

My Predecessors-in-Office

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I

In my appointment as Advocate General, Dr. Narain Prasad Asthana smilingly said to me, "You are my great grandchild". I was the fourth in the line of descent from him-Mohammad Wasim and Peary Lal Banerji having been the second and the third Advocates General of U. P. When, therefore, on the 13th of May, 1966, soon after his 93rd birthday, his grandchildren and great grandchildren invited a few persons to a party in his honour, I felt that I should join the hosts. And what a party it was, full of joy and frolic and fun, the toy balloons of variegated colours, glittering in the array of ninety-three candles and the children, brighter than the candles, rejoicing and clustering around him to wish him many many happy returns of the day; and there was Dr. Asthana, his face shining with the happiness of health, age and achievements.

Any person, after his ninety years, has to face inevitable enquiries about the secret of his longevity. The usual answers are, "I do not drink, I do not smoke, I eat sparingly, I keep regular hours". Dr. Asthana has never been able to give these answers, because they would not be true. At a late dinner, he can be seen any day enjoying the food and the drink and the after-dinner smoke with the zest of younger years. The secret of his longevity is the calm and unruffled face, the equanimity that would not be disturbed either by hilarious joy or by the depth of sorrow. What others have attempted by moderation in physical things, Dr. Asthana has achieved by moderation in thought and in emotion.

Old age has its compensations; but how few are those who can say while growing old, that the best is yet to be in "the last of life for which the first was made." When for a person who has led an aimless and desultory life, the shadows lengthen out and the midnight hour appears to be approaching, the sense of night, leaden and paralysing, deepens the sadness of what might have been. He starts living entirely in the past, clinging to the elusive memory of his contemporaries, slipping, one by one, into the void of eternity. Dr. Asthana's life has had its light and shade, joy and sorrow. Personal triumphs and achievements have mingled with deep bereavements, but both have furnished occasions for the serenity which comes only to those who have lived without rancour and malice, and who, like Dr. Asthana, have realised that life's calamities are not necessarily a punishment and its triumphs and attainments not necessarily a reward.

Dr. Asthana is the tenth President of the High Court Bar Association, Pandit Ajudhia Nath, in 1875, having been the first President. He has been the President for 18 years, the longest term of any President, except the 25 years of Sir Tej Bahadur Sapru, his immediate predecessor. Dr. Asthana is today the grand old man of the Bar because he has not stood aloof as he has grown older. The changing society and the advancing thoughts and points of view have not left him alone and isolated. Attending the High Court almost every day, even now, he shares the joys and sorrows of the members of the Bar and is with them in their difficulties and their problems. He has remained alive and active, without the faltering steps of age, taking delight in the joy of life and joining hilarious laughter.

Dr. Asthana's career, as a lawyer, began when the rule of the British Crown over India was only 37 years' old. A century had, however, elapsed since the creation, in 1793, of the modern legal profession in India, by the first Regulation of the Governor-General, authorising the appointment of vakils. When he started practice at Agra in April, 1895, no present Judge, in India, of the Supreme Court or the High Courts, had yet been born. Dr. Asthana went, thereafter, from position to position, with the effortless strides of a person to whom achievements come, not by tireless striving after schemes for obtaining post and power, but as a recognition of merit that did not generate pride, and humility that was not affected by attainments and status. Soon after he had joined the High Court Bar, in April, 1915, he became a member, in 1916, of the U. P. Legislative Council. He was elected to the Council of State in 1927, became the Vice-Chancellor of the Agra University in 1929, LL. D., *Honoris Causa*, of that University in 1932 and the first Advocate General of U. P., when the Congress Party took office, in 1937. The post of the Advocate General had not yet become a political post, its remuneration was non-votable, and Dr. Asthana continued as Advocate General even after the Congress Ministry had resigned in 1942. The other distinctions that he achieved in the educational, social and legal spheres, the membership of the Executive Council of the Allahabad University, the Presidentship of the Kayastha Pathshala and of the U. P. Lawyers' Conference, were not epochs but merely stages of a smooth and unruffled life.

