

## **WHO IS A HUMANE JUDGE? IS HE AVAILABLE NOW OR EXTINCT AS A CASUALTY OF THE SYSTEM**

***It was the boast of Augustus that he found Rome of brick and left it of marble. But now much nobler will be the sovereign's boast when he shall have it to say that he 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 (Henry Peter)***

How glorious our generation if we can create a transformation of the legal system to facilitate Humane Judges to survive the current global collapse of moral syndrome.

It was the boast of Gandhi and Nehru who found Law India of imperial Victorian vintage and won independent India and left it a socialist secular democratic Republic. Shall we betray this great transformation, by treaty with Israel and colonial subordination to President Bush?

How supreme is our generation which has had the glorious opportunity of liberation from Victorian imperial domination of the Indian empire by Crown and Commons and inauguration of Free Bharat or Sovereign swaraj without violence and war, and installed in the mighty prone thrown of the Viceroy, the Governor General and eventually the Rashtrapathi of India in Rashtrapathi Bhavan! It is the boast of 'We, the People of India' to behold the tricolour flag fly aloft

and the Union Jack respectfully brought down as we sang in patriotic chorus the National Anthem sung with nationalist vibrancy as the Constitution declares India a Sovereign Democratic Republic.

Dear Sisters and Brothers of the Commonwealth judicial fraternity be proud we are makers of the majesty of Bharat Mahan in Law and Life;

In this brave background, I am deeply grateful to the Indian Association of Senior Advocates for having invited me for inaugurating a Seminar on 'The Human Judge'. This is a peculiar, profound philosophical proposition at once embracing and enigmatic and too bizarre for me because I am not a senior advocate and too humble to claim the credentials of a human judge. Then how and why did I submit to this puzzle-some mystery? So it requires a statement of the background in which this seemingly celestial wizard but berserk proposition happens to be put on me, when it is otherwise a riddle wrapped in a mystery. Therefore I am least qualified to paint the compassionate profile of a human judge. Of course, I am a humane member of the Indian judiciary and have devoted my life for a slew cause of global, humanist and social justice. Indeed one of my mottos in life, Republic Day greetings is 'I am a human; I count nothing pertaining to humans is alien to me!' By this dimension I am a human judge but much more meaning is packed into the brief but luminous expression human judge. Unfortunately, this species of compassionate

wing of the judiciary is vanishing, rare and on the verge of extinction. But the judiciary in its high glory can never agree to a down hill process. We will fight on and survive. Sans humanity, Justice stand seppuku. We will struggle to survive. Nevertheless it is the glorious Bar a nidus to generate an instrumentality of justice.

A Great Bar the NIDUS of A Noble Judicature

It is indispensable and inconceivable that human judges cannot suffer eclipse so long as the Indian Bar holds high its finest blossom a Human Judge as its lovely product. Back to the beginning, who is a truly kindly robed brethren? Who is a human judge? Not in the material or lexical sense alone but in the spiritual, moral kindest sense and honest semantics as well. The best answer comes from that cyclonic sadhu Swami Vivekananda who was a towering personality in the East and the West and the champion of the paraya and pulaya of have-not humanity and the princely sector of the creamy layer of the higher hierarchy of the huge feudal Indian community at large who constitute 'We, the People of India'. I have quoted him later in this paper. But the puzzle remains—baffling theme this majestic how did I get into this mystery? The answer is a letter to me from Sri. Krishnamani:

***'Dated 7<sup>th</sup> February 2009***

***Respected Sir,***

***Sub : Function to felicitate you and to have a talk by  
you in our conference.***

**You will be glad to know that recently I was requested to be the chairman of all India Senior Advocates' Forum under the Bar Association of India. This All India Senior Advocates' Forum wants to hold a function in Ernakulam to felicitate you for your yeoman contribution as a great judge and as a great judge and as a great personality and to have a Seminar on "Human Judge – do we have him?", where you will be the main speaker. Sri Fali Nariman, President of Bar Association of India, Sri. Anil Diwan, future President of Bar Association of India and Sri Lalit Bhasin Secretary General of Bar Association of India will also participate in the function. We have chosen Ernakulam only to suit your convenience.**

**You may kindly indicate 2 or 3 dates convenient to you preferably in March or April 2009 so that we can choose one of them and print the invitation card accordingly, after informing you of the date. If the date chosen is a Saturday or Sunday it will be more convenient to the advocates' community and convenient for us also to go over there.**

**Kindly intimate us of the dates convenient to you so that we can make further arrangements.**

**My Reply**

**March 19, 2009**

**Dear Sri. Krishnamani,**

**I have received your letter sent through Sri. Kylasanatha Pillay asking me to participate in a seminar on behalf of the Senior Advocates of India to be organized in Kochi on a date suitable to me preferably on the dates mentioned in the letter or on Saturdays or Sundays in April on an odd subject "Human Judge – do we have him". I am still in a mystery as to the flattery involved in your celebrating National Conference as a tribute to me. Be that as it may. We may hold the meeting on 18<sup>th</sup> April 2009 one of the dates indicated by you as suitable to Senior Advocates of Delhi. After the date is accepted and fixed, please give the details of your acceptance, the time and the expected subject you want me to speak on and the length of time I can rob from the valuable time of Senior Advocates of India.**

**With warmest wishes,**

***Yours sincerely,***

**(V.R. KRISHNA IYER)**

**To**

***Sri. M.N. Krishnamani  
Senior Advocate  
Supreme Court of India  
"SARAYU", K-10A Kailash Colony  
New Delhi-110 048***

***Dated 24th March 2009***

***Dear and Respected Sir,***

***I read your letter. Thank you for agreeing to 18th April 2009.***

***This National Meet is arranged by Bar Association of India through its wing "All India Senior Advocates Forum" for which I happen to be the Chairman.***

***We are expecting 10 to 15 Senior Advocates and other leading advocates to attend the function. Apart from me, Sri Lalit Bhasin and Sri Prashant, the following leading Senior Advocates have agreed to participate in the function:***

- 1. Sri. Fali S. Nariman***
- 2. Sri. K.K. Venugopal***
- 3. Sri. P.P. Rao***
- 4. Sri. Anil Diwan***
- 5. Sri. Andiyarjina***
- 6. Sri Gopal Subramaniam***

**We will be inviting lawyers from Cochin-Bar. We will also be inviting all the High Court Judges and retired Supreme Court and retired High Court Judges in Kerala to the function.**

**The main object of the function is two-fold :**

**I To honour you for your great and matchless contribution in the field of law and in giving a new meaning to Art. 14 and Art. 21 by adopting a dynamic approach to Constitutional Interpretation with common-man as the focus.**

**II To have a discourse by you on the topic :**

**"The Human Judge"**

**This was decided since we all feel that there is lack of justice-oriented approach and compassion in our judges and since we all feel that judicial activism and concept of PIL are not of late serving the purpose originally intended. We feel that law will remain dry law and unless it is tempered with compassion it will never transform into Justice.**

**We want from you as to how an ideal judge should behave and function and as to where we are going wrong in not being in a position to get good and brilliant judges and as to:Why this system has not produced another V.R. Krishna Iyer?**

**We want to take a full video coverage of your speech and to depict it in different States later by organizing Seminars in the background of your speech. The intention is to bring about awareness about the requirements in an ideal judge.**

**I think I have answered the queries raised in your letter. If any more clarification is required I will be too happy to respond to the same.**

**With regards,**

**Yours sincerely,**

**(M.N. KRISHNAMANI)**

The Bench at its luminous best emerges from the Bar in its finer lawyers and so necessary a consequential interrogation springs to my mind. Who is a human Advocate? Is he available now? I confess at the beginning I am not one and cannot boast of being one.

Among the good judgments relevant to the subject is my last opinion pronounced on the last day of my office where I have glanced at this topic reported in 1981 1 SCC 246. Jurisprudence is in one sense social engineering and has a philosophical foundation of the universal human quality, socialism, secularism and democracy. This is the structural basic of our constitution as projected by our Founding Fathers. Three score years of independence have passed by and our first great Prime Minister Jawaharlal Nehru believed in the above principles. He was agnostic theologically, humanist and socialist by the philanthropic standard of cosmic compassion for all lovely, living creatures, and tirelessly strove to build a world of peaceful co-existence and an India of unity, integrity and fraternity, comity among nations and the Fundamental Rights of freedom of faith, liberty and worship and fundamental duties of fraternity for all living beings and respect for the sublime heritage articulated in 51A:

- (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

- (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- (c) to uphold and protect the sovereignty, unity and integrity of India;
- (d) to defend the country and render national service when called upon to do so;
- (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- (f) to value and preserve the rich heritage of our composite culture;
- (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- (h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
- (i) to safeguard public property and to abjure violence;
- (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.
- (k) Who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

The cultural quintessence of our Constitutional conscience is provided on the unique upanishadic philosophy of 'Adwaita' a cosmic wonder of global glory as superbly explained by Vivekananda:

*Unity in variety is the plan of the universe. We are all men, and yet we are all distinct from one another. As a part of humanity, I am one with you, and as Mr. So-and-so I am different from you. As a man you are separate from the woman; as a human being you are one with the woman. As a man you are separate from the animal, but as living beings, man, woman, animal, and plant, are all one; and as existence, you are one with the whole universe. That universal existence is God, the ultimate Unity in the universe. In Him we are all one. At the same time, in manifestation, these differences must always remain. In our*



*work, in our energies, as they are being manifested outside, these differences must always remain. We find then that if by the idea of a universal religion it is meant that one set of doctrines should be believed in by all mankind, it is wholly impossible. It can never be, there can never be a time when all faces will be the same. Again if we expect, that there will be one universal mythology, that is also impossible, it cannot be. Neither can there be one universal ritual. Such a state of things can never come into existence; if it ever did the world would be destroyed, because variety is the first principle of life. What makes us formed beings? Differentiation. Perfect balance would be our destruction. Suppose the amount of heat in this room, the tendency of which is towards equal and perfect diffusion, gets that kind of diffusion, then for all practical purposes that heat will cease to be. What makes motion possible in this universe? Lost balance. The unity of sameness can come only when this universe is destroyed, otherwise such a thing is impossible. Not only so, it would be dangerous to have it. We must not wish that all of us should think alike. There would then be no thought to think. We should be all alike, as the Egyptian mummies in a museum, looking at each other without a thought to think. It is this difference, this differentiation, this losing of a balance between us, which is the very soul of our progress, the soul of all our thought. This must always be. (Words of Wisdom from Swami Vivekananda)*

