

## The 125th Milestone - A Retrospect

*Hon'ble Mr. Justice A.N. Varma*

Seldom has history unfolded itself with little or no clues to what it holds for the future as when our Temple of Justice was consecrated in 1866. The day was 18th June, 1866, marking the birth of our Court. On that historic day six Judges - the entire complement of the Court - quietly walked in, took their seats and began the day's work as if totally oblivious of the great transition from the Sadar Diwani and Sadar Nazamat Adalats to a High Court. No reference, no speeches, no fanfare, symbolizing absolute and total devotion to their high judicial responsibilities.

Created by a colonial people primarily for handling routine civil and criminal matters for the subjects and not possessing the power to review executive action or legislative measures, the Court soon became one of the strongest Citadels of Justice across the length and breadth of the country. Considering the chain of colonial laws and ethos spread around it, the assertion of independence by the Judges of the Court in the earlier period of its history must have baffled the rulers.

A century and a quarter has passed since. In terms of human history, 125 years are like a speck of dust in the vast expanse of atmosphere worthy not even of being recorded. But where these years are marked by public service and achievements so profound as to affect the course of history, the Anniversary - 125th in the present case - calls for celebrations as also for remembrance and homage to the Founding Fathers who laid the foundation of our institution and built upon it an edifice so sturdy and strong as not only to stand the test of time but to hold the potential and promise to continue to play the role of sentinal *qui vive* for the preservation of human rights for centuries to come. This may not be dismissed as a mere cliché or an idle dream. The optimism is born out of the conviction that the Temple of Justice is the most permanent of all the temples on this earth. History will bear this out. Institutions come and go. The history of the mankind changes. The greatest of Scientific truths also pass away into oblivion replaced by new discoveries, thoughts and ideas. But the urge to seek justice is an imperishable human instinct that defies any change. It is inherent in man and all attempts to suppress or destroy it have been repulsed throughout the ages. It is in this inalterable truth that an institution like the High Court retains a permanent place in the life of a nation.

Consecrated in 1866 under a Royal Charter issued by Queen Victoria, the British Sovereign, with the modest complement of six Judges and an equal number of advocates, today the High Court of Judicature at Allahabad has become the largest of all the High Courts in the country in terms of number of Judges, the population of the State and the number of cases it is called upon to handle. It was established only four years after the coming into existence of the three Presidency High Courts, replacing the Sadar Dewani Adalat and Sadar Nizam Adalat of the North-Western Provinces (later came to be known as United Provinces). Sir Walter Morgan, a Judge of the Calcutta High Court, was designated as the first Chief Justice of the Court. He was a member of the English Bar. It is significant that for almost 100 years after its creation, the Chief Justice of the Court was always drawn from the Bar and not from the Civil Services.

It is remarkable that though established primarily for deciding routine criminal matters and private disputes based on personal laws of diverse communities, castes and sects among the subjects from the very first decade the Court began to assert its independence to a degree which was amazing. Instances of such assertion have been mentioned a little later.

The early period of the work of the Court was marked by exposition of principles underlying the great Codes of Civil and Criminal Procedures, the Indian Penal Code, 1860, the Evidence Act, 1872, the Contract Act, 1872, the Transfer of Property Act, 1882. During this period, the Judges of our Court rendered some of the greatest judgments concerned with expounding the most intricate principles of Hindu Law and Muslim Law.

The year 1882 saw the emergence at the age of 32, of one of the greatest Judges produced by this Court in its entire history-Mr Justice Syed Mahmood. Chief Justice Hindayatullah commenting on Justice Mahmood, says 'Anyone who wishes to name six greatest Indian Judges of all times, must find it difficult to omit the name of Syed Mahmood from his list. It is indeed a moot question how far he will go in his list before he must name him.' His career as a permanent Judge of this Court started at the age of 36 and ended at the age of 44 and within a short span of eight years he enriched legal thought by his classic judgments sufficient to confer immortality upon any Judge anywhere in the world. Indeed he was far ahead of his time and a genius par excellence. If the history of this Court were written, his name shall be inscribed in letters of Gold. That he acquired such a lasting fame within less than 8years of his stint on the Bench and that his judgments continue to illumine legal thought with the same brightness with which it had dazzled in the last quarter of the nineteenth century points to the stature of the Judge. He has perhaps given to our Court more than any other Judge throughout its history of 125 years. Chief Justice Subbarao paying tributes to Mahmood said, 'His judgments are masterly exposition on the different subjects dealt with by him. They reflect research, scholarship, hard work and thoroughness in detail. Some of his judgments hold the field even now though a century has passed since they were delivered'. Both Justice Mahmood of our Court and Justice Muthuswamy Ayyar of the Madras High Court were contemporaries and were unanimously rated as the greatest Judges of the day. It is said that Muthuswamy Ayyar came all the way from Madras to Allahabad to meet Justice Mahmood. Sir Whitley Stokes said of Justice Mahmood in his 'Anglo-Indian Codes' that no judgments in the whole series of Indian Law Reports are more weighty and illuminating than those of Justice Syed Mahmood of our Court

and Justice Muthuswamy Ayyar of the Madras High Court.