Law furnishes only the skeleton of any system of judicial administration. The muscles and the sinews, the coursing blood, that gives to an institution, like the High Court, its strength, its resilience and even its glory are furnished by its traditions. Each Judge and lawyer leaves behind him, in the wake of his advancing footprints, an aura, invisible and intangible, that makes up and enriches that tradition. It is only the memory of that tradition, wafted along the corridors of time, that shapes individual and collective action of a newer generation. It is very seldom that the old order is carried into the new by the visible presence of a person, who has rubbed shoulders with the builders and the makers of the old and is able to share the hopes and aspirations of the new. Of those, who were practising in the High Court, when Dr. Asthana joined it in 1915, only a few remain, the privileged long lived ones, Dr. K. N. Katju, Sir Iqbal Ahmad, Sri S. K. Dar, Sri Brij Narain Gurtu, Pandit Narmadeshwar Upadhyaya, Maulvi Mukhtar Ahmad, and Sri Janki Prasada. The High Court, in 1915, was a glittering array of jewels, some of them still uncut and in the making. There was Sunder Lal, the walking encyclopaedia of laws; Moti Lal Nehru, the matchless wizard, who, to the surprise and delight of a Judge, could turn a legal proposition or an issue of fact inside out, into an unexpected attractive picture; Satish Chandra Banerji, the philosopher and man of letters, whose entry into the fields of law enriched its literature, its learning and its practice; Sir Tej Bahadur Sapru, the great constitutional lawyer, whose nobility of character and deep grasp of international affairs, carried

aloft the name of India into lands across the seas; Charles Ross Alston who could, any day, convince any Judge that the defence case was a fact and the prosecution story, a fiction, and who could drag his client out of the gaping jaws of conviction, by an adroit cutting of the corners; and B. E. O'Connor, the profound analyst of facts. The cascade of brilliance of K. N. Katju and Peary Lal Banerji were then still in the womb of the future, but the promise must have even then been both visible and audible.

There were others, walking then in the corridors of the High Court building, men of keen intellect and profound learning who chose to go to the Bench. There was Shah Muhammad Sulaiman who combined a profound knowledge of law with the clarity and precision of thought of the mathematician and who, later took up cudgels with Einstein on certain aspects of the theory of Relativity; Iqbal Ahmad who could dispose of 124 cases under Order 41, rule II, C. P. C. in a single day and yet satisfy every counsel that he had been fully heard and who went to the heart of a criminal case while his brother judge was still groping with the first Information Report; Surendra Nath Sen, the effulgence of whose literary phrases illumined the dark corners of law and Uma Shanker Bajpai, suave and impeccable, whose gentle smile and witty literary words helped a stumbling and grouping counsel, across the barriers of each obstacle in the case. There were other notable contemporaries of Dr. Asthana, Golul Prasad, Sital Prasad Gse, G. W. Dillon, S. C. Choudhri and Satya Chandra Mukerji. The bar of the High court, in 1915, had the good fortune of containing men, whom Providence had chosen to mould the destinies of the nation-Pandit Madan Mohan Malaviya, clad in a cream achkan with his soft tongue and sweet persuasive voice, Jawaharlal Nahru, then fresh from Harrow and Cambridge, Purushottam Das Tandon, the embodiment of scruples and conscience and Ishwar Saran, the redoubtable champion of the Harijans.

The names of these, giants in their days, have passed into the history of this court and some of them into the history of this country. Their lofty thoughts and the impress of their activities have been woven into the texture that forms the valuable traditions of this court. Dr. Asthana not only carries the living memory of these men, but is an embodiment of that culture and tradition created and enriched by them.

The decades, that have passed since Dr. Asthana began the practice of law, have seen upheavals of the political, social and economic structure. Men have come on the stage of life and have gone, institutions have crumbled and been replaced, the world of 1966 has become unrecognisable to the citizen of 1915 but the changing panorama of life has not affected Dr. Asthana. The fundamentals of life do not change. Goodness is more rare and more difficult to attain than greatness. An infinite capacity for taking pains is said to produce a genius but a good man is God's own creation. Dr. Asthana has survived, like a pole star, and will continue for long long years to come because he is essentially and truly a good man.

II

Mohammad Wasim succeeded Dr. Asthana. The short period, during which he was Advocate General, was an interlude rather than a term. The atom bomb had finished the war in Asia. The marching columns of the Russian armies and waves of American bomber squadrons were, inevitably, closing on Germany. As the war clouds scattered over Europe the agitation in India, for a separate Muslim State, increased in volume and intensity. Chaudhari Khaliqzaman, brother-in-law of Mohammad Wasim had broken away from the Indian National Congress and led the Muslim League, in its agitation for a partition of India. Mohammad Wasim was essentially a man of law, devoted to his profession, but the lure of politics, and his brother-in-law, led him into adopting the Muslim League ideology. Mohammad Wasim had been called to the Bar and had joined Lincoln's Inn on the 27th January, 1908. He came to India and joined the Avadh Bar at Lucknow and became one of its leaders. With a clear and comprehensive grasp of the law of procedure and the Oudh Estates Act, Wasim became the idol of every Taluqedar, who went to law Courts. Gifted with the capacity of precise thinking and expression, he had his answers ready to every question in a Court-room and had risen to a place among the leaders, more than two decades before his appointment as Advocate General by the Governor of Uttar Pradesh.