And eclectic liberalism at its universal acme is in the Rigveda:

***Let noble thoughts come to us from every side***

## **IS A HUMAN JUDGE OR HUMAN ATTORNEY AVAILABLE NOW?**

No Human Advocate, no human Judge. So let us search for the humanist advocate. Is a Human Judge current coin? Is that species extant or extinct? I can recollect only of one human advocate—Mahatma Gandhi, or Abraham Lincoln both world famous for their inviolable commitment to life in dignity and Truth total for

truth and principled non-violence. In India Gandhi practiced as a lawyer. He had hardly begun as a lawyer. Then he shifted to South Africa where he had large practice. He was a fearless nationalist and stood for dignity and humanism although the Bench before which he appeared was European and dark Africa itself was constantly under the domination of the Whites in culture and ways of life. Gandhiji even in those young days was an uncompromising idealist under the benign influence of Tolstoy and Thoreau. He was an unusual lawyer who put his principle into professional practice. So he insisted on certain imperatives when clients approached him. He was a barrister scrupulous on two non-negotiable points. He would extract two promises from his clients. Firstly he claimed freedom to get to know the whole truth of the case adverse or favourable to his client and they are facts that he would tell the court only the truth and nothing but the truth mindless of whether it was adverse to his client's interest or not. Second principle he made mandatory was his right to accept what struck him as a fair compromise without consulting his client. Not litigative victory but just settlement was his aim of social justice. Only then he would appear in the case. After a time his reputation for these inflexible values impressed the Bar and the Bench. So much so, when Gandhi had stated his facts the Bench would accept it as the truth

and limited arguments of the counsel on the other side not to cover the facts—which they accepted from Gandhi’s statement and confined the opposition only to argue on the law and fair compromises he would readily accept. This created a new splendid reputation of Gandhi as a lawyer. He has claimed that sticking to the truth more clients were willing to come to him. His practice flourished and his lucrative income despite his unhappy disclosure of unfavourable truth did not suffer decline even by a rupee. This was the last of human attorneys at the Bar. But today’s judges clamour for more salaries. Judges drawing a salary of Rs.4,000/- a month earlier now are paid 80,000/-, avaricious inflation and expensive perks. More judgments were delivered by me in 7 years than any other judge for a comparable period. Judges demand latest model cars, change them every two or three years, luxury life as State Guests, when they visit other States, bungalows rent free, and amazing 200 litres of petrol when they require only 20 litres or less for professional use. Certainly they are no model for austerity and simplicity but ostentation and the State Advocates from Attorney General downwards are equally lavish with security pomp, right and left, and public expenditure on this score is very high. In short, a human judge and a human attorney are the rarest of the rare because our sense of development is distorted. Here Gandhiji

has observed: ***'In so far as we have made the modern materialistic craze our goal,' he wrote, 'so far are we going downhill in the path of progress.'*** Legal aid to the poor has many dimensions and all of them are now alien as fundamental to professional life. Access to justice is the cornerstone of fundamental rights. The majority in our country is below the poverty line and the justice system must be tuned to this economic reality. Otherwise, the Constitution is rehetorical illusion and the pledges under it find no fulfillment. Let me hark back to lives of Robert Frost.

***The woods are lovely, dark, and deep,  
But I have promises to keep,  
And miles to go before I sleep,  
And miles to go before I sleep.***

We, the Senior Advocates of India make a long march and keep the promises. These are the agenda of national development which are materialist and spiritualist and transcend ideological conflicts. The same great ideas hortatively expressed by noble idealist and cyclonic sadhu Swami Vivekananda is strongly but picturesquely quoted by me in the aforesaid judgment. Swami Vivekananda in a torrent of words exhorted an upper class Madras audience thus:

***"Feel, my children, feel for the poor, the ignorant, the downtrodden; feel till the heart stops and the brain reels and you think you will go mad."***

**"We talk foolishly against material civilization. The grapes are sour..... Material civilization, nay even luxury, is necessary to create work for the poor. Bread; I do not believe in a God, who cannot give me bread here, giving me eternal bliss in heaven. Pooh; India is to be raised, the poor are to be fed, education is to be spread, and the evil of priestcraft is to be removed....more bread, more opportunity for everybody...."**

Every time I put the question to myself who is a human judge I am inspired by the noblest and the most glorious thought expressed by that cultural volcanic wonder who is holistic, hallowed and humanist in the Everest of mighty thought prompted by heart and head of the highest human beings. I quote that passage which expressed my view of a human judge whose functional foundation is a global social philosophy which brings humanity together:

**Let me tell you a few words about one man who actually carried this teaching of Karma-Yogi into practice. That man is Buddha. He is the one man who ever carried this into perfect practice. All the prophets in the world, except Buddha, had external motives to move them to unselfish action. The prophets of the world, with this single exception, may be divided into two sets, earth, and the other holding that they are only the messengers from God; and both draw their impetus for working from outside, however highly spiritual maybe the language they use. But Buddha is the only prophet who said, "I do not care to know your various theories about God. What is the use of discussing all the subtle doctrines about the soul? Do good and be good. And this will take you to freedom and to whatever truth there is." He was, in the conduct of his life, absolutely without personal motives; and what man worked more than he? Show me in history one character who has soared so high above all. The whole human race has produced but one such character, such high philosophy, such wide sympathy. This great**

*philosopher, preaching the highest philosophy, yet had the deepest sympathy for the lowest animals, and never put forth any claims for himself. He is the ideal Karma Yogi, acting entirely without motive, and the history of humanity shows him to have been the greatest man ever born; beyond compare the greatest combination of heart and brain that ever existed, the greatest soul power that has ever been manifested. He is the first great reformer the world has seen. He was the first who dared to say, "Believe not because some old manuscripts are produced, believe not because it is your national belief, because you have been made to believe it from your childhood; but reason it all out, and after you have analysed it, then, if you find that it will do good to one and all, believe it, live up to it, and help others to live up to it." He works best who works without any motive, neither for money, nor for fame, nor for anything else; and when a man can do that, he will be a Buddha, and out of him will come the power to work in such a manner as will transform the world. This man represents the very highest ideal of Karma-Yogi.*

*Our watchword will be acceptance and not exclusion. Not only toleration, but acceptance. Toleration means that I think that you are wrong and I am just allowing you to live. I believe in acceptance. I accept all religions that were in the past and worship them all. I worship God with every one of them, in whatever form they worship Him. I shall go to the mosque of the Mohammedan; I shall enter the Christian's church and kneel before the crucifix; I shall take refuge in a Buddhist temple, where I shall take refuge in Buddha and his law. I shall go into the forest and sit down in meditation with the Hindu, who is trying to see the light which enlightens the heart of everyone.*

*Not only shall I do all these but I shall keep my heart open for all that may come in the future. Is God book finished? Or is it still a continuous revelation going on? It is a marvelous book-these spiritual revelations of the world, the Bible, the Vedas, the Koran and all other sacred books – are but so many pages, and an infinite number of pages remain yet to be unfolded. I would leave it open for all of them. We stand in the present, but open ourselves to the infinite future. We take in all that has*

***been in the past, enjoy the light of the present and open every single window of the heart for all that will come in the future. Salutation to all the prophets of the past, to all the great ones of the present, and to all that are to come in the future.***

In this global hospitality of culture we discover a glimpse of who is a human judge conceptually and semantically impregnated with profound feeling of humanity and empathy. This I consider is the heart of a human judge integrated into our system. Parsis, Christian and Muslims and so all religions are part and parcel of our global cyclopedia of our culture. In this rare moral holistic unity we abolished divisive religious thinking and obdurate obscurantism.

This is a happy blend of justice social, economic and political which is quintessential conscience of our Constitution. Prof. Griffith in his book 'The Politics of the Judiciary' has cited Winston Churchill and Lord Scrutton to throw light on impartial judges sans class-bias which I repeat here:

*The courts hold justly a high, and I think, unequalled pre-eminence in the respect of the world in criminal cases, and in civil cases between man and man, no doubt, they deserve and command the respect and admiration of all classes of the community, but where class issues are involved, it is impossible to pretend that the courts command the same degree of general confidence. On the contrary, they do not, and a very large number of our population have been led to the opinion that they are, unconsciously, no doubt, biassed. (Winston Churchill : The Politics of the Judiciary P-173)*

*Where are your impartial Judges? They all move in the same circle as the employers, and they are all educated and nursed in the same ideas as the employers. How can a labour man or a trade unionist get impartial justice? It is very difficult sometimes to be sure that you have put yourself into a thoroughly impartial position between two disputants, one of your own class and one not of your class.*  
*(Lord Scrutton : The Politics of the Judiciary P-173)*

Undoubtedly, impartiality and integrity, accountability to the larger community and transparency in the glasnost dimension of the judicial process are invaluable attributes of a human judge. Usually, we assume these virtues in their Lordships as writ in the black robes but often even law lords have shown the result to be vulnerable on this score. For instance, an outstanding Q.C like D.N Pritt has observed:

***D.N.Pritt in his autobiography told of his many political cases and of one which 'came before a judge of a great experience and knowledge, so bitterly opposed to anything left-wing that he could scarcely have given a fair trial if he had tried'.***

***Are such phrases applicable today? Every practicing barrister knows before which judges he would prefer not to appear in a political case because he believes, and his colleagues at the bar believe, that certain judges are much more likely than others to be biased against certain groups, like demonstrators or students, or certain kinds of action, like occupations of property by trade unionists or the homeless.***

***This however is to say little more than that, as we have already remarked, judges are human with human prejudices. And that some are more human than others.***  
***(The Politics of the Judiciary P-30/31)***



Prof. Griffith in his book 'The Politics of the Judiciary' has quoted from the famous judge Lord Haldane which is revealing in this context:

***I fought my hardest for the Dutch prisoners before the Privy Council this morning, but the tribunal was hopelessly divided, and the anti-Boers prevailed over the pro-Boers. It is bad that so much bias should shewn but it is, I suppose, inevitable.'***

Even the great Lord Denning was prejudiced towards coloured jurist and later apologized for it. Judges have vast powers to decree huge compensation. It is often said that justice must be fair and seems to be so often times as Frankfurter had pointed out:

***Judges as persons, or courts as institutions, are entitled to go greater immunity from criticism than other persons or institutions. Just because the holders of judicial office are identified with the interests of justice they may forget their common human frailties and fallibilities.***

In these circumstances it becomes necessary to scrutinize antecedents of a judge and his other social factors before being sure of his neutrality. That is why an Appointment Commission should be formed. Competent persons of a high level of public credibility and high sense of morality should be members of the Commission and should be accessible to employers and employees, socialists and capitalists, minorities and majorities, pro-Government and anti-Government—a class-free perspective. Difficult to secure in our days of polemical politics and everyone which has his own predilections and

the process of selection must be transparent, the public being taken into confidence with due publicity.