It is remarkable that the very first quarter of a century of the Allahabad High Court after its establishment should constitute a golden chapter in its history. It saw the emergence of many a great Judge, and many a powerful Advocate and erudite lawyer of everlasting fame. Sir John Edge who took over as the Chief Justice of the High Court in 1886 and remained there until 1898 when he was elevated as a distinguished member of the Judicial Committee of the Privy Council, shall always be remembered as one of the most outstanding Chief Justices ever produced by this Court.

A remarkable episode took place which eloquently speaks of the fearlessness and independence displayed by the Judges of this Court from its earliest times. The incident demonstrates that the Judges of this Court were not prepared to brook the slightest attempt at interference by the Executive with respect to matters falling within their exclusive province. In 1887, a bill was introduced in the House of Lords to regulate the jurisdiction of the High Courts and the place of sitting of Judges. The bill having passed the House of Lords had gone through the first reading in the House of Commons. Sir John Edge, the learned Chief Justice was quick to discern in the Bill a serious encroachment on the powers and independence of the High Courts. The learned Chief Justice immediately consulted his colleagues one of whom was the famed Syed Mahmood and immediately sent a wire to Mr Macpherson, Secretary of State for India, reading:

"We doubt words High Court Bill, purpose of regulating power appointing Additional Judges. Deprecate Section 3 depriving Chief Justice's control over composition of Benches."

The next day a detailed letter was sent to the India Office. In the letter, Sir John Edge pointed out that the Bill was a serious attempt at interference with the Judiciary. Remarkable as it may appear, the pernicious Bill was dropped.

Yet another instance was the occasion when in the very first decade the Governor General of India tried to interfere with a matter pertaining to the sentence which was awarded to an Englishman charged with the offence of having assaulted his servant who eventually died. The accused was sentenced to pay a fine of Rs.30/- or undergo 15 days simple imprisonment. The Local Government at the instance of the Government of India requested the High Court for its opinion on the adequacy of the sentence. The Governor General thought the accused deserved a much severer sentence. The High Court wrote back informing the Local Government that though the sentence was lighter than the Court itself would have been disposed to inflict, it was in the circumstances not open to any objection. Upon this, the Governor General wrote a strong letter containing remarks which were disparaging to the High Court. The Court took serious view of this obvious attempt by the Executive to interfere with a purely judicial matter and wrote to the Government of India asserting that the Governor General's pronouncement gave rise to important questions as to the position of the High Courts in India and that it did not lie within the province of the Government either to approve or condemn the action of the High Court in any matter which fell within its jurisdiction.

A similar episode was repeated in 1905. A question arose relating to the change of the designation and the Seal of the Court prescribed by the Letters Patent granted to the Court. The learned Attorney General and Solicitor General of England were of the opinion that the Seal could be altered by a simple executive order by the Governor General in Council. The Judges of this Court, however, took a contrary view. According to them, the Letters Patent of the Court could not be amended except by an Act of Parliament, though they desired the amendment itself. The view of the Judges prevailed against the opinion expressed by the Attorney General and his learned colleague. The Letters Patent of this Court were accordingly amended later by an Act of Parliament.

Again in 1937, the Chief Secretary to the Government sent a circular to Sessions Judges in UP pointing out that the Government is disturbed by the way in which bail applications are being granted so liberally by the courts. Sir John Gibb Thom, the Chief Justice of the Court immediately protested to the Government in the strongest terms and demanded withdrawal of the Secretary's letter along with an apology failing which the Court will be constrained to draw contempt proceedings against him. The Chief Secretary immediately withdrew the letter and tendered an unqualified apology. These are but a few instances demonstrating that the Court maintained the highest traditions of judicial independence right from the beginning.

