

## LOG-BOOK 109-111

*This article was written on 125<sup>th</sup> anniversary of the Allahabad High Court when I was a practising lawyer. It relates to the role of the Allahabad High Court during internal emergency during 1975-77. These years were 109<sup>th</sup> to 111<sup>th</sup> year since establishment of the Allahabad High Court in 1866. It is written as if the Allahabad High Court is reminiscing the role of its Judges and lawyers during emergency, its most difficult period since its inception.*

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I was born hundred and twenty-five years ago. My parents had moved away from our ancestral home in Calcutta. They always wanted to settle in Allahabad. Even my ancestors wished it. But my parents began at Agra. I was born there. I shifted to Allahabad within three years of my birth. I do not remember many things. But of these 125 years, I remember 21 months of 1975-77; the dark period as it is known or was it really dark. It was spread over 109<sup>th</sup> to 111<sup>th</sup> years since my birth.

Thousands were arrested at that time. They had come to me. Was it for their liberty or for their pay: or for the principles? May be for my dignity, my existence. I had my limitations. The right to come to me was suspended.

### JUDGES

You remember HN Seth and GD Srivastava. They were hesitant. They referred the Habeas Corpus petition of one of my guardians VKS Chaudhary detained under MISA, at that time, to the larger bench. He is at present guardian in chief<sup>1</sup>. I have always treated the judges as my children; lawyers as my guardians; and the Advocate General as my guardian in chief. Five of my children sat down to settle '*Should people be permitted to come to me for their release.*'

Today this might seem simple but in fact it was not. It troubled everyone. But four of them said yes. What a sigh of relief! KB Asthana spoke in Hindi. It was so that people may understand. It was more of rhetoric, but needed at that time. GC Mathur was traditional. Two others, HN Seth and KN Singh had a new insight. The fifth one spoke in different language. He held that people should not be so permitted. I forget his name<sup>2</sup>. Do not blame me. Do you remember any one apart from Atkin, who were there in *Liversidge Vs Anderson*<sup>3</sup>.

How can I forget DM Chandrashekhar<sup>4</sup> the one who came from Karnataka. He had strongly dealt with similar matters there. By the time he came here, the elder had upset my decision. It had closed not only my doors but also doors of all my brothers. And his doors as well. He was wrong. But what could I say. My elder binds me. All Habeas Corpus

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<sup>1</sup> VKS Chaudhary was the Advocate General at the time of 125<sup>th</sup> anniversary of the Allahabad High Court.

<sup>2</sup> He was Justice MN Shukla.

<sup>3</sup> 1941(3) AIER 338.

<sup>4</sup> Justice DM Chandrashekhar was transferred on punishment. He had held in the writ petitions filed by Atal Bihari Vajpayee, LK Advani and others that Habeas Corpus is maintainable. He became the Chief Justice of Allahabad High Court. This was during the time when Janata Party was in power in centre. He was senior most here. Justice Satish Chandra, who was to become the Chief Justice in case he was not transferred, did not appreciate it. He resigned, then took back his resignation on the understanding that Justice DM Chandrashekhar will go back. This led to litigation. This happened for the first time that a High Court Judge resigned and took back his resignation. Justice Satish Chandra though lost from the High Court but won the case from the Supreme Court (*Union of India Vs Gopal Chandra Misra* AIR 1978 SC 694). Chief Justice Chandrashekhar went back to Karnataka and Justice Satish Chandra became Chief Justice of the Allahabad High Court. He later went to Calcutta High Court as its Chief Justice.

petitions were coming up for hearing. Nothing could be done. They had to be dismissed. But these petitions were from jail. They had no one to look after them. Should they be dismissed without hearing the detainees or should they be heard? The State was pressing hard. They should be dismissed without hearing the petitioners; bringing all these petitioners will not only entail expenses but will be a security risk. Do you know what he said? It still rings in my ears. *'Principles of natural justice are not empty formality. We have to hear the detainees. If you arrest them you have to pay the expenses.'* Was it compassion; was it dignity; or was it the love for liberty? I cannot say. May be it was in my honour. Sometimes I find it difficult to fathom my own children.

