

We Will Preserve The Glory

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When we celebrate the 125th year of Allahabad High Court our minds travel back into the history, a major part of which stretches deep into the colonial past. With the spade of domination the British Crown established the Allahabad High Court. It was born under a Letters Patent with Chief Justice Walter Morgan and five Judges. It constituted another link in the transmigration of British Judicial system on the Indian soil. Having been born soon after the First War of Independence, 1857 and the end of the Company rule, one may doubt the intentions of British rulers in creating High Courts in India. But one cannot fail to perceive the break that this new system of justice made from the past system based on classical feudal justice, which was pervasively prevalent in India. Again, it is obviously perceptible that this implantation of a new system coincided with the growth of modern industrialised world.

While the freedom struggle forced legal reforms, with every reform-Morley-Minto and Montague-Chelmsford reforms; Government of India Act, 1935 etc.- the Allahabad High Court, like others grew from strength to strength. Several major conflicts of interests engaged its attention and many major legal battles were fought in its court-rooms. The loud echo of the growing freedom struggle found its reverberation in this legal arena. Many professionals of law who walked the corridors of our Court then, also fought in the front ranks of freedom fighters. The most prominent among them were Shri Moti Lal Nehru and Sir Tej Bahadur Sapru. They and other great lawyers like Peare Lal Bannerjee, Kailash Nath Katju, were matched by great and eminent Judges on the bench like, Sir Sayed Mahmood, Sir Shah Mohd. Suleiman, Bidhu Bhushan Malik, O.H. Mootham, Kamla Kant Verma, Tej Narain Mulla, etc. The Allahabad High Court was continuously undergoing transformation and after 1935 it had already become a strong pillar on whose shoulders the structure of Indian democracy could be rested.

And so it was. The Constituent Assembly, composed of eminent sons of India, continued the High Courts as a superior Court of record in the constitutional system of justice. The Allahabad High Court also grew expansively with the merger of the Chief Court of Oudh. It became the biggest Court in Asia from the point of view of the number of Judges, lawyers and filing of cases.

While the continuity from the colonial past to independent India is apparent, the High Court of Allahabad, like others, was no more the same. It had entered its most glorious era. It was now a constitutional Court with a duty to act like a 'sentinel on the quivers flashing its judicial sword at the might of legislation, governmental administration and the vested interests, whenever they trespassed upon the fundamental rights of the people of India. It was now one of the three pillars of State power, along with Parliament/Legislatures and Executive. The separation of powers envisaged by our constitution, with the inbuilt mechanism of checks and balances, has sprinkled elements of sovereignty on our Court. With the advent of Constitution, it was a new Court.

Both the lawyers and Judges had before them a new role. They had to work with missionary zeal to help expound the Constitution of India and laws made under it by our own parliament and legislature. The people had to be made aware of their new rights, and about the open doors of the Court. The lawyers and Judges of this Court were fully alive to the task, and a new battle of wits was witnessed. Many new legal luminaries were thrown up by circumstances. Some of them like Gopal Swarup Pathak, Kanhaiya Lal Misra, Jagdish Swarup, S.N. Kacker, Shanti Bhushan, R.K. Garg, acquired national fame and the walls of the Supreme Court resonated with their forensic skills. Others of no less eminence who led the Bar of this Court for decades included such distinguished names as Munshi Ambika Prasad, Sri S.C. Khare, Sri C.S. Saran, Sri P.C. Chaturvedi and Sri S.N. Mulla but, they mostly preferred to keep their practice confined to this Court. Their names and fame reached all the corners of the State of U.P. and even beyond. Sri Gopal Swarup Pathak acquired several distinctions. He was a Judge for sometime, the Governor of Mysore and then the Vice President of India.

It is said that Judges shine in reflected glory, and the higher the level of arguments, the better will be the quality of judgments. But very often it is the Judges who push the quality of debate upwards, and produce destiny-making judgments. The High Court of Allahabad abounded in this respect. It produced several Judges who rose to adorn the august judgeship of the Supreme Court. Some of them are S/Sri K.N. Wanchoo, Raghubar Dayal, V. Bhargava, M.H. Beg, S.N. Dwivedi, RS. Pathak, RB. Misra, K.N. Singh, K.J. Shetty, N.D. Ojha, RM. Sahai and B. P. Jeevan Reddy. Some of the judgments delivered by Mr. Justice S.N. Dwivedi in Keshvanand Bharti's case, Wimco and St. Xaviers' case, and those delivered by Mr. Justice K.N. Singh in Ganga Pollution case (Kanpur Tannery Closure), Nadiad case and "equal pay for equal work" cases are landmarks. Some other judges like S/Shri Bishambhar Dayal, Satish Chandra, K.C. Agrawal, T.S. Misra, H.N. Seth were appointed to other High Courts as Chief Justices. Sri K.C. Agrawal is the Chief Justice of Rajasthan High Court. In a short time he has made his impact felt there. Another eminent Judge Mr. Justice S.S. Dhavan became the Governor of West Bengal and High Commissioner to London. Justice RS. Pathak became the Chief Justice of India and later became Judge of the International Court.