The Roll of Honour of Judges of this Court before the dawn of Independence consists of men of undying fame. One is awe-stricken by a mere glance at the names-the famed Syed Mahmood, Sir John Edge, Straight, Sir PC Banerji, Sir Shah Sulaiman, Sir Lal Gopal Mukherji and Niamatullah.

The Bar of this Court too reached remarkable heights within the very first quarter of the century since its establishment. Munshi Hanuman Prasad, Pt. Ajudhiya Nath, Pt. Bishambher Nath and Munshi Ram Prasad who were the leaders of the Bar in the Sadar Diwani Adalat at once became the leaders of the Bar in the Sadar Diwani Adalat at once became the leaders of the Bar of the new High Court also despite the handicap of language. They were used to arguing in Urdu, the accepted court language. They, however, quickly picked up English and soon came to the fore and retained the same pride of place which they had earned in the Sadar Diwani Adalat. Of Pt. Ajudhiya Nath, Sir John Edge, the learned Chief Justice said that in sheer forensic eloquence he ranked with Sir John Russel, the celebrated English lawyer who had become a legend in his lifetime.

A little later came another band of legal luminaries. Renowned for their erudition, eloquence and masterly presentation of their cases, these stalwarts took the reputation to unprecedented heights. To name a few, there were Pt. Motilal Nehru, described as a charmer by Justice Mahmood, Sir Sunderlal whose superb art consisted in artless simplicity and incisiveness and whose mastery over the Hindu Law was unrivalled, Mr. Jogendra Nath Chaudhry, whose advocacy and eloquence was the envy of this great contemporaries, and Sri Ram Prasad, a counsel of equal eminence. Incidentally, these venerable lawyers were the first among the Indian Vakils to be designated as Advocates by the Chief Justice in 1892. Pt Ajudhiya Nath who was sought to be conferred the same honour a few years earlier, had declined it understandably on the ground that some of his learned colleagues were being unjustly deprived of the honour.

By the turn of the century emerged a group of lawyers to whom this Court owes a debt which perhaps it can never repay for the fame and glory they brought to the Court. The first among them was the Right Hon'ble Sir Tej Bahadur Sapru who reigned supreme at the Bar for almost half a century. Brilliant and profoundly learned in law and classics, his arguments were marked by a complete mastery over most intricate aspects of law and jurisprudence. The flow of his erudition and the orderly array of his submissions were compared with incessant waves of an ocean. He rose to be a Member of the Viceroy's Executive Council and represented India on several occasions at the Round Table Conferences. There was then Dr Satish Chandra Banerji, a contemporary of Sir Tej, who was a scholar of rare erudition in law, literature and philosophy. He was a Premchand Roychand scholar and also a Tagore Lal Lecturer. Dr S N Sen who was also a Judge for some time was yet another eloquent lawyer whose arguments were extensively embellished with quotations from classics and poetry of which he was a master. Pt Madan Mohan Malaviya, another outstanding lawyer, was famous for his oratory. Pt Jawahar Lal Nehru also joined the Bar of this Court about this time but soon opted out to answer the call of the Nation then in the throes of struggle for freedom.

The succeeding generation of the legal giants included such awe-inspiring names as Dr Kailash Nath Katju, who needs no introduction and Mr Pearey Lal Banerji, whose delivery and flow of arguments were the envy of the greatest lawyers of his day. He was also a distinguished Advocate General of the State. For decades these two giants were pitted against one another but without any trace of rancor existing between them. While, however, Mr. Banerji confined his activities to the practice of law, Dr Katju came into the mainstream of national politics and the freedom movement which was then at its height and soon became one of the greatest national leaders. He was successively Governor of two States-West Bengal and Orissa, Law Minister and Defence Minister in the Union Cabinet and finally the Chief Minister of Madhya Pradesh. He was regarded as the greatest case-winner ever produced by this Court. Among his contemporaries were Mr. S.K. Dar and Dr N.P. Asthana, Dr Asthana was a first Advocate General of Uttar Pradesh and was President of the High Court Bar Association for several decades.

No account of the history of the Allahabad High Court would be complete without reference to the great Luminaries of the Oudh Chief Court which was merged in this Court in 1948. The Law Reports of that Court are replete with monumental judgments rendered by the Judges of that Court. Outstanding among these were Sir Solmand Chamiar, Sir Benjamin Lindsey, Sir Sunder Lal, Sir Syed Wazir Hasan, Sir Bishambher Nath Srivastava, Pt Gokaran Nath Misra, and, nearer our times, Mr Justice Mubashir Husain Qidwai, a distinguished member of the English Bar, before his elevation to the Bench of the Allahabad High Court. If death had not snatched away such a brilliant Judge as Mr Justice Qidwai from our midst whilst he was in office we would have surely found his name in the Hall of Fame of our Court.