What about the contempt application. The Habeas Corpus Petition of VKS Chaudhary, which was referred to the larger bench, was sent from jail. The Superintendent of Jail instead of sending it to me had sent it to the District Magistrate. He later said that the District Magistrate had instructed that all petition be routed through him, who wanted to be satisfied about the maintainability of the petition. And then and only then was it to be sent to me. Imagine- What temerity! The District Magistrate had also ordered that the interview between detainee and his advocate would take place in the presence of Assistant Jailer. HN Seth and GD Srivastava not only held the order to be illegal but also held of them to be guilty of contempt. Not on one but on both counts.

There were other cases; Professors, teachers, workers stripped off their jobs; stripped off their salary, but not of their dignity. Of course you remember those who granted relief- Yashoda Nandan, HN Seth and BN Sapru. The families would have famished but for the orders.

Yoshada Nandan parted company early, before it was due. He was short but stood tall in those difficult times. With his immaculate manners and command over languages he could control his Court well. But even he would often be irritated with the state action.

HN Seth, who was rather difficult with *ex parte* motions, was liberal. After all it was a matter of liberty.

BN Sapru was quick and often sat with the other two. Due to him much became possible.

I remember the other day; a boy had come to me. He was throughout first class, but his services were terminated. He had carried a poster on his back *'Down with emergency'*. It was in those black days and for this he was sentenced to jail under DIR. He did not file an appeal. His conviction stood. Sapru initially granted the interim order, but on being informed, that his order may not be respected on the pretext that termination order had been given effect to, he took the file back, cut that order. And then in his own hand writing, an unusual gesture, wrote, *'the boy shall be taken back in service.'*<sup>5</sup> It saved the boy's life.

Do you remember *Rule 194 of DIR*.<sup>6</sup>? I mean the clause (b) of that rule. Let me remind you. It provided that in case prosecution opposes the bail application and there is a contravention of the rules or the orders made there-under then bail may not be granted unless the Court has reasonable grounds for believing that the accused is not guilty of such contravention. Of course the bail applications were strongly opposed. All FIRs were similar, if not the same. All accused were respectable persons from different walks of life- Professors, doctors, advocates, and political thinkers. Every one knew these cases were

<sup>5</sup> This was interim Order. This happened when Janata party had fallen and Indira Gandhi was the Prime Minister. LP Nathani advocate opposed this order, at the time of confirmation, on behalf his employers ONGC. I was very nervous that court might vacate it on the technical ground that termination order was given effect to. Justice SD Agarwala confirmed it. The matter was taken to Supreme Court by ONGC. A bench headed by Chief Justice YV Chandrachud confirmed the interim order and suggested to the ONGC to end this litigation, which they gracefully did.

<sup>6</sup> DIR is short form of Defence of India Rules.

false<sup>7</sup>.

JP Chaturvedi, much to my relief and to the relief of the oppressed started granting bail. And MP Saxena, the chirpy one would often say that rule 194 (b) works the other way round. According to him all these first information reports were false unless proved to the contrary.

It is often said that '*great cases like hard cases make bad law*'. The phrase has to catch on; after all it was Holmes who made it famous<sup>8</sup>. But in the words of Ronald Dworking '*hard cases make great judges*'. Those twenty-one months are witness of it. These were those who stood firm in those difficult times. But to say that they were the only ones would be wrong. There were others. Some, who refused to appear for the Government. But what do you expect of an old man. I forget.

### LAWYERS

What about- my guardians? I recollect they had passed a resolution condemning those dark days. I was sure of that. But somehow it is not in their diary. I remember the guardians had signed up a petition urging the Government that VKS Chaudhary be released. Some did not sign. But it is immaterial. What is material is that all who mattered had signed, irrespective of their political ideologies. Many searched in vain to sign the petition. They had missed it. It was already sent.

Almost those who had appeared for these innocents harassed detenues, for one relief or other had appeared without any fees or for nominal fees. And many appeared at the cost of their own arrest. Why did they do so? I think they did for me. I feel humble. In that short period they paid me back, whatever they owed me. One can talk about many. But I wish to talk about three: Jagdish Swarup, SN Kacker and SC Khare ... for they are no more.