Secrecy in the process of selection is the upas tree under whose shade reason fails and justice dies. As is proverbial: 'Caesar's wife must be above suspicion'. So must be our judges to command the great trust which gives them the status to criticize the highest executive and even the proceedings of the legislature.

Statutory guidelines and due publicity process must be prescribed for the Preamble, parts III, IV plus IVA must find explicit expression therein for adoption of selection of judges. Already there exist rules of good behaviour unanimously passed at Chief Justice's conference and approved by Supreme court judges which can be the basis or criteria for recruitment of members from the bar and subordinate judiciary. The Commission should have an investigation body for plenary powers for getting information about the antecedent family background and assets and business relations which condition the economic outlook of the judges. The moral, mental, material and spiritual dimensions and background of the judges to be selected must also be laid down by Parliament. More than all it is my view that like in the USA a Rajya Sabha judicial sub-committee must interview critically the candidates for the higher judiciary and thoroughly examine the antecedents from top to bottom without inhibitions and

their approval will be the last decisive voice. True, this will make the candidate getting through the rarest of the rare in a society like ours with feudal, colonial, theological divisive infirmities. The critical episode makes delinquent judges like a camel and the eye of a needle. Strict procedure may be required to get the right candidate on the Bench. Candidate so selected not on the basis of communalism and other oblique criteria but on merit is the special function of the appointment commission to undertake a sophisticated job.

The candidate so selected should also be efficient and up to date with the due developments of jurisprudence like environment and ecology and other developmental trends of modern technology with impact on social justice and biosphere and revolutionary changes in the economy of the country. Here begins the performance of the judge where arrogance, arbitrariness, class-bias will operate. This means a compulsory course of six months in the college for judges must be obligatory and a constant review of the judgment must be under scrutiny of juristic bodies. Here comes the importance of a Performance Commission which even David Pannick QC has suggested for Britain. Why not India too?

What is impartiality vis a vis a judge? He has to be learned in the glory of India's struggle for swaraj, the history of humanity and secularist semantics from Jesus, Vedic Thought which begins with the

first verse of Prophet Muhammad who found an Arab society of havoc, terrorist suppression of women and godist pluralist chaotic pantheon syndrome and transformed it into an orderly humanist cosmos sans chaos and a Bharat Mahan of which Max Muller researched and discovered. Real politics and patriotism is cultural in its roots. Read Max Muller on Vedic India:

***If we were to look over the whole world to find out the country most richly endowed with all the wealth, power, and beauty that nature can bestow-in some parts a very paradise on earth-I should point to India. If I were asked under what sky the human mind has most fully developed some of its choicest, gifts, has most deeply pondered over the greatest problems of life, and has found solutions of some of them which well deserve the attention even of those who have studied Plato and Kant-I should point to India. And if I were to ask myself from what literature we here in Europe, we who have been nurtured almost exclusively on the thoughts of Greeks and Romans, and of one Semitic race, the Jewish, may draw the corrective which is most wanted in order to make our inner life more perfect, more comprehensive, more universal, in fact more truly human a life, not for this life only, but a transfigured and eternal life-again I should point to India.***

A judge should be:

***I venture to believe that it is as important to a judge called upon to pass on a question of constitutional law, to have at least a bowing acquaintance with Acton and Maitland, with Thucydides, Gibbon and Carlyle, with Homer, Dante, Shakespeare and Milton, with Machiavelli, Montaigne and Rabelais, with Plato, Bacon, Hume and Kant, as with the books which have been specifically written on the subject. For in such matters everything turns upon the spirit in which he approaches the questions before him. The words he must construe are empty vessels into which he can pour nearly anything he will. Men do not gather figs of thistles, nor supply***

***institutions from judges whose outlook is limited by parish or class. They must be aware that there are before them more than verbal problems; more than final solutions cast in generalizations of universal applicability. They must be aware of the changing social tensions in every society which make it an organism; which demand new schemata of adaptation; which will disrupt it, if rigidly confined.'* (Learned Hand in Quote It-II) `**

The forensic culture of Kerala, of Gandhi as a paradigmatic judge in South Africa, of Maveli as a legendary ruler of Kerala and his jurisprudence the silhouetted in Volume-I of the Law Reforms Commission—Kerala. Such is a human judge who will be his brother's keeper who will be remembered long after he has gone as one who is never tuned to grab power or gain publicity, or satisfy his pride or prejudice. My humble homage to a Human Judge is in this perspective. The Supreme Court, on my retirement, gave me a touching send off, a delectable dinner and most moving resolution of appreciation as follows:

***'Permit us to remind you that the Bar is the judge of judges and no judge can avoid or escape the verdict of the Bar. We have summoned you this evening to hear our unanimous declaratory verdict. Our verdict is a decree of affection and admiration. Let us also declare, in these proceedings which are sui generic, that we are not only your judges but also your judgment-debtors.***

***No words of prosaic prose would be adequate to encompass your vitality and versatility – not even if we drew upon and borrowed from the hoarded wealth of a vast vocabulary you are known to possess. We shall therefore crave your indulgence to supplement the record by those profounder feelings, which the language of the***

***lexicon cannot communicate and which are best conveyed by the language of the heart.***

***It was in stormy weather that you first took your seat on the Supreme Court Bench on 17<sup>th</sup> of July, 1973. Some members of the Bar were apprehensive that your appointment may not contribute to the traditions of judicial detachment. But those who came to scoff, stayed on to respect and to admire. Last Thursday the weather was crisp and bright. But in the Court where you sat, there was a humid air. Eyes were moist. We felt that a great intellectual and a great gentleman was sitting in the Court for the last time.***

***In a span of a little over seven years, you have brought distinction to the highest Court of the land. Indeed you did more than that. You opened its doors wider: to the poor, the needy and the indigent. Your crusade for legal aid and law reform, your concern for and commitment to the common people, your dedication to the creed of human rights, and your allegiance to judicial independence and Rule of Law have become quintessential catalysts in our legal process. These humane contributions have endeared you to one and all and will long be cherished and remembered in and out of law reports and in and out of law courts.***

***Yours has been a restless and rebellious quest for justice. You have dared and defied and you have drawn your sword of thoughts and words when many would have been content to be reticent and complacent. Your ideas have seldom failed to stir and to provoke. Sometimes you may have gone too far and sometimes you may not have gone far enough, but at all times, there was unfailing courtesy and consideration going hand in hand with a spiritual translucence and equipoise of goodwill, sincerity, compassion and understanding in your judicial and extra-judicial pathways. All that we will remember and cherish for a long-time.***

***There are many landmark judgments you have handed down which have helped to humanize our legal system, particularly in the field of criminal jurisprudence and jail reforms, and which have helped to resolve critical***

***intricacies of constitutional law, harmonizing its delicate equations, optimizing fundamental rights and extending the frontiers of the accountability of the State and its instrumentalities in their ever-expanding operations. Many of your judgments have given a new dimension and a new direction to law. In many of them, you rode the unruly horse of public policy with exceptional skill, acumen and erudition and brought it to heel on the path of justice and good conscience. In some of them you rode it too hard. But there was always your shining faith in the true role and destiny of law in a developing society, which made you the lyricist, the poet-laureate and the visionary of a socially aware and socially accountable Third World jurisprudence.***

***We honour you with all our hearts and we bid farewell to you with our warmest good wishes and with our most affectionate homage of respect and admiration.'***

***[Address read out and presented by Dr. L.M. Singhvi, Chairman, on behalf of Members of the Bar Assembled at Phoolwari Banquet Hall, Pragati Maidan, New Delhi on Saturday, the 15<sup>th</sup> November, 1980.]'***

The Capital Foundation Society, Delhi wrote to the Chief Minister of Kerala pleading for a National Chair:

*Appeal to The Hon'ble Chief Minister of Kerala*

*Dear Sir,*

*Greetings. It is a matter of Great honour that our founder Patron Justice V.R. Krishna Iyer is the most respected judge this country has produced. His judgments are cited throughout the globe by jurists and human rights champions.*

*There is no other judge in the world on whom so many students have done research and have been awarded Ph.D. conferred doctorates. In the year 2009 itself he was awarded a Doctorate by the Chancellor His Excellency M.C. Bhandare of the Utkal University.*

*Justice Iyer was conferred the Highest Russian Honour by President Putin at New Delhi. He received the biggest reception and highest Award from President Najibullah at Kabul. It was my privilege that on both the occasions I was present. He is one of those patriots who has never shirked responsibility, and has expressed freely whatever is in the interest of vast millions. He transcends all political parties and speaks fearlessly what he thinks right.*