Among the leaders of the Oudh Bar there were Syed Mahmood, AP Sen, Pt Jagat Narain Mulla, Mirza Samiullah Beg, Sir Iqbal Ahmad (who practiced in Lucknow after he retired as Chief Justice of the Allahabad High Court), Chaudhry Niamatullah who later adorned the Bench of this Court with rare distinction, Ghulam Husan who later became a Judge of our Court and finally the Supreme Court from there. The line seems unending.

The traditions of independence laid down by the previous generation of Judges and lawyers continued even with greater vigour in the post-independence era. Yet another golden chapter in the history of the Court was opened with the advent of the Constitution. The Court came to occupy a pivotal position under the Constitution embodying the rule of law and guaranteeing fundamental freedoms. The High Courts and the Supreme Court were constituted, in the felicitous language of the Chief Justice Patanjali Shastri, 'the sentinels qui vive to watch and enforce the fundamental rights tempered by principles of social justice and to prevent any distortions of the same'.

The fifties of this Century witnessed the emergence of yet another galaxy of great lawyers who took the reputation of our Court to sublime heights reminiscent of the greatest Judges and lawyers of yester years. There were Mr GS Pathak, the undisputed leader of the Allahabad Bar and Pt Kanhaiya Lal Misra, the famed Advocate General of the State both of whom appeared in most of the heaviest matters which came to this Court beginning from the famous Zamindari Abolition case. Together they played a pivotal role in the shaping of the Constitutional Law, a comparatively less known branch of the law in those days. The advent of the Constitution threw up in its wake great issues of national importance before the Court. Both these legal giants appearing against one another dominated the scene making contribution towards the growth and development of the Constitutional Law and that too at a time when there were hardly any judicial precedents of the Courts in India.

Of equal eminence was Mr Jagdish Swarup, another erudite lawyer who had made profound studies in the Constitutional Law besides taxation and company laws. Deeply learned he authored many a treatise on interpretation of Statutes, Constitution of India, and Company Law. He also held the distinction of a

Tagore Law Lecturer.

Mr. Gopal Swarup Pathak, however, shifted to Supreme Court in the late fifties because of the ever increasing demand of his services in that Court. In the Supreme Court he at once became one of the top leaders of the Bar commanding a huge practice till the call of public duties took him away to hold successively the high offices of Governor of Mysore, the Law Minister in the Union Cabinet and finally the Vice President of India.

Closely following on the heels of these giants were a band of your lawyers who were to dominate the national scene in their turn raising the flag of the Court to precipitous heights. There were Mr SC Khare, the illustrious lawyer who reigned supreme in this Court on the constitutional side for almost a quarter of a century until his end came in the eighties. Mr SN Kacker, a powerful and erudite lawyer shared with Mr Khare the leadership of the Bar first of this Court and later of the Supreme Court along with Mr Shanti Bhushan. Both of them rose to be Advocates General of the State and subsequently Law Ministers in the Union Cabinet. Mr Shanti Bhushan, one of the top senior Advocates of the Supreme Court is happily still in active practice. Mr. Shanti Bhushan has also been taking keen and active interest in public life.

Other acknowledged leaders of the Bar of this period accepted the call of the nation and opted out for the Bench. They rose to occupy the highest judicial offices of the land. Mr. Justice SN Dwivedi, an eminent Judge of this Court, rose to be a Judge of the Supreme Court and distinguished himself in that position but died in harness at a time when he had many more years to go. Mr. Justice MH Beg rose to be the Chief Justice of India and held that office with great distinction. There was then Mr Justice Pathak who rose to great heights successively occupying the offices of the Chief Justice of Himachal Pradesh, Judge of the Supreme Court and finally as Chief Justice of India. He also holds the rare distinction of having served as a Judge of the International Court of Justice. Indeed from the very outset this Court has been serving as a reservoir for the highest Judicial Offices. Sir John Edge, our Chief Justice, adorned the Bench of Privy Council after his retirement in 1898. Sir Shah Mohd Sulaiman, one of the greatest Judges produced by this Court, was elevated to the Federal Court followed by Mr Justices Ghulam Hasan and KN Wanchoo. The latter rose to be the Chief Justice of India. At present, three Judges of this Court are in Supreme Court. Mr Justice KN Singh, the present Chief Justice of India, Mr. Justice ND Ojha and Mr Justice RM Sahai, besides, Mr Justice KJ Shetty and Mr Justice BP Jeevan Reddy who were both Chief Justices of this Court before their elevation to the Apex Court.

