages, one of the gross instances being the recent attitude of the Tamil Nadu Government in opposing the recommendations made by the Chief Justice of the High Court. Such instances can be multiplied. The Chief Justices of India must assert their authority and ensure that appointments are made on merits, not forgetting that the weaker sections of the community must not be denied adequate opportunities, whenever there are deserving candidates available from those sections. For the matter of that, women too deserve a special consideration.

It is unfortunate that even the available strength of judges is depleted by appointment of judges on Commissions of Inquiry, without making additional appointments in the fortuitous vacancies. And it is now high time to consider carefully whether the Chief Justice of India should at all agree to lend the services of judges to sit on such commissions. Judges, today, are called upon to discharge out-of-court functions which they undertake out of a sense of duty. To the extent that such functions involve determination of facts, the judges are well equipped to discharge those functions. But, when such assignments involve pronouncements on policies, judges have a delicate task to perform for which they are not suited either by training or by expertise. Judges do attempt to discharge even those functions with aloofness but such sensitive involvements plausibly lend a political flavour to their functioning which, inevitably, sticks to them when they resume their normal duties. In the process, institutions, more than individuals, suffer.

Well, ladies and gentlemen, thanks once again for inviting me and my wife here.

Goa is small and, small is beautiful, as the Bombay High Court was way back with only a dozen judges. We were a closely knit family, with so much brotherly feeling and rapport amongst us. Let not the numbers devour the greatness of this Court. Harmony is the answer to the present day crisis;

harmony amongst the Bench, harmony amongst the Bar and, harmony between the Bench and the Bar. May I pray that the High Court of Bombay will regain its old splendour and produce lawyers and judges, as in bygone times, who will keep the flag of justice flying high. That flag can never fly half-mast.

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# LIST OF CHIEF JUSTICES AND JUDGES OF THE HIGH COURT AT BOMBAY FROM 1862 TO 1987

## *I—CHIEF JUSTICES*

THE HONOURABLE	Period
Sir MATHEW RICHARD SAUSSE, Knight, Bar-at-Law	.. 1859—1866
Sir RICHARD COUCH, Knight, Bar-at-Law	.. 1866—1870
Sir MICHAEL ROBERTS WESTROPP, Knight, Bar-at-Law	.. 1870—1882
Sir CHARLES SARGENT, Knight, M.A. (Cantab.), Bar-at-Law	.. 1882—1895
Sir CHARLES FREDERICK FARRAN, Knight, Bar-at-Law	.. 1895—1898
Sir LOUIS ADDIN KERSHAW, Knight, Bar-at-Law	.. 1898—1899
Sir LAWRENCE H. JENKINS, K.C.I.E., M.A. (Oxon), Bar-at-Law	.. 1899—1908
Sir BASIL SCOTT, Knight, M.A. (Oxon), Bar-at-Law	.. 1908—1919
Sir NORMAN CRANSTOUN MACLEOD, Knight, B.A. (Oxon), Bar-at-Law	.. 1919—1926
Sir AMBERSON BARRINGTON MARTEN, Knight, LL.D., M.A. (Cantab.), Bar-at-Law	1926—1930
Sir JOHN WILLIAM FISHER BEAUMONT, Knight, K.C., M.A. (Cantab.)	.. 1930—1943
Sir LEONARD STONE, Knight, Bar-at-Law	.. 1943—1948
Mr. MAHOMMEDALI CURRIM CHAGLA, B.A. (Oxon), Bar-at-Law	.. 1948—1958
Mr. HASHMATRAI KHUBCHAND CHAINANI, B.A. (Cantab.), I.C.S.	.. 1958—1965
Mr. YESHWANT SHRIPAT TAMBE, B.A., LL.B.	.. 1965—1966
Mr. SOHRAB PESHOTAN KOTVAL, B.A., LL.B.	.. 1966—1972
Mr. K. K. DESAI, B.A., LL.B., Advocate (O. S.)	.. 1972
Mr. R. M. KANTAWALA, M.A., LL.B., Advocate (O. S.)	.. 1972—1978
Mr. B. N. DESHMUKH, M.A., LL.B.	.. 1978—1980
Mr. V. S. DESHPANDE, B.A., LL.B.	.. 1980—1982
Mr. DINSHAW PIROSHA MADAN, B.A. (Hons.), Advocate (O. S.)	.. 1982—1983
Mr. MADHUKAR NARHAR CHANDURKAR, M.A., LL.B.	.. 1983—1984
Mr. KONDA MADHAVA REDDY, M.A., LL.B.	.. 1984—1985
Mr. MADHUKAR HIRALAL KANIA, B.A. (Hons.), LL.B.	.. 1985—1987
Mr. CHITTATOSH MOOKERJEE, M.A., LL.B.	.. 1987