*You know his contribution to Kerala more than any one else, as he had been a Minister in EMS Government, a Judge of Kerala High Court, Chairperson of several cultural and social and cultural organizations and finally for his radical Legal Reforms Committee Recommendations.*

*We have issued an appeal to many people to persuade you to institute a Chair in most Kerala universities known as Justice V.R. Krishna Iyer Chair and a National Chair in the newly created Central University in Kerala.*

*With kind regards,*

*Yours sincerely,  
Sd/-  
Dr. Vinod Sethi*

This flattering function does not glorify me into a human judge. One swallow does not make a summer. Let me cite what I have written in my book 'Off the Bench':

***Moderation is a fatal thing; nothing succeeds like excess—wrote Oscar Wilde, good for literary lampoon, not for forensic praxis. And yet, the elation of elevation to the high Bench seduces some robed brethren to imitate, simian fashion, the Oscar dictum; and in this 'excess' process, intemperately indulge in pejorative denunciation of brethren of the lesser judiciary and thereby caricature the judicature. In our country, while other constitutional functionaries forfeit their credibility by ludicrous circuses and corrupt delinquency, the judicial fraternity, by and large, has preserved its dignity, decorum and sobriety,***



***although exceptions, deviances and heady hubris abound, born of the illusion of occupying the commanding heights of constitutional authority. British judges on the Bench have, in the past, been boisterous and buffooning but have vastly improved. The awe of the court hall and the moderation of judicial diction are a paradigm. David Pannick, in his book judges writes:***

***Mr. Justice Jackson of the US Supreme Court observed in 1952 that 'men who make their way to the Bench sometimes exhibit vanity, irascibility, narrowness, arrogance and other weaknesses to which human flesh is heir'. It would be surprising, indeed alarming, if some of the eminent legal minds that constitute the English judiciary did not, on their rare off days, act injudiciously. This was recently recognized by Lord Chancellor Hailsham. Those who sit in judgment occasionally become subject to what he called 'judges' disease, that is to say a condition of which the symptoms may be pomposity, irritability, talkativeness, proneness to obiter dicta (that is, statements not necessary for the decision in the case), a tendency to take short-cuts. A 'judge may grow unfit for his office in many ways'.***

***In our country, judicial aberration, linguistic indiscretion, irritating observations and violent diction, slowly escalating, has produced a demand for canons of judicial conduct.***

***A robed umpire, exercising authority with modesty and refusing to be authoritarian by issuing ukases, and admonishing lesser tribunals using unbecoming expressions of abuse is the desideratum. A code of conduct for judges is very much being debated and Justice Verma, when occupying the Chief Justice's position took the initiative and got a code drafted and approved by the higher judiciary unanimously. A public demand for a judicial performance commission, comprehensively overseeing appointments, behaviour, transfers and censure when needed, by appropriate constitutional amendment, is now a public issue. Some aggressive judges, some corrupt tribunals, some immoderate, intemperate and uncivil judicial personnel***

***mar and tar the otherwise excellent reputation of the robed class. They forget that the Bench is no immunity when vices abound and criticism cannot be silenced if good behaviour, ethics and gentleness are jettisoned seeking refuge in judge power and contempt power.***

Is this credential enough to claim title as a Human Judge? Perhaps the Central government without much research nor getting my consent bestowed on me the human distinction of Padmavibhushan among few judges. The Executive is not the best judge of judges. Still it is of some value. I was in Delhi when the Collector of Kochi telephoned me asking for my consent for this honour. I first declined since I was in Delhi and desired to know the grounds on which this honour was bestowed on one who was a critic of many State policies. I asked Rashtrapathi Narayanan himself, the highest Executive. Sir, I am a critic of your Government although I am an admirer of Jawaharlal Nehru for his humanism. Of course, not all the Nehrus deserve adulation. President Narayanan was a liberal soul and told me Sir, you must accept it. Your criticism is always motivated by a constructive correctional humanist purpose as the last letter of Nehru to you testifies:

***Circuit House  
Dehra Dun.***

***May 24, 1964***

***Dear Krishna Iyer,***

***Your letter of the 15<sup>th</sup> May reached Delhi when I was away in Bombay for the A.I.C.C meeting. Hence the delay in answering it.***

***I am glad you have sent me an account of the Budapest meeting of International Democratic Lawyers. I agree with you that these meetings should not be wholly ignored, and I hope that our External Affairs Ministry will pay attention to them in future.***

***Yours sincerely,  
Sd/-  
Jawaharlal Nehru***

***Shri V.R Krishna Iyer  
Advocate  
M.G.Road, Ernakulam***

There is no malignancy about it. Democracy requires a critical public opinion. Even after receiving the distinction you are free to criticize my Government from a human, cultural angle. Therefore he persuaded me and I consented to be Padmavibhushan which I received the next day from him. The great Justice Gajendragadkar had received it. He was a Human Judge under whom I was a beloved member. Truly Dr. Narayanan was a liberal democrat, Harold Laski's good student and head of an eminent educational institution namely Delhi University.

I remembered my days as SPCA Secretary from my days in Tellicherry. Later, when I was minister I made the Kerala Government pay the salary of SPCA Inspectors of the State, the

only State in India, and when I was Secretary I myself visited slaughter houses and prevented cruelty in killing of cattle. Later, I became Vice President of the Animal Welfare Board at the request of Rugmini Devi of Adayar. My links with animal welfare are strong. But is that a component of a Human Judge. Perhaps, yes, because I remembered 51A which speaks of humanity and also 'compassion for all living creatures'. I also recollected a philosophical definition of God. God sleeps in the mineral, wakes up in the vegetables, walks in the animal and thinks in man. Darwin has proved that the human is an evolution from animals and still retains many savage qualities of beasts:

***We must, however, acknowledge, as it seems to me, that man with all his noble qualities.....still bears in his bodily frame the indelible stamp of his lowly origin.(Darwin)***

So I felt that to love animals is to be human and to be savage is to be cruel to living creatures.

Then I remembered by strong allergy against death sentence. All Life is dear ad God-given. Mahatma is a sublime humanist and against Capital Penalty; Macaulay was great as a penologist, not a humanist. In Ediga Annamma's case (1974 4 SCC 443 and Rajendra Prasad's case (1979 3 SCC 646) I held,

contrary to conventional judicial thinking shaped by Macaulay's criminology, a humane sentencing policy against death sentence conditioned by Mahatma Gandhi which de facto abolished capital penalty based on humane considerations. Chief Justice Ray was apparently told that I had nullified death sentence and sent for me to discuss this unconstitutionality of my penology during lunch interval. I met him. Brother, have you declared death sentence ultra vires? You can't do that because a Constitution Bench has already upheld death sentence. With some embarrassment, I explained to him, assuming death sentence constitutional the option for the court to lay down guidelines as to when it should not be imposed and the life term was appropriate. He agreed with hesitation my explanation. However, some of my sadist colleagues did not cherish my weakness against death penalty and in a later case held before a larger Bench that it should be imposed only in cases of the rarest of the rare instances. This is neither Macaulay nor Mahatma who was against death sentence altogether. Later I was invited by Amnesty International aware of my conviction against death penalty, to inaugurate an International Conference at Stockholm against death sentence along with Swedish Prime Minister which

I did. Of course, the Government of India declined to pay my travel at their expenses. But the Amnesty did meet my expenses. I stand for a Reformation theory of sentencing jurisprudence even to the extent of suggesting that transcendental meditation is therapeutic sentencing strategy. Will this make me a Humane Judge? The great Lord Scarman once wrote to me a private letter dated 6<sup>th</sup> October 1982 that he was moved by my passion for life in Ediga Annamma and Rajendra Prasad and chose to follow it in his judgment in a Privy Council ruling. Here is the letter:

***"Dear Judge,***

***I am sending you a copy of the Privy Council Appeal judgment from Jamaica. The case is Riley v. The Attorney-General. You will see that Lord Brightman and myself in our dissenting opinion made very great use of some observations of yours in the Indian Supreme Court.***

***Thank you so much for the really passionate way in which you have in the past and continue now to forward the cause of human rights.***

***Yours sincerely,  
Sd/- Scarman"***

Scarman is not an Indian judge but a celebrated British Law Lord. Of course, Britain has abolished death penalty by law. God gives life and He alone can take it is the Gandhian view. But savage

barbarity is terrorist ubiquity the globe over today. How can this be obviated?

I wonder whether the Senior Advocates of India have considered these factors while calling me a 'Human Judge'. Their verdict is Indian Bar wisdom.

Access to social justice is a structural basics of our Constitution and so I claim that Law India must preserve its cultural glory in the spirit of Max Muller or Mahatma Gandhi or Nehru or Dr. Ambedkar. Every judge should be a human judge—Not the deterrent committed to the Reformatory theory nor retributive theory of sentencing.

I pay my great tribute to the Senior Advocates Association of India for being Indian. Once this cultural fundamental becomes quintessential to our judicial jurisprudence there will be a transformation of our jails as I did make Kerala jails a hospitable rehabilitation home. Every criminal is born innocent and has a finer future that is the kernel of the Valmiki Jurisprudence. Valmiki, who was a robber, by a saintly mantra, became a Rishi. To be truly socialist, secular democratic Indian that is our paramount duty. Our patriotism, our felicitous fellowship glory of all true religions which, in Vivekananda's words, are a manifestation of the divinity in every man.