Together, the judges and lawyers have made great contributions to the legal system and the society as a whole. Especially, the Allahabad High Court has stood like a rock of Gibraltar to protect liberty. The victims harassed by DIR and preventive detention, found shelter here. Ram Manohar Lohia, assisted by Shri S.C. Khare, had fought the battle of liberty in our Court. During emergency whether it was DIR or it

was MISA, our High Court became a shield for the victims. Inspite of the Presidential Order suspending fundamental rights, the Full Bench laid the doors of the temple of justice open. The reversal by Supreme Court was unfortunate.

The Allahabad High Court has been at the forefront in safeguarding the independence of the Judiciary. It has withstood the fury of U.P. Legislative Assembly with judicial might and refused to buckle under pressure. Yes, I am referring to the largest 28 Judges Bench which has ever sat in any Courtroom, not merely for protecting two colleagues of the bench or Mr. Solomon, but mainly to blunt the warrants issued by the House on the passing of a stay order by a bench of the High Court. The issue was whether Legislature was amenable to the writ jurisdiction of the High Court. The stand of our Court was upheld by the Supreme Court in the reference case (In re, under Art. 143, Constitution of India, AIR 1965 SC 745). In an epoch making judgment Gajendragadkar, C.J., held that legislatures were not beyond the ken of Art. 226 and no contempt of House had been committed in entertaining the writ petitions against the Speaker's ruling.

Another historic matter was the election petition filed against the late Prime Minister of India, Indira Gandhi, a great leader's case was before this Court. The pressures were tremendous. Yet the pen of Mr. Justice Jagmohan Lal Sinha moved dispassionately and undauntedly. The decision went against the late Prime Minister, and the emergency came as a fall out. The judgment could be set aside in appeal by the Supreme Court only after a retrospective constitutional amendment. Our Court has made significant contributions in the field of Tax Law, Service law, Industrial Law, Administrative Law, Criminal Law and Land Reforms. The legal war in the field of Zamindari Abolition was fought unsuccessfully by the Zamindars in the case of Raja Surya Pal Singh (AIR 1951 Allahabad 674 (F. B.)) The glorious chapters of judicial history could not be possible without the inner strength of our High Court generated by the diligence, integrity, intelligence and sense of duty of all the four wings of the High Court-the Judges, Lawyers, Registry and employees. The four wheeled chariot could move smoothly in performance of Constitutional duties, only because each wheel respected the other and the importance of none was undermined. During the course of functioning several good values had emerged which formed the high traditions. It has to be remembered that four wheels move on an inbuilt mechanism and not by the goading of any external force. It is the good traditions which provide the cohesive motion. And it is the continuous motion in dispensing untainted justice that instills confidence in masses.

The tradition of giving respect to all and getting respect from all; of punctuality; of arguments being made with brevity, persuasiveness, humility and fervour; of large number of cases being heard finally and delivery of prompt judgments; of cases being posted on board as directed by Court; of refusal to seek unnecessary adjournments; of junior lawyers coming prepared to Court and seizing opportunity to gain the Court's ear; of senior lawyers training the juniors and the juniors respecting the seniors; of adept staff helping the judges in and out of the Court in the performance of judicial functions; and so on, are traditions of great value. Perhaps, the sense of duty was then more dominant, though the self interest existed' and therefore, the glorious chapters could be written.

From Morgan's Court to M.K. Mukherjee's Court is a long way. An infant Court has matured and is surrounded by people conscious of their rights. Today its dockets are overloaded and its productive pace has slowed down disconcertingly. Our Court is crisis ridden. Can we pull it out of the bog?

Today, there is no dearth of talent in our High Court in all the wings. But a relatively marked fall in the sense of duty is visible. It appears that the self interest has become predominant. As a result all the wheels are in a state of mutual friction. While each wheel is responsible for the braking and jamming in the Court, each prefers to rest content by pointing an accusing finger at the shortcoming in the others. This escapism is leading to destruction of existing good values-a destruction without reconstruction. As a result, a state of chaos and collapse appears to be overtaking us and we seem to be drifting towards the abyss.