The fame of the Judges of this Court was not confined within the borders of the State even in the earlier period of its history. Its very first Chief Justice Sir Walter Morgan went to Madras in 1871 as Chief Justice of that Court, Sir William Comer Petheram went as Chief Justice of the Calcutta High Court in 1886 and Mr Justice Kershaw QC as Chief Justice of the Bombay High Court in 1898. There was also Sir Arthur Trevor Harrier of this Court who became successively the Chief Justice of three High Courts, those of Patna, Lahore and Calcutta.

It is remarkable that Judges and Chief Justices not only distinguished themselves in the realm of law but also went on to make a valuable contribution in the field of education. Many of its outstanding Chief Justices and Judges adorned the highest academic offices as the Vice Chancellors of premier universities of the State. Sir John Edge and Sir Henry Richards, Chief Justices, Sir George Knox, Sir Pramoda Charan Banerji, Sir Robert Aikman, Sir Sunder Lal, Mr. Justice Gokul Prasad were the Vice Chancellors of the Allahabad University. The celebrated Judge Sir Shah Mohd. Sulaiman was Vice Chancellor of Aligarh University. Chief Justice Malik became the Vice Chancellor of Calcutta University. Many other distinguished lawyers and Judges also served as Vice Chancellors of other universities and they held the high academic office with singular distinction.

It is impossible to compress within the space of a few pages the record of useful public services rendered by our Court in the past 125 years beyond stating that its history is replete with instances of the Court's having consistently repulsed every single challenge to its independence, fearlessly and most decisively.

The contribution of the Bar of this Court to public life is now a matter of history. Its leaders, great and distinguished as they were, in the legal sphere, refused to be confined to the practice of law in which, of course, they excelled to a degree no less than their great contemporaries of other High Courts. From the outset of the national struggle for independence the leaders of the Bar of this Court joined the mainstream of public life and were seen in its forefront, playing significant roles in the great struggle launched by the people for independence from the alien rule. Pt. Ajudhiya Nath was at once a leader of the Bar and a front-rank leader in the Indian National Congress. Pt. Motilal Nehru unrivalled in forensic eloquence and commanding a large and lucrative practice did not hesitate to join the struggle and came to the forefront at the height of the national movement. His illustrious son Pt. Jawaharlal Nehru also joined the struggle and became the first Prime Minister of India. There were then Pt. Madan Mohan Malaviya, Sri Purshottam Das Tandon, Dr. Kailash Nath Katju, Dr. Sachchidanand Sinha, the first President of the Constituent Assembly and, nearer our times, Pt. Gopal Swarup Pathak and a host of others. The Rt. Hon'ble Sir Tej Bahadur Sapru who was the uncrowned king of the Bar of this Court for decades, became a distinguished Law Member in the Viceroy's Executive Council besides having represented India at the three Round Table Conferences between 1929 and 1934.

The Bar Continued to make its contribution to public life in the post-independence era as well. The galaxy included such eminent names as the late Pt. Gopal Swarup Pathak, successively the Governor of Mysore, Law Minister in the Union Cabinet and finally the Vice President of India, late Sri Shyam Nath Kacker, the former Advocate General of UP, Solicitor General of India and later the Law Minister in the

Union Cabinet, Sri Shanti Bhushan, a Senior Advocate and one of the leaders of the Bar of the Supreme Court, former Advocate General of the State and later the Law Minister in the Union Government from 1977 to 1979, the late Sri Jagdish Swarup, the distinguished author, jurist, a member of the first Law Commission and a Tagore Law Lecturer apart from having been the Solicitor General of India from 1966 to 1969. The line is unending.

In November 1966, the Court celebrated its centenary amid the glitter and glory provided by the presence of men famed in law and literature, philosophy and history, gathered from all parts of the world. The occasion was marked by three days of celebrations and of pomp and splendour. His Excellency, the then President Dr. S. Radhakrishnan, the famed philosopher-statesman, inaugurated the celebrations and delivered an address the echo of which is still reverberating, fresh and vivid.

A heritage which is so rich and resplendent and inspiring ought to sustain any institution in any age for generations to come. History will not forgive us if we cannot preserve the glory of the past and carry the message of our Founding Fathers forward with the same vigour and sacredness with which it was nurtured. It is still not too late.