With the partition of India, Mohammad Wasim migrated to Pakistan and became a Judge of the High Court at Dacca, and later the Advocate General of Pakistan. He represented Pakistan as a member of its Delegation to the United Nations Organization. Mohammad Wasim died in Pakistan far away from the field of his life's labours and the large circle of his friends in Lucknow and Uttar Pradesh. His successor to the post of Advocate General of Pakistan was another member of the Avadh Bar, Mr. Faiyaz Ali.

The time during which Mohammad Wasim was the Advocate General of Uttar Pradesh was too short for any deep or lasting impression being created. He stood at the parting of the ways and deliberately selected the road to Pakistan. His gentle and courteous manner and his neat presentation of cases would continue to be remembered by all those who had come in contact with him.

III

When Mohammad Wasim relinquished the office of Advocate General, a new and free India had been born. The dawn of freedom brought, in its wake, the responsibilities of freedom which were bound to be more onerous than those in the routine administration of a foreign Government. Victory over a towering imperialist power, with the matchless and unprecedented weapon of a non-violent fight, had given delight and jubilation. But the people had come on the stage, and the glare of the footlights had brought into prominence their poverty and ignorance. The small tillers of the soil, who provided food for society, were living under a subordination, more pervading and intimate, and, sometimes, more harsh, than foreign domination. The subordination of man by man was inconsistent with the dignity of a citizen of free India. Landlordism had to be abolished to restore- that dignity, even though its disappearance might not, immediately, solve any economic problem. Human personality had to be freed, even if the loosening of the bonds of the landlord over the tenant created new and unforeseen difficulties.

Visible on the horizon were many of the complexities that would arise in the process of transforming the economic and social structure of society. The task of giving advice to Council of Ministers in the

construction of that new structure, and of the wheels of law on which a free democracy would move on its onward march to peace and prosperity, though fascinating was likely to be beset with hurdles. A Constituent Assembly, of a sovereign nation, was engaged in the task of framing a Constitution for a free people. The dignity of the individual and his rights were bound to be recognised and guaranteed by the Constitution. The law of the future would require the language and content of liberty. The atmosphere was pregnant with immense possibilities. Even though it might become a routine selection later on, the choice of an Advocate General of the largest State in India, adequate to that occasion, had to be of the very best person available.

There was nothing then to cloud the vision or impede a selection on merits. The narrow grooves of personal power-politics, that reduce selection into jobbery, had not yet been formed. The ideals, with which Mahatma Gandhi's saintly leadership had saturated the country, had not yet been blunted by tireless stale repetitions in the speeches of the politician. Clean and noble patriotism, that the national fight had aroused, had not yet been reduced to meaningless shibboleths and slogans, for capturing power and position. The choice was easy. Sir Tej Bahadur Sapru, even if he could have been possibly persuaded to accept, was no longer in active practice. Dr. Kailas Nath Katju had been in the vanguard of the battle for freedom and was in a Cabinet post. Peary Lal Banerji, the acknowledged leader of the Bar, was the obvious choice and was selected.

But Peary Lal Banerji's appointment, as Advocate General of Uttar Pradesh, was not based upon political considerations. By his upbringing and conviction, he had been loyal to the British Crown. He was the second son of Shri Dwarka Nath Banerji, a leading criminal lawyer in the High Court, who had joined the rank of Barristers and who spent the High Court vacations, like European Judges, outside India. Dwarka Nath Banerji had become a British subject and his third son, born in England, was named 'George'. He gave to Peary Lal Banerji, as inheritance, not only a love of the English language, but deep respect for the British Crown. Though Peary Lal Banerji's loyalty had not the servile, cringing quality of the fawning publican, there was nothing common, in ideals and outlook, between him and the Congress Government. Future Government was bound to be based on a positive policy, and an Advocate General had to be in tune with that policy. Peary Lal Banerji's appointment, therefore, was an experiment into the darkness of the unknown, but it was hoped that his eminence, his profound knowledge of law and the deep respect that he was bound to command, would smoothen the obstacles that might arise. That hope was not belied, though no occasion arose for his attending the Legislature, even after the right of the Advocate General to attend and take part in its proceedings had been recognised by the Constitution.