## II—PUISNE JUDGES

### THE HONOURABLE

- Sir JOSEPH ARNOULD, Knight, Bar-at-Law.  
Mr. RICHARD COUCH, Bar-at-Law (Became Chief Justice on 28th April 1866).  
Mr. HENRY HERBERT, I.C.S.  
Mr. CLAUDIUS JAMES ERSKINE, I.C.S.  
Mr. ALEXANDER KINLOUCH FORBES, I.C.S.  
Mr. HENRY NEWTON, I.C.S.  
Mr. AUGUSTUS BROOKE WARDEN, I.C.S.  
Mr. HENRY PENDOCK ST. GEORGE TUCKER, I.C.S. and Bar-at-Law.  
Mr. MICHAEL ROBERTS WESTROPP, Bar-at-Law (Became Chief Justice on 1st April 1870).  
Mr. J. S. HORE, Bar-at-Law (Acting).  
Mr. THOMAS CHISHOLM ANSTEY, Bar-at-Law (Acting).  
Mr. JANARDHAN WASSODEWJI, Pleader (Acting).  
Mr. JAMES GIBBS, I.C.S. and Bar-at-Law.  
Sir CHARLES SARGENT, Knight, M.A. (Cantab.), Bar-at-Law  
(Became Chief Justice on 9th August 1882).  
Mr. FRANCIS LLOYED, I.C.S.  
Mr. LYTTELTON HOLYOAKE BAYLEY (Afterwards Sir LYTTELTON),  
Bar-at-Law (Acted as Chief Justice).  
Mr. MAXWELL MELVILL, I.C.S. (Afterwards Sir MAXWELL).  
Mr. CHARLES GORDON KEMBALL, I.C.S. and Bar-at-Law.  
Mr. RAYMOND WEST, M.A., I.C.S. and Bar-at-Law (Afterwards Sir RAYMOND).  
Mr. J. P. GREEN, LL.B., Bar-at-Law.  
Mr. ROBERT HILL PINHEY, I.C.S. and Bar-at-Law.  
Mr. NANABHAI HARIDAS, LL.B., Pleader.  
Mr. JOHN MARRIOTT, Bar-at-Law (Acting).  
Mr. BARON DE H. LARPENT, I.C.S. (Acting).  
Mr. G. ATKINSON, Bar-at-Law (Acting).  
Mr. F. D. MELVILL, I.C.S. (Acting).  
Mr. F. L. LATHAM, Bar-at-Law (Acting).  
Mr. J. SCOTT, Bar-at-Law (Afterwards Sir JOHN).  
Mr. H. M. BIRDWOOD, M.A., LL.D. (Cantab.), I.C.S. and Bar-at-Law.  
Mr. W. E. HART, Bar-at-Law (Acting).  
Sir W. WEDDERBURN, Bart., I.C.S. (Acting).  
Mr. JOHN JARDINE, I.C.S. (Afterwards Sir JOHN) (Acted as Chief Justice).  
Mr. C. F. FARRAN, Bar-at-Law (Became Chief Justice on 20th June 1895).  
Mr. H. J. PARSONS, I.C.S. and Bar-at-Law (Acted as Chief Justice).  
Mr. E. T. CANDY, I.C.S. (Acted as Chief Justice).  
Mr. K. T. TELANG, M.A., LL.B., Advocate.  
Mr. E. M. H. FULTON, I.C.S.  
Mr. H. H. STARLING, Bar-at-Law (Acting).  
Mr. M. G. RANADE, M.A., LL.B., C.I.E., Advocate.  
Mr. A. STRACHEY, Bar-at-Law (Became Chief Justice of the High Court of the North-West Provinces).  
Mr. BUDRUDDIN TYABJI, Bar-at-Law (Acted as Chief Justice).  
Mr. E. HOSKING, I.C.S. (Acting).  
Mr. L. P. RUSSELL, Bar-at-Law (Acted as Chief Justice).  
Mr. W. H. CROWE, I.C.S. and Bar-at-Law.  
Mr. H. BATTY, I.C.S.

