

## **Dr N P Asthana**

### **A Life Sketch (1874-1968)**

*Sri B N Asthana, Senior Advocate*

In the 94 years of life span (1874-1968) Dr Narayan Prasad Asthana, as man, lawyer and public figure, did leave a memory to be cherished and worth emulating by the succeeding generations of lawyers and even others in different walks of life.

Dr Asthana was born at Agra in 1874 in a humble family. His father was a doctor. The family had migrated to Agra from District Hardoi around 1857, presumably in the first war of independence. He was educated at Agra and was well versed in English, Urdu and Persian. After a brilliant academic career he finished his education with Master's Degree in English and the degree in Laws. In MA he had topped in Agra College.

After education, at a young age of 21 or so, in 1895 he started practice as a Vakil in Agra Civil Court. He must have been lucky as within a year or so he had a good clientele and was earning enough to decline the offer of Munsifship in or about 1897. He was leading a zestful life. There used to be weekly parties or Mushairas at his residence. His clientele, while he was at Agra, was mostly of rich temples and Maths of Mathura which was then in Agra Judgeship. By 1915 he was a leading member of Agra Bar, when he decided to try his fortune in the High Court.

From 1915 to 1961 he was in active practice in the High Court. Within a short period at the High Court he was spotted by the Judges for his sound legal knowledge and honesty. Brevity of drafts and arguments was a natural gift to him. The Bench had implicit faith in his legal submissions and used to remark 'If you say so the law must be so'. In those days the High Court Bar had the giants of the profession, such as, Pt Moti Lal Nehru, Sir Tej Bahadur Sapru, Mr Surendra Nath Sen, Ajudhya Prasad, Sir Sunder Lal, Dr. Satish Chandra Banerji and a few others. Dr K N Katju, Mr Pearey Lal Banerji and Sir Shah Mohd Sulaiman had all the signs of making a mark in future. There must have been talent in Dr Asthana to have risen at the Bar as it then was. Within a couple of years he had a large volume of work, mainly First and Second Appeals, and a flock of youngsters as juniors. Mr Sri Narayan Sahai, one of them, later adorned the Bench of the Court.

By 1926 he was a leading member of the Bar on the civil side. At the same time he was drawn towards the movement for freedom. At that juncture, like the men of his like, he joined the Liberal Party founded by Sri Gopal Krishna Gokhale and became its active member. In 1922, he was nominated to the provincial legislature as a member. Around 1928 he became a member of the Central Legislature, Contemporaneously he was elected as the Vice Chancellor of Agra University. Afterwards he was honoured by the same University with the LL.D. Honoris Causa and came to be called 'Dr' Narayan Prasad Asthana from 'Munshi' Narayan Prasad Asthana. In mid-thirties he was again the Vice Chancellor of the same 'Varsity' for another term. At the same time he became the member of the Executive Council of the Allahabad Varsity and remained a member for years. As a member he was the one who could not say 'No' to the scholarship seekers in the Varsity. Perhaps he was the only one who was easily accessible and could not resist helping anyone coming to him for help. I remember seeing students waiting outside his chamber for recommendation for scholarships. He used to oblige all with words of encouragement. He was at last connected with Prayag Sangeet Samiti and Hindi Sahitya Sammelan. Of the former, he was life President. For a short period he was the President of Kayastha Pathashala Trust running several educational institutions of repute.

For years the presidentship of K P Trust was rotating amongst the members of a particular reputed family having firm hold over the trustees. By his election the hold of the family on the Trust was broken, but for a while only. The Trust reverted to the same family. The significance of his election against the family was the short-lived victory of those who wanted to serve the institution as against those who treated it as their fiefdom.

When Dr Asthana was about 65, general elections were held in 1937 for the first time in the province to form a responsible government under the Government of India Act, 1935. The Congress Party swept the polls and formed the first representative government in the province. Pt Pant was the Premier. Dr Katju became the Minister of Justice etc. After the ministry had been installed, the appointment of the Advocate General was taken up. The office was constituted for the first time in the provinces by the Act of 1935 and the demand of the Congress Party was to have some one of the party as the Advocate General. However, on the insistence of Dr Katju to appoint Dr Asthana, their demand to appoint a party man was not pressed. Dr Asthana became the first Advocate General in 1937.

The task of the Advocate General then was difficult as well as delicate as his opinion and advice to the ministry had to be given keeping in mind that the British Governor and the Congress Ministry were not in harmony and the Governor was not a mere show piece. Chances of conflict on every major step of reform were very real. The position of the Governor in the Government of Indian Act 1935 was quite different from his position in the Constitution of India. In short the Governor under the 1935 Act not only reigned but also ruled. He could override the advice of the Council of Ministers and act in his discretion on matters of state policy. So long as the Congress Ministry remained in power (1937-1942) it functioned smoothly with little friction between the Governor and the Ministry. Credit in part for it should go to Dr Asthana for his sagacious advice to the Government.