Besides the love of the English language, Peary Lal Banerji appears to have inherited from his father, the English habit of meticulous punctuality. It was possible to regulate a watch by his daily routine; his sitting, in his office from 7.30 to 9 in the morning, and, summoned by the gong, at his dinner table at 8.30 in the evening. Year after year, he would leave Allahabad for his summer vacation, by the forenoon train on the 20th of May. His daily fees, for professional services were fixed and would not be varied, on any provocation. The identity even of the pair of shoes that he would wear on a particular day were known.

But regulated as his life was by a chronometer, Peary Lal Banerji was a person of deep culture and sensibility. Culture had, in fact, walked into his house when he married Shanta, the daughter of Shri S. P. Ganguli, a close relative of Rabindra Nath Tagore. Peary Lal Banerji's residence, 41 George Town, was named Shantavas after his wife, and, on two occasions Tagore came and stayed at Shantavas. Shri Ganguli himself lived there for years and planned a beautiful garden of fruits and vegetables including a Japanese miniature Table garden. In later years, the garden was enriched and ornamented, with exquisite taste, by Peary Lal Banerji's close and constant friend, Pandit Narmadeshwar Upadhyaya, when it became a feast for the eyes of the connoisseur.

Peary Lal Banerji, at the age of 25, joined the High Court Bar in 1908, somewhat reluctantly, at the insistence of Dr. Satish Chandra Banerji. Many advocates have found that part-time teaching in law, in the Allahabad University, has been a stepping-stone either to the Bench or to eminence in the profession. Peary Lal Banerji became, after Sir Tej Bahadur Sapru, a part-time lecturer in law, but his rapid rise in the profession, soon engrossed all his time and attention.

Peary Lal Banerji's command over the English language was a marvel. I have not myself heard any other Advocate in India having that matchless combination of diction, rhythm and facility of speech. During about twenty years that I had the privilege of hearing him, I cannot recollect a single occasion when he hesitated or slurred over a word, or where a sentence, howsoever complicated, once begun, had to be reconstructed. The regular cadence that appeared to pour forth from an inexhaustible vocabulary was never interrupted or disturbed. But it was not merely an amazing flow of words. His language in the law courts, couched in phrases, inspired by the width and variety of English literature and classic expressions in Privy Council judgments, would have brought credit to any Advocate in the world.

But a mere emphasis on the flow of words would give an inadequate picture of Peary Lal Banerji. A facility of speech, or a seeming command over words may merely be the smooth expression of a superficial acquaintance with a problem. A facile jack of all trades, with a gift of the gab, will not make a great or even a competent Advocate. The mind of a trained Advocate is an apparatus and a technique of thinking. It is a storehouse of classified relevant material, informed with commonsense, derived from constant contact with the outside world. Peary Lal Banerji's language was the outward expression of a profound knowledge of law and precise thinking. The depth of language was only the manifestation of the depth of his thoughts.

The depth of the learning of an Advocate scatters itself through his spoken words. It leaves no memorial behind. When it reaches the heart of a Judge, it sometimes shines out, but only anonymously, through great and immortal judgments. But there are occasions when the memory of a profound and discerning mind is left in the archives of time. Let me illustrate.

A dispute of succession to the properties of the Majhauri Raj opened in about 1923. The Raj was owned by an ancient family in which the sister of Gautam Buddha had been married. It had a known and unbroken descent of successive Rajas, beginning in the mist of antiquity, and right through the Christian era. Succession to the Raj was governed by the family custom of male lineal primogeniture. A Raja had died in 1911 and the Court of Wards was in possession on behalf of Rani Shyam Sunder Kuer, the widow. The remote collateral, who was in possession of a *Babuai* grant, given to his ancestors, claimed the estate against the widow. He could only succeed if he still formed a joint family with the Raja and was a member of the coparcenary of an impartible estate under the Hindu Law. The defence to the claim was that the common ancestor had lived 200 years away in the past, that for about a hundred years there was not only separation in ownership of property, food, residence and worship, but there had been a bitter feud, handed down from generation to generation, between the family of the Raja and the family of the claimant. It was inconceivable, said the defence, that the unstable cohesion of a joint Hindu family, which is broken into separation by the mere jolt of an expressed intention, could have withstood all the indicia of separation and the bitter hostility of the Raja's family with the remote family of the claimant.