*An honest God is the noblest work of man (Robert G. Ingersoll).*

Humanism is not merely a sentiment but its roots green in the heart of man. A bright brain with a hard heart is a dangerous tool of justiceship. So, a great judge is one with a large heart, not with a sharp brain. That is why our Constitution speaks of sympathy to the lowliest sector of society and special provision for establishing the reality of material, moral equality in life. Indeed, reservation is not discrimination but equalization as a process towards equality. That is why classless social fabric of socialist society can be harmonized only with an egalitarian methodology aimed at providing a level play field in public life for the high and the humble. Economic equality for the working class justice is the due labour jurisprudence. I am for this dynamic economic justice not for working class greed, grab and indiscipline in hartal. If we take justice, social and economic seriously a new perspective towards the working class and industrial relation will be necessary as I have explained in Gujarat Steel Tube's case. A fair deal to workers make them contended in the industry and the management told me years later that the workers produced more after a just wages in the Gujarat judgment and the management secured more profit from the Industry. I have founded a new liberal jurisprudence for women producing domestic justice and family welfare. I have expounded this thesis in the report of a Committee of which I was the Chairman appointed by Margaret Alva to look into the



injustices suffered by women in custody and suggest remedial measures. My report was motivated by compassion for sisters. Narasimha Rao promised publicly he would implement but did not. Likewise our children are neglected and exploited and became street children and adult goondas. The State of India did not care to implement an International Convention on the rights of a child through a signatory to it. Because of this long indifference and culture of torture of children the UNICEF appointed a committee with me as Chairman to implement this Convention for the rehabilitation of victims of pediatric exploitation. My Report was received by the then Prime Minister Vajpayee with praise but not yet implemented is proof of the callous attitude of Executive and Parliament of the State. These remarks have some bearing on my post retiral, free activism of a human judge. Forgive me for this autobiographical adventure.

The largest minority under economic disablement is the considerable humanity below the poverty line largely belonging to the agricultural, dalit sector. That is why suicide cases escalate in the rural sector. Extremism and terrorism, which go together, increase in our villages and one way of overcoming misfortunes and indebtedness is abolition of alcohol and drug addiction and agricultural development which find an easy Western market in our agrarian backwardness. Therefore, the elimination of poverty and unemployment have many

social blessings, including domestic contentment and child development and care. Abolition of privation of human rights, gender justice and the evils of alcoholism is absolutely necessary if the disasters consequent on liberalization of alcoholism is not arrested totally. The Law Reforms Commission has quoted a judgment by the Chairman in the Supreme Court in Volume I of the Report at page 165 advocating moderation because of the outrageous impact of alcoholism on social and domestic, peace and stability, security and public health of society violating a directive principle of state policy which de facto demands abolition. It is a curse that the Kerala State, Government after Government, is making and encouraging use of beverages sales as a source of revenue. The only State Government which believes in respect for the Constitution on this core, is the Modi Government in Gujarat, where the Chief Minister told me that it is 60 to 70% successful as an abolitionist State. On the other hand, in Kerala licenses for bars and clubs and restaurants are increased and every toddy shop has long queues, and no dry days at all. One Collector who banned it was duly transferred. Every festival whatever the religion is now an invitation for drinking. Yet not any molecular or molar party, even during election season, has the sanity to ask for prohibition despite a strong judgment of the Supreme Court and increased violence in street fighting, terrorism, domestic discord, ragging,

immoral abuses of girls, ubiquity of psychotropic drugs. Behind every evil of this type is alcohol. By advocacy of prohibition, its recognition in the humanity will stop. Today although I know some colleagues robed (robed brethren) drink privately and some dare though rare, sit tipsy on the Bench!

Access to justice is through litigation in our adversary system. Litigation costs are heavy and lengthy and horrendously dilatory is the distance between the beginning of a case and its finality of the lis. So much so, the great Learned Hand cynically remarked that every litigant before he goes to court must execute a will as to who will continue the case after his death, since man lives in the short run but litigation never dies and lives in the long run. The multi-decked hierarchy of courts makes it a baffling astrology as to when to predict finality or binding infallibility. There is no endeavour to streamline litigative life or legal aid to the poor on a realistic basis.

Way back in 1957 when I became a minister for Law in Kerala I had prepared a comprehensive legal aid scheme the like of which no other State had and the All India Law Minister's Conference of 1957 September (?) lauded this scheme as a model but it died with my departure from the ministry. No State Government, even my successors, are bothered about the indigents although I make some beneficial provisions in the Court Fees Act providing no court fee for

claims of wages of workers and maintenance for widows. More could have been done through the legal benefit fund which I had provided in the Court Fee Act had it been implemented early. But the poor man's cause is nobody's concern not even CPI (M) in our feudal colonial State. The People's Council for Social Justice (PCSJ) was established by me and the Ford Foundation was pleased to make a substantial grant for running it. Its first glorious annual meeting was a grand adventure in Paravur (North) with the whole district participating at the people's level and many disputes got settled on the spot. It was inaugurated by Chief Justice Chandrachud and if similar experiments continued, this nation would have been a happy sanctuary for legal aid. Similarly when I was member of the Central Law Commission I was appointed by Indira Gandhi as Chairman to make a report on free legal services to the indigent. A comprehensive report was made by me. Only fragments of which are implemented. Why? the poor man will not win election? But communalism will win. So a vote bank, not the constitution is politically in operation. Let the people judge. Through election campaigns the ballots can be bought by slogans and processions and propaganda not the indigent slum and homeless humanism. The constitution is dead, so too Gandhi. Narasimha Rao reversed Nehru and Manmohan Singh. Nehru irrelevant and Bush of

the White House are our policy makers. What a fall my countrymen!  
The Human Judge sans ideological oxygen will suffer suffocation.

### Public Interest Litigation and Access to Justice

Many common issues affecting the communities will come to the court on an individual basis if he has a personal grievance, personal cause of action since British jurisprudence reorganizes only individual standing. This narrow concept of cause of action is contrary to socialism, social justice and democracy in its collective dimension. To democratize and collectivise judicial access is what is in Ratlam Municipalities case.(AIR 1980 SC 1622). Where cause of action or standing is not confined to the individual injured but needs broadening the scope of legal remedies. It occurred to me that this narrow conception of standing was anti-socialist and lucky in the Ratnam Municipality case I expanded the jural semantics of standing and access to justice. This give rise to Public Interest Litigation. In a poor country like ours Public Interest Litigation is fundamental ideology of Poverty Jurisprudence and is now integral to Law India. Any one, not an official busy-body with private motivation but with social concern and public spirited activism can come to court urging a common cause affecting public weal and interest. He can even write letters to the court which will make a preliminary investigation and if satisfied that there is the voice of public grievance take up the matter and hear and

decide. Of course, the affected party will be heard. This is the democracy on judicial remedies with epistolary procedural jurisdiction. It has worked well and deserves to be statutorised with fair restriction to forbid abuse of this process.

I claim as a mere matter of history that I gave shape to PIL and Justice Bhagvathi ably reinforced it. This perhaps is a useful dimension of a human judge. Those allergic to PIL have no socialist conscience or desire for justice to have-not humanity.

The well-being of society through forensic process must justly extend even to law making. Humanise, socialise, secularise the rule of law is basic to our tryst with destiny. This is exemplified by the Law Reforms Commission—Kerala of which the Kerala State forced Chairmanship on me. I am old and ill but the Law Minister gave me no option. As Chairman of Law Reforms Commission—Kerala, with the assistance of a few colleagues, the following Bills among 104 of them we have proposed were recommended which strengthen the socialist, secular democratic character of the State and ministers. They are:

1. The Kerala Police Act.
2. The Kerala Widows' Right to (a shelter and maintenance Bill
3. The Kerala Rights of illegitimate children.

4. The Kerala Code for Custodial, correctional and habilitative Justice to Women Bill.
5. Right to a small farm and shelter Bill
6. The Kerala Women's Code Bill
7. The Kerala Access to Justice Bill.

The motivations for these reforms are human rights of the common man. Am I a human judge for this reason? I wonder. The legislative objectives were promotive of human rights, right to life and equality and dignity in society.

My basic points about a human judge are over but a recondite search into my past at what learned lawyers of high standing to name me as a human judge made me discover a few more remote points which I set out below. Not a boast but facts which I blush to mention.

If I am humane and gentle on the Bench and kindly to living creatures I must frankly shift the tribute to my kindly mother who lived as an obedient wife of my father who was gentle and lenient but was stern as a father and husband. The home is the best school and the mother the finest teacher. So it is that I owe everything good in me to my mother who was always kind to the poor and gave food to hungry persons, came to our home and got hospitable food, never for once was harsh to the have-nots, but was so loving and sweet as the breast milk she gave me. The happiest moment of my life of course,

was her warm lap. Truth to tell, was Sarada's luscious laps while in long car journeys to Coorg for cases were a shade sweeter. A judge would be human only if his domestic felicity was real. Yes, I had a fine conjugal home and this made my life loving on and off the bench, work hard without being tired since her presence was perennial healer. It is from this spring of piety, the heart of this source of goodness and cosmic devotion that I possess and practiced kindness. I have seen at the Bar the same compassion from lawyers happy at home but bitter and irritable of conjugally quarrelsome. The Bar was my teacher of law in the same spirit Holmes has stated it: "Shall I ask what a court would be, unaided? The law is made by the Bar, even more than by the Bench". In this background read my expressions on the Bar and the Bench and social justice and forgive me if I am exaggerated or being harsh. Read every judgment or brief order, my sympathy will be testified by it. I have reversed myself on the same point of law that counsel has changed my mind by more fruitful arguments. Law is what judges say. It is but what judges write is persuasively presented by charming submissions of counsel. Presentation is advocacy. Of course, police torture have hurt my heart in me. That is why I abolished hand-cuffing, solitary confinement and any trace of torture on prisoners. My judgment in Nandini Saphthathi case and a few other judgments and my post-retiral articles, you may pick anyone, and you



will notice a sense of humanity. Maybe, it is a weakness or goodness but there it is. Call me human judge or weak judge. But that is the judge I was for what it is worth. Read on and judge me at the end.