## THE HONOURABLE

- Mr. G. C. WHITWORTH, I.C.S. (Acting).  
Sir NARAYAN GANESH CHANDAVARKAR, B.A., LL.B., Pleader (Acted as Chief Justice).  
Mr. V. J. KIRTIKAR, Pleader (Acting).  
Mr. H. F. ASTON, I.C.S. and Bar-at-Law.  
Mr. G. JACOB, I.C.S. (Acting).  
Sir S. L. BATCHELOR, B.A. (Oxon), I.C.S. (Acted as Chief Justice).  
Sir BASIL SCOTT, M.A. (Oxon), Bar-at-Law (Acting) (Became Chief Justice on 22nd April 1908)  
Sir D. D. DAVAR, Bar-at-Law (Acted as Chief Justice).  
Sir F. C. O. BEAMAN, I.C.S.  
Sir J. J. HEATON, I.C.S. (Acted as Chief Justice).  
Mr. M. P. KHAREGHAT, I.C.S. (Acting).  
Mr. R. KNIGHT, I.C.S. (Acting).  
Sir N. C. MACLEOD, B.A. (Oxon), Bar-at-Law (Became Chief Justice on 1st June 1919).  
Mr. MAHADEV BHASKAR CHAUBAL, B.A., LL.B., Pleader (Acting afterwards Sir MAHADEV).  
Mr. L. J. ROBERTSON, Bar-at-Law (Acting).  
Mr. GANAPAT SADASHIV RAO, M.A., LL.B., Pleader (Acting afterwards DIWAN BAHADUR).  
Sir LALLUBHAI ASHARAM SHAH, M.A., LL.B., Pleader (Acted as Chief Justice).  
Sir A. B. MARTEN, M.A., LL.D. (Cantab.), Bar-at-Law (Became Chief Justice on 7th June 1926).  
Mr. M. H. W. HAYWARD, LL.B. (Cantab.), Bar-at-Law, I.C.S. (Afterwards Sir MAURICE).  
Mr. E. M. PRATT, I.C.S.  
Mr. A. M. KAJIJI, B.A., LL.B. (Cantab.), Bar-at-Law.  
Sir C. G. H. FAWCETT, I.C.S. (Acted as Chief Justice).  
Sir L. C. CRUMP, I.C.S.  
Sir CHIMANLAL HARILAL SETALWAD, B.A., LL.B., Advocate (Acting).  
Mr. J. B. KANGA, M.A., LL.B., Advocate (Acting afterwards Sir JAMSHEDJI).  
Mr. N. W. KEMP, Bar-at-Law (Afterwards SIR NORMAN) (Acted as Chief Justice).  
Mr. C. A. KNICAID, I.C.S. (Acting).  
Mr. H. C. COYAJEE, B.A., LL.B., Advocate (Acting).  
Mr. D. F. MULLA, M.A., LL.B., Advocate (Acting afterwards The Right Honourable Sir DINSHAW).  
Mr. V. F. TARAPOREVALA, B.A., LL.B., Bar-at-Law (Acting).  
Mr. G. D. MADGAVKAR, B.A., I.C.S. (Acted as Chief Justice, afterwards Sir GOVIND).  
Mr. MIRZA ALI AKBAR KHAN, B.A., Bar-at-Law (Acted as Chief Justice).  
Mr. P. E. PERCIVAL, C.I.E., B.A. (Oxon), I.C.S. and Bar-at-Law (Acting).  
Mr. C. P. BLACKWELL, M.B.E. (Mily. Dn.), B.A. (Oxon.), Bar-at-Law (Acted as Chief Justice).  
Mr. F. S. TALYARKHAN, Bar-at-Law (Acting).  
Mr. S. S. PATKAR, B.A., LL.B., Pleader (Acted as Chief Justice).  
Mr. W. T. W. BAKER, B.A. (Oxon.), I.C.S. (Acted as Chief Justice, afterwards Sir WILLIAM).  
Mr. S. S. RANGNEKAR, B.A., LL.B., Bar-at-Law.  
Mr. J. D. DAVAR, Bar-at-Law (Acting).  
Mr. K. Mc. I. KEMP, Bar-at-Law (Acting).  
Mr. K. M. JHAVERI, M.A., LL.B. (Acting afterwards DIWAN BAHADUR).  
Mr. B. J. WADIA, M.A., LL.B., Bar-at-Law (Afterwards Sir BOMANJI).  
Mr. S. J. MURPHY, I.C.S., (Acted as Chief Justice, afterwards Sir STEPHEN).  
Mr. BALAK RAM, I.C.S. (Acting).  
Mr. A. C. WILD, B.A. (Cantab.), I.C.S. (Acting).  
Mr. F. W. ALLISON, B.A. (Oxon.), I.C.S. (Acting).  
Mr. R. S. BROOMFIELD, B.A. (Cantab.), I.C.S. and Bar-at-Law.  
Mr. P. B. SHINGNE, B.A., LL.B., Advocate (Acting afterwards DIWAN BAHADUR).