It is true that our fraternity has grown. More individual interests are now seeking accommodation and at various levels. But this is hardly possible by pulling the institution apart. No system or institution has ever worked statically. That is just not possible. The working of the institution itself exposes and brings to the fore the dormant maladies. This, however, should catalyse our thinking to help catharise the institution. It should not warp and block our thought process. The maladies that crop up provide a basis for mutual dialogue and discussion to reform the institution, and not for its destruction. We cannot forget that we survive and thrive, only if the High Court lives, and it can live only by dispensing justice-more of final justice. The time imposes on us an outlook of positivism, not fatalism nor anarchism.

Today, we find the institution engulfed with negative approach of frequent strikes, mutual disrespects and delayed sittings. None of these help in resolving any problem. They only aggravate. Imagine we must have lost over a year of Courts functioning in strike. Many a time strike is resorted to on flimsy issues. Even the working class has several other weapons of struggle. But the legal intelligentsia seems to be - suffering from brain paralysis. It is unable to forge new methods. Look at the paradoxical scenario. We jump over each other shoulders to compel the Judges to take up our cases, and complain of irreparable loss, and lecture on delayed justice, when we ourselves contribute to magnify the jamming by senseless and irresponsible strikes.

Even in industrial arena, strikes ought to be resorted to minimally, rationally and responsibly. Workers must keep an eye on the society which they seek to build and develop. Destruction of factory and society cannot be their motive. Any other approach is counter productive.

But strikes of lawyers in Courts are a phenomenon whose justification is incomprehensible. Against whom are we striking at? Who gets injured by it? Who suffers because of it? No, not the State legislature, nor the State executive, nor the local administration. Influential circles of vested interest in these wings of State power are often found swinging their might at the Courts to reduce their power and importance. They view the Courts as interferers and obstacles in perpetration of illegalities. So, when the men in robes, whose sanction less duty it is to protect the temple of justice, rise to strike at their temple, it would only gladden the hearts of vested interests. For then they need not use their own hands. They can simply tell the people that the existing institutions of justice and its men have become worthless and irrelevant, and should be allowed to lapse in desuetude. They would simply kill the base on which the Courts stand-namely, the faith and confidence of people.

In fact, we are reducing ourselves to irrelevance by resort to frivolous strikes and indulging in disrespect of Judges. This will only lead to Delhi High Court incidents. There was a time when our 28 Judges sat to resist wantonness of House of Legislative Assembly, today 26 Judges of Delhi High Court are sitting to issue notice of contempt to District Court lawyers. Our own High Court was stormed by hooligans and it goes to the credit of lawyers that they resisted them.

Similarly, delayed sittings of Court even by a few minutes count up to a loss of over a year in course of time. Initially this was unheard of. Three decades later it emerged as an exception. Now it threatens to grow into a rule.

It is true that the continuous existence of vacancies of Judges is also having a crippling effect, and here it is the Government which is the main culprit. Several other factors may be responsible for the breaking and jamming. But all our attention ought to be devoted to their removal.

Our Courts are already under a severe, calculated assault from those who want to see its door shut and to Bench-ise it. It is time we ingeniously devise new methods to take the bull by the horns, rather than indulge in breast beating and striking at ourselves. We cannot even unknowingly and innocently create a situation which would signify a fifth column service to the enemies of Court.

Hopefully the other wings of State would realise soon that they themselves cannot develop without building circumstances conducive to judiciary's development, and that they must work in harmony with Courts, rather than be at loggerheads. But more than them, the lawyers, who are the priests of the temple of Justice have to ensure that the temple continues to enjoy the faith and respect of the people. If the four wheels of the Nyay Mandir move in "Harmony-with minimal friction", then alone Nyay will flow illuminably.

The junior section of lawyers have greater stakes. In them lies the future. From them will come the senior lawyers and great Judges of tomorrow. They are the womb of the future. At the same time the seniors and Judges of today have a social duty to shape them for tomorrow. The junior counsels of today are more talented than those of yester years. I am sure the army of lawyers, especially the junior regiment, would rise to the occasion, and will make a tryst to lend lustre to the glory of our High Court. Let us resolve "We shall bring greater glory".

"Men at some time are masters of their fates, The fault, dear Brutus, is not in our stars, But in ourselves, that we are underlings."

(Julius Caesar)