In an article from Macaulay to Mahatma in my book (Law, Lawyers and Justice) which I presented some years ago a few passages may be relevant. I quote them: "This culture of humanism, compassion and habilitation, this faith in personhood and its great potential that seeks expression but suffers suppression in an unjust social system, consists in the trinity of principles of Karuna, Samata and Praghna which the Buddha taught, for which Gandhi fought and which is the value-oriented jurisprudence where man matters more than money. Its springs are globally found in the progressive affirmation by the United Nations Charter of 'faith in the Magna Carta and fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women'. What a universal heritage with a dynamic, satvic dimension in penological perestroika!" "Humanism in criminology, or satvalogy, if I may call it so, is having a hard time. Therefore, compassion towards those who indulge in savage crimes under drives of passion fights on with faith in Man in the manifestation of the divinity in Man. Bernard Shaw once remarked: "All great truths begin as blasphemies." Valmiki was a

violent robber until he was transformed by a mantra Ram, Ram to become the world's greatest poet.

My last thought which is also the first thought about a human judge is that he is a human judge for whom Man Matters more than materialist pleasures. Our cultural collapse has begun the day we made our journey downhill and money mattered and hunger of Third World was Big Business for the corporate consumerist cosmos. To reverse this perverse trend is the object of social justice where man matters above all (vide my judgment in Sunil Batra reported in AIR 1978 SC 1675 and Maru Ram reported in AIR 1980 SC 2147). In Churchill's words humanism is better than legalism. Such is my conviction is a proof of my concern for prisoner's reform and my connection against death sentence.

In the beginning is the end. Who is the Human Judge? He who answers Socrates:

***Over 2,000 years ago," he says, "Socrates said, "Four things belong to a judge; to hear courteously, to answer wisely, to consider soberly and to decide impartially.' At NJC we honor that and also strive to improve a judge's competence, conduct and productivity."(Quote It-I p-201)***

***In Learned Hand's erudite prescription:***

***'May I take an illustration nearer to the field with which you are especially concerned? I venture to believe that it is as important to a judge called upon to pass on a question of constitutional law, to have at least a bowing acquaintance with Acton and Maitland and Gandhiji as a successful lawyer in South Africa, with Thucydides,***

***Gibbon and Carlyle, with Machiavelli, Montaigne and Rabelais, with Plato, Bacon, Hue and Kant, as with the books which have been specifically written on the subject. For in such matters everything turns upon the spirit in which he approaches the questions before him. The words he must construe are empty vessels into which he can pour nearly anything he will. Men do not gather figs of thistles, nor supply institutions from judges whose outlook is limited by parish or class. They must be aware that there are before them more than verbal problems; more than final solutions cast in generalizations of universal applicability. They must be aware of the changing social tensions in every society which make it an organism; which demand new schemata of adaptation; which will disrupt it, if rigidly confined.'* (Quote It-II p.203)**

A truly human judge is one who in my Republic Day Greetings I have described as 'I am a human : I count nothing pertaining to humans alien to me'.

The reservoir of the Bar is the source from which selection has to be made to the Bench. The robed brethren before elevation and empowerment in the right to punish with death penalty and huge sum by way of compensation will have to be tested by their performance as lawyers. It is the best lawyer who can be classified as a good judge but the lawyer itself belongs to a higher professional class. The architect of the rule of law and one who is independent and fearless and fights for justice and truth earns a finer position in society. The finest tribute to the profession of law is articulated by Felix Frankfurter:

***No one can be a truly competent lawyer unless he is a cultivated man. If I were you, I would forget all about any technical preparation for the law. The best way to prepare for the law is come to the study of the law as a well-read person. Thus alone can one acquire the capacity to use the English language on paper and in speech and with the habits of clear thinking which only a truly liberal education can give. No less important for a lawyer is the cultivation of the imaginative faculties by reading poetry, seeing great paintings, in the original or in easily available reproductions, and listening to great music. Stock your mind with a deposit of much good reading, and widen and deepen your feelings by experiencing vicariously as much as possible the wonderful mysteries of the universe, and forget all about your future career.***

Similarly the high aristocracy of this learned profession can be gathered from what Abraham Lincoln himself said:

***There is a vague popular belief that lawyers are necessarily dishonest. .... Let no young man choosing the law for a calling for a moment yield to the popular belief—resolve to be honest at all events; and if in your own judgment you cannot be an honest lawyer, resolve to be honest without being a lawyer. Choose some other occupation, rather than one in the choosing of which you do, in advance, consent to be a knave.***

I have been influenced while on the Bench and on the Bar by what Alexis Tocqueville has observed:

***In America there are no nobles or literary men, and the people are apt to mistrust the wealthy; lawyers consequently form the highest political class and the most cultivated portion of society.... If I were asked where I place the American aristocracy, I should reply without hesitation that it is not among the rich, who are united by no common tie, but that it occupies the judicial bench and the bar.***

Having said what I regard as the finer qualities of the Bar I would assert that the best lawyer is eligible to shine as a human judge. I do not think that this species is extinct. The point is we have to create a social milieu for the profession to give great recognition not by the income he makes but by the integrity he manifests. For Indians the best paradigm of a lawyer is Mahatma Gandhi.

### **Some Trans-Atlantic Tremendous Trifles of recondite relevance to my humanism**

My son Ramesh Krishnaiyer was an engineer under Johnson and Johnson Controls in Milwaukee the business capital of Illinois, the land of Lincoln. I used to visit that city frequently. Over the collective leftist elements of Lincoln's Illinois, the politicians gave me a reception. There was a decent gathering. I was surprised. In many local policies there was more socialist slant in the USA than Manmohan Singh's colonial India. I spoke first and emphasized not the arms deal dollar grants and the Nuke Treaty as a gift from the White House and World Bank aimed at making our colonial foreign policy a dependencia syndrome. A sound starling empire gone and dollar domination gained. But I stressed that Gandhiji, our spiritual guide was a disciple of Thoreau who observed: 'Under a government which imprisons any

unjustly, the true place for a just man is also a prison' and how Martin Luther King was in turn Gandhiji's disciple. How Vivekananda became famous after his great Chicago speech and J. Krishnamoorthy and other great Indian gurus had been welcomed with cultural hospitality in USA. Read the Autobiography of Mahatma Gandhi. In the higher sphere of human thought we had bright bonds, forget the nuclear deal and arms terrorism and Big Business MNCs of America Inc. What amazed me most was the American Presiding gentleman's one-minute speech when I finished the value-wonder bond between our two great nations. He simply stood up and said that this great talk of Mr. Iyer made me feel my blunder in not bringing my tape recorder to record this great address, brief but brilliant. The USA is not mere materialism but has a basic cultural hospitality. Do you know that a few miles from Harvard Swami Vivekananda was holding Yoga classes with success?

Again Maharshi Mahesh Yogi has two Universities teaching Vedanta in Ohio and Washington but none in India. The West learns from hallowed East. But the East goes downhill from the consumerist West.

Yet again I was struck by the marvelous popularity of Mukthananda with orderly crowds listening to his discussions anywhere from New York to California. I have attended his discussions to large

American audiences. So also the Brahmakumari movement. Read the epic poet of Vedanta Walt Whitman and lofty thinkers.

These are the lasting ties between the soul of the USA—not dollar-mania of commercial five-star culture.

Emerson and Walt Whitman were finest advaita in their thoughts more than the spurious godmen of Bharat. I was once invited to address in Stanford Varsity on Legal Aid in Asia. I spoke for an hour on Asian Poverty and the need for the Jurisprudence of Penury and Public Interest Litigation. John Kennedy's brother-in-law Sargent Shriver presided. I spoke of the divinity in the lowliest and the legal value of egalite in the Supreme Court social philosophy which shall not be the conscience-keeper of the capitalist class and the princes. An hour long performance and a silent audience. Shriver, at the end of it, got up to wind up with one sentence. How I wish I had a Justice Krishna Iyer in the Washington marble Judicial Palace! Such in brief are some of my experiments with truth which have a bearing on my career as a judge. The most sensational of my judgments for which Seervai, my great critical jurist paid me a tribute is the conditional stay of Indira Gandhi's disqualification as Prime Minister. That mystic judgment has made many wonder as a piece of enigma but I claim every part of the judgment which produced friends and foes for me is truly my experiments with truth. Did this independent pronouncement

persuade the senior advocates regard me as a Human Judge? Ultimately what is truth is as difficult a question as asking who am I or know thyself. Aham Brahmasmi! This profound issue takes us to the social philosophy of justice and truth. The nidus of the judges is the Bar and therefore the Gandhian perspective of the legal profession becomes relevant while dealing with the Human Judge as a higher category of the judicial profession.

'Gandhi as a Jurist'

***'I have no doubt that when the sponsors of today's symposium chose the subject of Gandhiji as a Jurist, they did not have in mind the term jurist in its ordinary technical sense. But I do not think that we shall be doing any injustice to Gandhiji's memory if we do not describe him as a jurist in that sense. It cannot, however, be denied that Gandhiji had a legal philosophy of his own and entertained most refreshing views as to the duties and functions of lawyers as well as of courts of law though they might not have gained acceptance in those days and might not get even today a whole-hearted acceptance. That, however, cannot detract from their value and the fruitfulness of a discussion like that of today's evening.***

***Gandhiji's views regarding the duties and functions of the legal profession must find the first mention in any discussion of his legal philosophy. According to him, though a lawyer must do his very best for his client, he ought not so to identify himself with his client as to transgress the principles of truth and justice.....***

***Gandhiji always regarded that over and above the interests of his clients, he had a prior and perpetual retainer on behalf of truth and justice. That led to his developing certain rules of conduct which he scrupulously followed.***



***His adherence to justice and truth also led to another result. Gandhiji was always in favour of setting a case and often advised his clients not to fight to the bitter end. That is illustrated by the very first case in which he was concerned on behalf of his employer one Abdulla Seth, between whom and the opponent Tyeb Seth, he was able to bring about an amicable settlement. This practice often creates a misconception in the clients' mind especially in the case of junior lawyers. But in Gandhiji's case it brought him greater esteem and confidence on the part of his clients. To clients who were co-workers in his public work in South Africa, Gandhiji has always stressed that it is the glory of the legal profession to bring the two opposing parties together to agree to submitting their disputes to arbitration.***