## THE HONOURABLE

- Mr. K. W. BARLEE, B.A. (Dub.), I.C.S. and Bar-at-Law (Afterwards Sir KENNETH).  
Mr. H. J. KANIA, LL.B., Advocate (O. S.) (Acted as Chief Justice) (Became Judge of the Federal Court and later Chief Justice of the Supreme Court of India).  
Mr. D. D. NANAVATI, B.A. (Bom. & Cantab.), I.C.S. and Bar-at-Law (Acting).  
Mr. FAIZ BADRUDDIN TYABJI, Bar-at-Law (Acting).  
Mr. N. J. WADIA, B.A. (Bom. & Cantab.), I.C.S. and Bar-at-Law (Afterwards Sir NAWROJI).  
Mr. H. V. DIVATIA, M.A., LL.B., Advocate (Afterwards Sir HARSIDHBHAI).  
Mr. A. S. R. MACKLIN, B.A. (Cantab.), I.C.S. (Afterwards Sir ALBERT).  
Mr. K. C. SEN, B.A. (Cal. & Cantab.), I.C.S.  
Mr. A. A. CHITRE, LL.B., Advocate (O. S.) (Acting).  
Mr. K. B. WASSOODEW, B.A., LL.B.  
Mr. N. P. ENGINEER, B.A., LL.B., Advocate (O. S.) (Additional).  
Mr. M. A. SOMAJEE, B.A., LL.B., Bar-at-Law.  
Mr. D. R. NORMAN, I.C.S. (Acting).  
Mr. G. N. THAKORE, B.A., LL.B., Advocate (O. S.) (Acting).  
Mr. N. S. LOKUR, B.A., LL.B.  
Mr. INDRNARAYAN BRIJMOHANLAL, B.A., LL.B. (Acting).  
Mr. M. C. CHAGLA, B.A. (Oxon.), Bar-at-Law (Became Chief Justice on the 3rd January 1948).  
Mr. ERIC WESTON, B.A. (Cantab.), I.C.S. (Became Chief Justice of the High Court of the East Punjab State).  
Mr. N. H. C. COYAJEE, B.A., B.Sc. (London), Bar-at-Law (Acted as Chief Justice).  
Mr. J. B. BLAGDEN, Bar-at-Law.  
Mr. K. A. SOMAJEE, M.A., LL.B., Bar-at-Law (Additional).  
Mr. G. S. RAJADHYAKSHA, M.A. (Cantab.), I.C.S. and Bar-at-Law.  
Mr. N. H. BHAGWATI, B.A., LL.B., Advocate (O. S.) (Later became Judge of the Supreme Court of India).  
Mr. R. S. BAVDEKAR, B.A. (Bom. & Cantab.), I.C.S.  
Mr. P. B. GAJENDRAGADKAR, M.A., LL.B., Advocate (A. S.) (Became Judge and later Chief Justice of the Supreme Court of India on 1st February 1964).  
Mr. Y. V. DIKSHIT, B.A., LL.B., Advocate (A. S.) (Acted as Chief Justice).  
Mr. S. R. TENDOLKAR, Bar-at-Law, Advocate (O. S.).  
Mr. M. V. DESAI, B.A., LL.B., Bar-at-Law, Advocate (O. S.) (Additional).  
Mr. R. A. JAHAGIRDAR, M.A., LL.B., Advocate (A.S.) (Additional).  
Mr. K. T. MANGALMURTI, B.Sc., LL.B., I.C.S.  
Mr. HASHMATRAI KHUBCHAND CHAINANI, B.A. (Cantab.), I.C.S. (Became Chief Justice on 29th September 1958).  
Mr. J. C. SHAH, B.A., LL.B., Advocate (O. S.) (Became Judge and later Chief Justice of the Supreme Court of India on 17th December 1970).  
Mr. J. R. MUDHOLKAR, B.A., LL.B., Bar-at-Law.  
Mr. D. V. VYAS, B.A. (Bom. & Cantab.), M.A. (Cantab.), I.C.S.  
Mr. M. C. SHAH, B.A. (Hons.), LL.B.  
Mr. S. T. DESAI, B.A., LL.B., Bar-at-Law.  
Mr. Y. S. TAMBE, B.A., LL.B. (Became Chief Justice on 7th February 1966).  
Mr. B. N. GOKHALE, M.A., LL.B., Advocate.  
Mr. SHRIPATRAU PALNITKAR, B.A. (Hons.), LL.B.  
Mr. S. P. KOTVAL, B.A., LL.B. (Became Chief Justice on 31st July 1966).  
Mr. K. G. DATAR, B.A., LL.B.  
Mr. K. T. DESAI, B.A., LL.B., Advocate (O.S.).  
Mr. J. M. SHELAT, M.A. (Lond.), Bar-at-Law.