Banerji appeared for the claimant on the date of issues and was called upon to make a statement. He asserted that the claimant was a member of the notional coparcenary of an impartible Raj and could lose his right to succeed to the estate only by an express renunciation of his right to succeed. His possession of a *Babuai* grant was conclusive evidence of jointness and nothing else, said Banerji, was relied upon to establish Jointness.

On the state of authorities then, the confidence behind the statement, made on the date of issues, was amazing. When the case went to trial, voluminous evidence, which would have proved separation, ten times over, in an ordinary *Mitakshara* family, was led. Shri T. N. Mulla, the District Judge, made a clear and close analysis of the evidence and, relying upon the decision of the Privy Council, in *Tara Kumari's* case, 42 I. A. 192, held that separation had been proved. Peary Lal Banerji argued and won the appeal, in the High Court, against that decision. But even before the decision of that, appeal by the High Court, in 1930, came the Privy Council decision in *Konammal's* case, 55 I. A. 114, in 1928.

Both in *Konammal's* case and in the appeal from the decision of the High Court, in the Majhauri Raj case, the Privy Council echoed the very words which had been used by Peary Lal Banerji on the date of issues. In saying, that the judgment of the District Judge in the Majhauri Raj case was the only possible judgment, in the unsettled state of law on a very vexed question, the Privy Council paid a silent tribute to the insight of a person who had seen the law with clarity, even when it had been submerged by the turbid atmosphere of uncertain judicial pronouncements.

The appearance of Peary Lal Banerji and Kailas Nath Katju, against each other, was a familiar sight in three or four decades that preceded Mr. Banerji's death in 1952. The good fortune of those who have seen them in action against each other is incomparable. Banerji marshalling his facts and law, in an impressive array, like the timed rhythm of the marching of an array of thousand disciplined feet, seldom looking at the Judge, even when replying to a question, and carrying the case on the vehicle of clipped, precise classical expressions and Kailas Nath Katju, the great case winner, with an intellect that had the scintillating brilliance of a diamond, pulling out of the mass of facts and law, the unexpected winning points with adroitness of a wizard. None of them depended on elaborate notes. Banerji's entire notes, in a heavy First Appeal, would consist of two pages of his register, containing the exhibit numbers and pages of documents in the paper book, chronologically arranged. Katju's notes were even more scanty. When a hostile Judge interrupted with an objection, Banerji, apparently indifferent to results, would reply with words, telling and eloquent, that would silence the objection by, the mere weight of the reply. Katju, keen for victory, would look up and say, "What, My Lord". With a face full of the delight of battle and with a twinkle in his eyes, he would bring out the unanswerable point, that sometimes, even more effectively, met the objection. The one was a torrent that brushed aside obstacles by its volume and weight, the other was a pointed arrow that; swiftly, sped and hit the bull's eye with accuracy and effect. Banerji and Katju against each other and before a Full Bench consisting of Sulaiman, Lal Gopal Mukerji and Niamatullah, presented a sight and an unforgettable experience and if the gods were near about, they came to see and hear.

Banerji amassed a fortune in the practice of law. He had the habit, formed from his earliest years, of depositing, half his income as savings. He had a horror of waste. He would, scrupulously, save the paper covers of, magazines and use them as note paper and even for sending informal communications to his friends. Nothing that could be utilized was ever thrown away. His habits of economy were caricatured by a story of how, while walking on the road, he once met an old friend of his father, who pointed out the contrast between the coat that Banerji was putting on and the modern tailored coats of his father; and Banerji replied, pointing out to his own coat. "But why do you say so, this in fact is my father's coat". But his regulated life and his thrift enabled him to leave, on his death, trusts, in favour of his two sons and his brother George, each valued at several lakhs of rupees.

Peary Lal Banerji had become an institution when he died. During the last days, afflicted with ailments, he attended the High Court and the Supreme Court, for the State of Uttar Pradesh, to oppose the challenge to the Zamindari Abolition Act. It was a sad and solemn day for the High Court, when, accompanied by the members of the Bench and Bar, his funeral procession went on the last journey to the burning ghat. For myself, I have never lost the feeling that, when I succeeded him, I obtained a "laurel, greener from him brows of him who uttered nothing base".