***One final point and I have done. A reference cannot be avoided to Gandhiji's views on civil resistance which is an important part of his legal philosophy. Some of you might remember how strongly he protested against the dictum of the Bombay High Court that "those who live by the law must keep the law". Commenting on this Gandhiji wrote:***

***"If it means that no lawyer may ever commit a civil breach without incurring the displeasure of the court, it means utter stagnation. Lawyers are persons most able to appreciate the dangers of bad legislation and it must be with them a sacred duty by committing a civil breach to prevent a criminal breach. Lawyers should be guardians of law and liberty and as such are interested in keeping the statute book of the country 'pure and undefiled'."***

***It is perhaps true that a situation contemplated by Gandhiji may not arise in an Independent India with a Constitution based on democratic principles. But when a body of lawyers condemns in strong terms legislative measures of Government as unconstitutional and objectionable, as has happened in recent times and may happen in future, it would be an interesting speculation as to what Gandhiji's reaction would have been if he had been alive today and shared the views of these lawyers.***

***As all of you are aware Gandhiji was considerably influenced by the teachings and writings of Ruskin***

**especially his *Unto The Last*. This is what Ruskin wrote on the function of the five honourable professions to be found in any civilized society.**

**"Five great intellectual professions relating to daily necessities of life have hitherto been in existence—there exist necessarily in every civilized nation; the soldier's profession to defend it; the pastor's to teach it; the physician's to keep it in health; the lawyer's to enforce justice in it; the merchant's to provide for it. And the duty of all these men is, on due occasions, to die for it. On due occasions, namely, the soldier rather than to leave his post in battle, the physician rather than to leave his post in plague, the pastor rather than to teach falsehood, the lawyer rather than countenance injustice. What is the due occasion for the merchant? It is the main question for the merchant as for all of us. For truly the man who does not know when to die, does not know how to live." (From the speech delivered by late Mr. Justice B.N. Gokhale added as Appendix III to the Book "The Law and the Lawyers" by M.K. Gandhi)**

Omega

### LAW, LAWYERS AND JUDGES

The human judge is a rare product in Indian jurists society, because he is conditioned by his class milieu which moulds his moral and material faculties. Why? Because all creation developmentally responds to environment. Society gives the Bar a monopoly because the right to life in dignity and wellbeing depends on the extent to which the rule of law governs the value of life. He lives in a community where the rich rule the social institutions and its trinity of Montesquieuan instrumentalities in a democratic Republic. The poor man matters little even during election because his ballot is bought

and sold by the highest bidder who belongs to the richest party or is himself very wealthy. In short, democracy can be manipulated by the affluent wing of the mafia sector. The best constitution fails to inhibit operation of the robber class with the result that the rule of law is functional as a rule of robbers. Here is the need of the human judge for whom justice, social, economic and political is part of his professional integrity and non-negotiable mind-set. The lawyer by principled professional values gives sound advice and can arrest malpractices and cleanup society and social transactions. Indeed more than any other profession, the lawyer is the architect of the finer fabric of social structure. So far as India is concerned we have a viable value-based Constitution which should be the foundation, the vision, the mission and even the passion and conviction of professional conduct. Our Preamble makes our Republic socialist, secular and democratic. These three expressions must be seen as a sublime semantic. So much so, every national policy, election manifesto and legislative bill if contrary to these values must be struck down by the judiciary to be ultra-vires. The judges, therefore, must have a social philosophy consistent, vibrantly supporting the Constitution whose conscience is compassionate to the have-not humanity and the weaker sections of society, and the comity of plural religions and the divinity and dignity of every member of humanity. Backwardness of women is

to be vanished and ensured. No theological pathology can contradict the Socialist Secular Democracy of our Republic. No canon or command from Rome can survive so long as the constitution is sovereign and supreme. Indigent and backward Children must have free and compulsory education at State expense. Development and public health and communal comity and social welfare must be under State care, rich or poor, and is secular and no Pope or Prophet or Acharya can infringe secular policy. A crime free society, non-violence, truthful and animal sacrifice and abolition of casteism is a fundamental value and should be guaranteed in the larger community. The basic moral principle whatever the religion must govern theology and anything contra is anti-secular and unconstitutional. Basic equality, economic and social, is integral to socialism. Theology has no immunity from immorality in the larger sense as the constitutional semantic obligatory. The rule of law must protect these values of the *suprema lex*.

Take care of the moral stature of the Bar and the unity and integrity of the nation and the sublimity and humanity of the Bench will take care of itself. Every judge comes from the Bar and the humanity of the lawyer, once inviolable, ensures the humanist integrity of the judiciary. The lawyer interprets the Constitution and the Bench is bound by the Constitution. So too the policeman and the

Executive in all its ramifications. If the legislature and the Executive act unconstitutionally the court has the power to nullify its action. Every citizen has a discretion to disobey any action of the State if it is plainly unconstitutional as the Supreme Court has ruled it (AIR 1974 (SC) 147). Unfortunately, our Central Executive has contravened constitutional basics but our politicians have hardly made these fundamental flaws part of the political electoral polemics.

To sum up Who is a Human Judge, I have nothing more to say as my memory at this old age cannot dig up stale anecdotage. After all my dotage now relies on the cyclonic Sadhu my eloquent inspirer, a cultural wonder. And my forensic wonder is M.K. Gandhi whom I quote. He is my last word on a Human advocate. 'Listen: The Shavian remark to Gandhiji's son on his assassination is a warning to every great glorious martyr in every profession. It is dangerous to be too good.' (Bernard Shaw)

### **Arbitral Alternative of Litigative Disputes**

One of the scandalous features of our forensic system is the intolerable delay of litigation the longest in the world affecting public interest and the poorer section of the people. The litigation relating to the land dispute connected with the Baberi Masjid is nearly half a century old. Had it been decided within half that time the question of Baberi Masjid and the shocking communal terrorism would never have

occurred? Thus it is a very urgent policy to shorten litigation by alternative dispute resolution process. One of them is reducing the number of appeals and revisions. But Parliament in its creative sloth has not chosen to explore this possibility. Another common place alternative is arbitration for which we have an Arbitration Act. The pivotal methodology is undertaken judicially by retired judges. It is true that the arbitration is essentially judicial and the appropriate cadres to operate it functionally is judges. One should have welcomed it on a large scale but alas the retired judges are hungry to make arbitration a remedy which aggravates the melody defeating the blessings of litigation by making the whole process extravagantly expensive and longer in all the vices of the curial litigation. Easy adjournments, huge remuneration and the whole device a racket and mafia—vicious. Judges when they retire make in a few hearings of arbitration cases what they in their whole career have not made as judges. A sense of discipline fee regulation, moderation time vice and promptitude and other good behaviour is necessary by procedural behavioural code for arbitration judges with a performance commission which would be empowered to give directions to arbitration courts. A panel for selection is also desirable. These will torn up arbitration as a healthy alternative which will also cast a obligation to conciliate and

settle disputes with judicial powers. I suggest a comprehensive code for arbitration on the lines indicated above.

I must confess that my experience of post-retiral arbitration, because of my conviction that judges should not be capricious or avaricious in running after arbitration and collecting unconscionable sums of money which makes the judicial institutions as money-making commercial operation forfeiting the confidence of the people in the economic sobriety of judicial officers. These abuses which are now rampant must be restrained by the code. Arbitration should find its finest hour by conciliation and dispute resolution by consensus. In this connection the only arbitration where both sides approached me together and wanted me to be an arbitrator, I settled avoiding cantankerous finale but a happy harmonious settlement. The concluding paragraphs of that benign adventure are set down below for its educational value:

***"Justice has an aspect of relativity; and what all disputants, on fair and competent advise, accept as just is the best that human institutions can dispense. I have always regarded that the finest hour for the Bar and the Bench arrives when a long drawn-out and extremely bitter litigation has been brought to a peaceful end by mild suggestions from the Bench, catalytic action by advocates and sensible response from the parties. I record my deep appreciation on the counsel appearing for the various parties in the present case for having produced what, I am assured by counsel, is a reasonable and just solution, wrought in a spirit of peace and goodwill. Justice is what justice does.***

To be a judge is a model life; abstemious, not five-star transparent public and private life, nothing sweet or suspicious. But today showing power, class-conscious costly perks, high salaries and elite company and even alcoholic dinners, flags flying on cars, pompous security as VIP as if all these proclaim the man. Is not the Bench recruited from the Bar? Must first simplify the Bar before preaching to the Bench. Correct. The fabulous fees of senior advocates humbles every other profession except the corrupt politician and bureaucrat and the PWD which Rajaji described as public enemy number one. Rightly, a severe ceiling on lawyer's fees is basic if right to justice is fundamental. The legal system is currently hard currency and balloon remuneration. So making the Constitution is a caricature in the adversary system where the sophisticated methodology keeps the have-not majority alien, untouchable and unapproachable unless his purse is fat and liberal. So, the Bar council must obligate a sharp, penological provision against this pathological syndrome and comprehensive legal and poverty jurisprudence. This is first and before a judge's moral code. The life of the law is not logic but experience and so the rule of law must reflect the rule of life. The structural architect of Social Justice is the legal profession simplify, streamline and transform it to be an instrumentality of a poor people,



sans caste, creed, minority and majority. This is the desideratum of Law Reform of swaraj in its vision, mission and passion.

To praise a human judge on the higher bench of judges of India when the women representation is negligible is to ignore gender justice and half of humanity. So it is for the better that a human judge needs as a condition precedent a descent representation of women on the Bench. I take pride in saying that the first woman judge in India Anna Chandy was elevated under pressure from me as Home Minister, way back in 1958. Alas, even today the percentage of women is grossly under-represented. Such things first. Social justice is a fetch where gender justice is a facet. So I appeal to the Indian Association of Sr. Advocates to demand to the Central Government to give their sisters a fair share on the Bench. No civilized State can command the rule of justice without this structural basis is given constitutional expression as a priority.