THE HONOURABLE

- Mr. N. A. MODY, B.A., LL.B., Advocate (O.S.) (Acted as Chief Justice).  
Mr. N. M. MIABHOY, B.A., LL.B.  
Mr. G. B. BADKAS, M.A., LL.B.  
Mr. V. M. TARKUNDE, B. Ag. (Bom.), Bar-at-Law.  
Mr. D. V. PATEL, B.Sc., LL.B.  
Mr. V. S. DESAI, B.Sc., LL.B.  
Mr. K. K. DESAI, B.A., LL.B., Advocate (O. S.) (Became Chief Justice on 27th September 1972).  
Mr. V. A. NAIK, B.A. (Hons.), LL.B.  
Mr. V. B. RAJU, M.A., Diploma in Economics (Madras), I.C.S.  
Mr. S. G. PATWARDHAN, B.A., B.Sc., LL.M.  
Mr. S. M. SHAH, Bar-at-Law.  
Mr. N. L. ABHYANKAR, B.A., LL.B., Advocate.  
Mr. M. G. CHITALE, B.A., LL.B.  
Mr. Y. V. CHANDRACHUD, B.A., LL.B. (Became Judge and later Chief Justice of Supreme Court of India on 22nd February 1978).  
Mr. D. P. SHIKHARE, B.A., LL.B. (Additional).  
Mr. D. G. PALEKAR, B.A. (Hons.), LL.B.  
Mr. R. M. KANTAWALA, M.A., LL.B., Advocate (O. S.) (Became Chief Justice on 27th October 1972).  
Mr. V. G. WAGLE, B.A., LL.M.  
Mr. H. R. GOKHALE, B.A., LL.B.  
Mr. L. M. PARANJAPE, M.A., LL.B.  
Mr. V. D. TULZAPURKAR, B.A., LL.B., Attorney-at-Law (Acted as Chief Justice and later Judge of Supreme Court of India).  
Mr. B. D. Bal, B.Sc., LL.B.  
Mr. B. N. DESHMUKH, M.A., LL.B. (Became Chief Justice on 6th October 1978).  
Mr. D. B. PADHYE, B.Sc., LL.B.  
Mr. M. V. PARANJAPE, LL.B. (Additional).  
Mr. G. A. THAKKAR, LL.B., Advocate (O. S.) (Additional).  
Mr. J. R. VIMADALAL, B.A. (Hons.), LL.B., Advocate (O. S.)  
Mr. V. S. DESHPANDE, B.A., LL.B. (Became Chief Justice on 12th January 1981).  
Mr. N. P. NATHWANI, B.A. (Hons.), LL.B., Advocate (O. S.).  
Mr. J. L. NAIN, Bar-at-Law.  