Jagdish Swarup was learned. He appeared for detenues; for liberty. He was a pessimist. He would often tell his clients they had no case- but not- in this one. He would often inspire when light of liberty might be flickering.

SN Kacker<sup>9</sup> was a better orator. He appeared to support the state action, the emergency itself. He was guardian in chief at that time. People often say '*he ought not to have appeared*'. But those who say really do not understand the role of the guardians<sup>10</sup>. You see, guardians have to appear. They cannot refuse. But there were others who refused to appear for the Government. Well, guardians are masters of their own conscience.

SC Khare was not a good orator, but was probably the most brilliant. He himself did not argue in these cases. He had personal difficulty. He had appeared for Indira Gandhi the then Prime Minister in the election petition and had lost. It is after that or was it due to that emergency was imposed. During those difficult times State Government amended the rules laying down the conditions of detention. It was to the detriment of the detenues. There were too many of them. The Government was unable to look after them. It was argued that these advocates, doctors, professors, political activists- who were innocent, yet detenues- at least be given if not humane treatment then at least the same treatment that was being given to murderers and hardened criminals. The guardian in chief opposed it.<sup>11</sup> Fundamental rights were suspended. It was difficult time. If you remember it was the

<sup>7</sup> Internal emergency reminds one of George Orwell's Nineteen Eighty-four. False documents and FIRs were officially prepared.

<sup>8</sup> *Northern Securities Vs US*.

<sup>9</sup> SN Kacker opposed the Habeas Corpus petitions before High Court in the 1<sup>st</sup> round and the Supreme Court. He later on resigned when the Chief Minister resigned. He became Solicitor General of India after emergency when Janata Party came in power.

<sup>10</sup> Kindly see the article Lawyers' Creed in the book 'A Lawyer's World and Childhood Dreams'.

<sup>11</sup> I had argued these matters. It was opposed by Raja Ram Agarwal, the then Advocate General of UP. SN Kacker had resigned as the Chief Minister had stepped down. I had

time when Niren De, the guardian in chief before the elder, had argued that Government could shoot anybody without being questioned and was spared by him. It is at that time that SC Khare helped- with principles and precedents.

On my 100<sup>th</sup> birthday, KL Mishra<sup>12</sup> the then guardian in chief said, '*... in very recent history, it (Allahabad) had acquired a reputation for standing against tyranny and oppression.*' I did not disappoint him. I have to fulfil one of his other prophecies. I have to wait '*for visitors from Mars and from Venus and even from other planets and stars (for 1) have to prove (my) traditions of justice, independence and impartiality.*'<sup>13</sup>

This dark period or with your permission this bright period is ample proof of that. I know I will go on. Guardians are seldom wrong.

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taken up the point on the basis of 'delegatus non potest delegare'. The bench of Justice Yashoda Nandan and Justice BN Saprú wanted to give relief but were not fully convinced. The matter was put up for the next date. SC Khare who was listening to the arguments asked me to meet him next day morning at 5 AM. This was his usual time. He suggested me to advance arguments on the line that discretion has to be exercised on the relevant considerations. In case relevant considerations are not indicated then the court should cull out the same on the principles of *Padfields Vs Minister of Agriculture* 1968 (1) ALLER 694. This was my first lesson on administrative law. It was so argued the next day and the Court granted interim orders.

<sup>12</sup> There is an excellent biography of KL Misra by SS Ray Sr. Advocate. It appears in Commemoration Volume I of Post Centenary Silver Jubilee of Allahabad High Court.

<sup>13</sup> This was an impromptu speech. It was in answer to President Radhakrishnan's speech on the centenary celebration of the Allahabad High Court. President Radhakrishnan, had unintentionally offended many. It is not only one of the finest speeches ever delivered but also the most inspiring. Both speeches are printed in Commemoration volume II of the Centenary celebrations as well as Post Centenary Silver Jubilee celebrations of the Allahabad High Court.