As the Advocate General he demonstrated before the High Court and the Federal Court sound knowledge of the problems arising under the Federal Constitution. He was noted for the grasp of the subject and the brevity of arguments advanced in a conversational style for resolving complex issues between the Centre and the province involved in the cases. He was never given to citing a lot of case law very much unlike some of the leaders of the Bar. At least three of the reported cases of importance in the Constitutional Law in which he appeared are United Provinces vs. Governor General-in-Council, AIR 1939 F C 58, United Provinces vs. Atique Begum, AIR 1941 FC 16, and Jagannath Bux vs. United Provinces, AIR 1913 FC 23. Each of these cases deal with the different aspects of the legislative power of the province in the Federal Constitution introduced by the Government of India Act, 1935 and which have relevance even today. Atique Begum's case in particular has been relied upon by the Supreme Court in cases concerning the power of the State Legislature to validate an illegal act or executive action retrospectively by curing the defect of the statute.

Dr Asthana resigned from the office of Advocate General in 1945 and reverted to private practice. Around this time Maharaja of Benaras State nominated him as one of the members of his Privy Council which was the apex court of the State. The other member of the Council was Mr S K Oar, a renowned lawyer on the civil side of the High Court Bar who had also been a Judge of this Court for a few years. On the merger of the State in Uttar Pradesh perhaps in 1950 the Privy Council of the State came to an end.

In 1950 when the Constitution of India came, the High Court Bar was depleted of the eminent lawyers of the generation of Dr Asthana. Sir Tej Bahadur Sapru and Mr P L Banerji had died. Dr Katju had left practice to join the Government. Dr Asthana was perhaps the only one of the older generation left. By this time he was very old, around 77 years of age. On account of his great age, gentleness and virtues as a man he was treated as the grand old man of the Bar, liked and respected by the Bar and the Bench. Respect of the Bar was reflected in his remaining President of the Bar Association, for sixteen years upto 1967, a term second largest in the history of the Bar Association. Sir Tej was President of the Bar Association for twenty five years, the longest in history.

In more than 60 years of practice Dr Asthana saw great changes in the higher judiciary. Right to the end of the Raj, prestige of the High Courts remained high as their independence was never doubted. Though under the British rule High Courts were less powerful than in free India, yet they enjoyed higher respect of the public than accorded after the freedom. He must have been pained to see the decline of the prestige of the High Court and the erosion of its independence over the years since freedom.

Dr Asthana due to very advanced age did not play a major role in the formative years of the most potent power of the High Court, namely, to issue prerogative writs under Article 226 of Constitution of India. Yet he did have the satisfaction of seeing the commendable service rendered in this behalf by his younger friends like, Pt Gopal Swaroop Pathak, Mr Jagdish Swaroop, Pt K L Mishra and Mr SC Khare. Each of them contributed in his unique way to the development of constitutional and administrative law in their formative years.

Pt G S Pathak and Mr Jagdish Swaroop with vast knowledge of the laws and Herculean preparation, citing American (US Supreme Court), English and Australian cases left nothing unsaid, did widen the knowledge of the constitutional and administrative law of the Bench and the Bar. On the other hand, Pt K L Mishra with a razor sharp mind, strong commonsense and unmatched art of advocacy mesmerised any court anywhere to follow him. Perhaps he was the only one capable of convincing that 'wrong' was 'right.' A little later Mr SC Khare emerged. He also had a strong commonsense and capacity to reach the real spirit of the law. His contribution to the development of the law of election by the High Court is most significant.

1966 was the centenary year of the High Court, although a Full Bench of the same Court had held that it was a new High Court established by the Constitution of India. Be that as it may, centenary was celebrated with great fanfare. Dr Radhakrishnan was the President of India and inaugurated the celebration by an excellent address. Dr Asthana was then 92 years old. He was noted by Dr Radhakrishnan in the message on the occasion.

As a man Dr Asthana was perhaps greater than as a lawyer. He had the rare qualities which go to make a perfect gentleman. He was untouched by malice or rancour for anyone. Achievements and setbacks in private life, joys and sorrows in public life were acceptable to him with equal detachment. The loss of his young son in 1922 and the deaths of four of his sons-in-law did not show on him. He lived like a saint though led a mundane life up to the end, He died peacefully in 1968. His funeral was an event to be remembered. People from all walks of life flocked in great numbers at his residence to pay the last homage.