Mr. D. P. MADON, B.A. (Hons.), LL.B., Advocate (O. S.) (Became Chief Justice on 11th August 1982 and later Judge of Supreme Court of India).  
Mr. M. N. CHANDURKAR, M.A., LL.B. (Became Chief Justice on 15th March 1983 and later was appointed Chief Justice of Madras High Court).  
Mr. D. G. GATNE, B.A. (Hons.), LL.B.  
Mr. M. S. APTE, B.A., LL.B.  
Mr. R. R. BHOLE, B.Sc., LL.B.  
Mr. G. N. VAIDYA, M.A., LL.B.  
Mr. N. D. KAMAT, B.A. (Hons.), LL.B.  
Mr. S. B. BHASME, B.A. (Hons.), LL.B.  
Mr. M. H. KANIA, B.A., LL.B. (Became Chief Justice and later Judge of Supreme Court of India)  
Mr. S. K. DESAI, B.A., LL.B.\*  
Mr. M. A. R. KHAN, B.A., LL.B. (Additional).  
Mr. S. M. HAJARNAVIS, B.A., LL.B.  
Mr. P. S. MALVANKAR, M.A., LL.B.  
Mr. R. K. JOSHI, B.A., LL.B.  
Mr. B. A. MASODKAR, M.A., LL.B.

THE HONOURABLE

- Mr. C. S. DHARMADHIKARI, M.A., LL.B.\*  
Mr. P. M. MUKHI, M.A., LL.B.  
Mr. P. S. SHAH, B.Sc., LL.B.\*  
Mr. G. G. BHOJRAJ, M.A., LL.B. (Additional).  
Mr. B. M. SAPRE, B.A., LL.B.  
Mr. N. B. NAIK, B.A. (Hons.), LL.B.  
Mr. D. M. REGE, LL.B., Advocate (O. S.).  
Mr. J. M. GANDHI, B.A. (Hons.), LL.B.  
Mr. C. L. DUDHIA, M.A. (Cantab.), LL.B. (Cantab.), Bar-at-Law (Additional).  
Mr. R. L. AGGARWAL, LL.B.\*  
Mr. B. LENTIN, LL.B. and Bar-at-Law.\*  
Mr. P. B. SAWANT, B.A. (Spl.) (Hons.), LL.B.\*  
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Mr. M. P. KENIA, B.A., LL.B.\* (Additional).  
Mr. V. P. TIPNIS, M.A., LL.M.\* (Additional).



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\*In office on 14th August 1987.

# PORTRAITS IN THE COURT ROOMS OF THE HIGH COURT BUILDINGS

Court Room Nos.