To expect a generation of human judges when the nidus namely Indian Bar is not elevated to the highest standards with the sublime constitutional values tuned to social justice, economic justice and political justice of democratic Republic is bathetic and pathetic. Therefore a generation of human advocates is a condition precedent to the basic question of 'Who is a Human Judge'. First thing first.

While I speak of a human judge or a human advocate, cynicism is impossible to eliminate and the world's most sarcastic figure I have not come across is a Hallowed Human Judge currently crucified on the multi-national corporation cross by the contemporary judicial incarnation of Pontius Pilate who crucified innocent Christ in a barbarous sentence. The justice system is today a travesty and social syndrome as Bernard Shaw in characteristic sarcasm has expressed in acid ink, in acid print:

***He who has never hoped can never despair.***

***The one point on which all women are in furious secret rebellion against the existing law is the saddling of the right to a child with the obligation to become the servant of a man.***

***The greatest of evils and the worst of crimes is poverty. Money is Almighty save on Sunday inside Church.***

***Our political experiment of democracy, the last refuge of cheap misgovernment.***

***Democracy substitutes election by the incompetent many for appointment by the corrupt few.***

***There is nothing so bad or so good that you will not find Englishmen doing it; but you will never find an Englishman in the wrong. He does everything on principle. He fights you on patriotic principles; he robs you on business principles; he enslaves you on imperial principles. He rules Indian colonial Cabinet.***

An Indian who obeys the commands of the American White House is like an Englishmen who does evil on principle. He can be human even in Third World conditions (and India with its huge

majority below the poverty line is one) without the State being structurally democratic. Poverty is Big Business for U.S MNCs travesty unless economic democracy which is socialist secular and have-not humanity has a dominating voice over fundamental State Policy geared to Swaraj values never to bend before imperial MNC Big Business or theological pathology submitting to God and Godmen as Big Business. 'A Supreme Divinity or honest God is the noblest work of man'.(Ingersoll) Egalite and humanity in both materialist and spiritual dimensions is the revolutionary version of the basic structure of our Republic and the Human Judge must use his powers to make this a rule of law and rule of life or else the constitutional transformation is a myth, a majestic illusion, a robe of robbery. The Human Judge must have this social philosophy. That is the Judiciary's Tryst with Indian human Destiny. Sans this, Truth and Justice proves a puppetry of democracy as satiriced by the anonymous sardonic poem:

***The law locks up both man and woman  
Who steals the goose from off the common,  
But lets the greater felon loose  
Who steals the common from the goose.***

The life of a Human Judge is more decidedly the highest of robed brethren. Homer is not more decidedly the first of heroic poets. Shakespeare is not more decidedly the first of dramatists. Demosthenes is not more decidedly the first of orators and Boswell is

the first of biographers than the Human Judge the finest symbol of Social Justice in our Socialist Secular Democratic Republic. Who he is will be history's verdict! Not I, please. This I say in spite of the great jurist Seervai's glorious comment on my judgment in Prime Minister Indira Gandhi's case refusing Palkhiwala's plea for an absolute stay of the Allahabad High Court's order unseating Indira Gandhi from her Prime Minister's position.

Why I say no please? Burke gives the answer:

***Magnanimity in politics is not seldom the truest wisdom; and a great empire and little minds go ill together.***

The glorious judicial empire and small robed brethren hardly go together. How can I claim to be a builder of India's constitutional judicature? Even so, let me cite Seervai in partial extenuation of the label Human Judge applied to me:

***As the historian turns from the High Courts to the Supreme Court his task will be harder, for the history of the Supreme Court during the emergency is a history of two different periods: the first began a day before the Emergency and ended with Prime Minister Indira Gandhi's Appeal in the Election Case; the second began with the Habeas Corpus Case and ended with the revocation of the Emergency by a defeated Mrs. Gandhi, unwilling to put into the hands of her opponents a weapon she had forged and used against them. Of the first period, the historian will say that the Supreme Court moved towards its finest hour, a day before the proclamation of Emergency, when, on 24 June 75, Krishna Iyer J., following judicial precedents, rejected an application made by Mrs. Gandhi that the Allahabad High Court's order, finding her guilty of corrupt election practices and disqualifying her for 6***

**years, should be totally suspended. In the best traditions of the judiciary, Krishna Iyer J. granted a conditional stay of the Order under appeal, although he had been reminded by her eminent counsel, Mr. N.A. Palkhivala, "that the nation was solidly behind (her) as Prime Minister" and that "there were momentous consequences, disastrous to the country, if anything less than the total suspension of the order under appeal were made".**

In reinforcement of the above thought there is Sri. Fali Nariman's testimony in a long ago article of 2001 in The Hindu which runs:

***Eighty-seven and still batting!***

***Mr. V. R. Krishna Iyer's most outstanding contribution has been that whatever he has given to the law he has also given unstintedly to public life. He has exhibited that inestimable quality - so rare these days - of his public pronouncements always coinciding with his private opinions.***

***An assessment of Mr. Krishna Iyer's contribution to the law by reference to his prolific judgments - more than 700 delivered during the seven years that he sat on the Bench of the country's highest court - would not do him adequate justice. It would only help collate a wide range of flamboyantly-phrased judicial opinions on a variety of subjects. I believe his contribution to Indian jurisprudence is much greater. Justice Krishna Iyer, more than any other Judge by his pronouncements on the Bench has made other Judges think! Through his judgments, he showed to them (and us lawyers) that the Anglo-Saxon system of jurisprudence India had adopted (and adapted) did work if only we knew how to make it work: which was to decide (as one must) according to law, but never to forget that law without justice is like an egg without its yolk, and much of its salt!***

***He was responsible for - and in turn inspired - a new thrust, a new direction, for decision-making in the Supreme Court. He helped to humanise the legal system - particularly in the field of criminal jurisprudence and jail reform.***

***He extended the frontiers of the accountability of the State and its instrumentalities in their ever-expanding operations. He often strayed from the beaten path of the law spinning his own ``cocoon of jurisprudence," making no secret of the fact that a judge must have a social philosophy and a humane approach to legal problems.***

***Law to him was ``value-loaded". His social philosophy was more than an interpretative tool. It has been the mainspring of almost all his judicial dicta. He founded a new ``school of jurisprudence" - which had at one time many adherents: now alas, very few.***

***And then, he had that abiding quality of a great judge - he was fearless. Whilst still a junior puisne judge in the Supreme Court, within two years of his elevation from the Law Commission to the highest court, he sat as the Vacation Judge during the summer recess of 1975.***

***It was destined to be the most historic summer recess of the court. Indira Gandhi had lost the election petition filed against her by Raj Narain in the High Court of Allahabad. The High Court judge ruled that she had forfeited her seat in the Lok Sabha. Indira Gandhi applied for an absolute stay of the judgment and order. The matter was argued before Krishna Iyer - the Vacation Judge.***

***He could have passed the buck - granting an absolute stay till the reopening of the court when a Bench of three or five judges would have finally heard the application. But he did not flinch. Sitting singly and so taking the entire odium on himself, he passed an order granting only a limited stay, consistent with the practice of the Supreme Court in all election appeals.***

***He ordered that whilst Indira Gandhi as Prime Minister could speak in either House of Parliament (so long as she filled that office) she as a Member of Parliament could not vote nor participate in proceedings of the Lok Sabha - since she had been unseated by the judgment of a competent election court.***

***India's constitutional expert Mr. H. M. Seervai (otherwise critical of Justice Krishna Iyer and many of his judgments) applauded: in his book on the Constitutional Law of India he described the passing of the order granting a conditional stay as the ``Supreme Court's finest hour."***

***Great praise, indeed. But then Mr. Krishna Iyer always did what he thought was right - not bothering about the consequences.***

***His pronouncements when on the Bench and off it (after retirement) have been invariably swadeshi - of an indigenous socialistic bent: But his fame has spread far beyond the country's frontiers. Only a few weeks ago when I was in Paris attending a plenary session of the International Court of Arbitration of the ICC, an old time colleague on the court, Mr. Antis A. Triantafyllides, a distinguished lawyer from Cyprus, said to me that he had read the Constitution Bench judgment in Fatehchand vs. State of Maharashtra (delivered in January 1977) and was greatly impressed by the high quality of its thought- content and language.***

***I was quite amazed. I asked him how he came to know about it, and he said that he was looking for judgments of courts around the world on debt-relief laws and found that Mr. Krishna Iyer's judgment in Fatehchand was the finest. I am privileged to have been (at least in part) responsible for this decision, since I argued the case for the petitioners - and lost!***

***What has endeared him to us all is that after retirement he has been a vocal public figure. He advises no one but public causes, he holds no briefs but for his country. Whenever he speaks on matters of moment, India listens.***

***At eighty-seven he is not old - because, to paraphrase the great poet: ``He shall grow not old as we that are left grow old. Age shall not weary him nor the years contend. At the going down of the sun and in the morning. We shall (always) remember him.''***

Never in the field of litigative conflict has so much owed by so many for delivery of justice, civil, criminal and miscellaneous to so few robed brethren described as human judges who are free from fear or favour, affection or illwill, as the rarest of the rare among the vast army of judicial numbers in the uncertain gamble of tier upon tier procrastinating interminably the final end of forensic justice as in the Indian justice system. I salute this micro-category of daring human judges whose survival is the only hope of those have-not humanity

who are now in despair of gaining justice, social, economic, political and egalitarian.

In today's world of flagrant violation of social, economic, egalitarian justice with a value distortion of Money higher than Man a transformation of the Social Order is the desperate desideratum. Homer is not more decidedly the first of heroic poets, Shakespeare is not more decidedly the first of dramatists, Demosthenes is not more decidedly the first of orators, than Boswell is the first of biographers. Human Judge is more decidedly the finest of the Indian Judiciary in fulfillment of the pledge of swaraj, the tryst with Bharat's destiny this century and the Socialist Secular Democratic Republic under the Sovereign Constitution—Not any myopic theological pathology nor nationalist divisive religious breach of the unity, integrity and fraternity of Bharat Mahan.

May 14, 2009

V.R. KRISHNA IYER