Portraits

## AT BOMBAY

- 31 (1) Mr. Justice S. R. Tendolkar (1947—1958)
- 40 (1) Sir Justice Dinsha D. Davar (1906—1016 ; Ag. C. J. in 1914)  
(2) Sir Justice Charles F. Farran (1890—1895 ; C. J. from 1895—1898)  
(3) Mr. Justice B. Tyabji (1898—1906)  
(4) Mr. Justice K. T. Telang (1889—1893)
- 43 (1) Sir Justice Norman C. Macleod (1910—1919 ; C. J. from 1919—1925)  
(2) Mr. Justice H. J. Kania (1933—1946)  
(3) Sir Justice Bomanji J. Wadia (1931—1941)  
(4) Mr. Justice S. S. Rangnekar (1929—1938)  
(5) Mr. Justice P. B. Gajendragadkar (1945—1957)  
(6) Mr. Justice J. C. Shah (1949—1959)
- 46 (1) Sir Justice John P. Grant (1828—1830—Supreme Court)  
(2) Sir Justice Charles S. Sargent (1866—1882 ; C. J. from 1882—1895)
- 49 (1) Mr. Justice M. G. Ranade (1893—1901)  
(2) Sir Justice Lallubhai A. Shah (1913—1926)  
(3) Sir Justice Harsidhbhai V. Divatia (1933—1946)  
(4) Sir Justice Sitaram S. Patkar (1926—1933)  
(5) Mr. Justice H. J. Parsons (1887—1900)  
(6) Sir Justice Maxwell Melvill (1871—1884)  
(7) Sir Justice Narayan G. Chandavarkar (1901—1913)  
(8) Mr. Justice N. S. Lokur (1942—1947)
- 52 (1) Sir Justice Lawrence H. Jenkins (C. J. 1899—1908)  
(2) Sir Justice John W. F. Beaumont (C. J. 1930—1943)  
(3) Sir Justice Charles S. Sargent (1866—1882 ; C. J. from 1882—1895)  
(4) Sir Justice Michael R. Westropp  
(5) Mr. Justice M. C. Chagla (1941—1948 ; C. J. from 1948—1958)  
(6) Mr. Justice H. K. Chainani (1948—1958 ; C. J. from 1958—1965)
- 53 (1) Mr. Justice N. Haridas (1883—1889)
- 54 (1) Sir Justice Lyttelton H. Bayley (1869—1895)

## AT NAGPUR

- A (1) Mr. Justice Vivian Bose (1936—1949 ; C. J. of Nagpur High Court from 1949—1951)

## AT AURANGABAD

- 1 (1) Mr. Justice M. C. Chagla (1941—1948 ; C. J. from 1948—1958)  
(2) Mr. Justice V. S. Deshpande (1967—1980 ; C. J. from 1980—1982)
- 2 (1) Mr. Justice M. P. Kanade (1977—1983)  
(2) Mr. Justice D. B. Deshpande (1979—1984).

**THE REGISTRARS OF THE HIGH COURT AT BOMBAY  
FROM 1962—1987**

					Period
1	Mr. D. G. GATNE	..	..	..	1961—1963
2	Mr. N. D. KAMAT	..	..	..	1963—1967
3	Mr. P. S. MALVANKAR	..	..	..	1967—1970
4	Mr. B. M. SAPRE	..	..	..	1970—1972
5	Mr. P. G. KARNIK	..	..	..	1972—1976
6	Mr. V. V. JOSHI	..	..	..	1976—1978
7	Mr. D. B. DESHPANDE	..	..	..	1978—1979
8	Mr. S. N. KHATRI	..	..	..	1979—1982
9	Mr. S. M. DAUD	..	..	..	1982—1985
10	Mr. R. G. SINDHAKAR	..	..	..	1985—TILL DATE

**PROTHONOTARIES OF THE HIGH COURT AT BOMBAY  
FROM 1962—1987**

1	Mr. S. J. RAHIMTOOLA	..	..	..	1940—1964
2	Mr. S. H. A. VAKIL	..	..	..	1964—1975
3	Mr. A. P. YAJNIK	..	..	..	1975—1980
4	Mr. D. B. KHADE	..	..	..	1980—1984
5	Miss. KATY R. BHARUCHA	..	..	..	1984—TILL DATE

**THE ADVOCATES-GENERAL OF MAHARASHTRA STATE  
1962—1987**

1	Mr. H. M. SEERVAI	..	..	..	1957—1974
2	Mr. R. W. ADIK	..	..	..	1974—1978
3	Mr. R. S. BHONSALE	..	..	..	1978—1979
4	Mr. A. S. BOBDE	..	..	..	1980—1982
5	Mr. A. V. SAVANT	..	..	..	1982—1987
6	Mr. A. S. BOBDE	..	..	..	1987—TILL DATE

□