





# The Casquet of Remembrance



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# Preface

All the way through my life across 80 plus years I firmly believed and persistently followed the pre-eminent time-honoured precept - “*bene que latuit bene vixit*”, meaning – “**he has lived well who has lived obscure**”!!! Never had any intention, desire or ambition to write a paperback likely to linger in the public eye at the most for a few months and then having to endure its callous disposal to the wastepaper basket, or worse, allowed to decay in the company of book-loving microbes in a not easily-reachable corner of a tottering book-shelf. Besides, as the famous Irish writer James Joyce had so rightly pointed out in his letter written in the year 1918, “Writing in English is the most ingenious torture ever devised for sins committed in previous lives. The English reading public explain the reason why.”

All the same, with the blessings of Lord *Ganeshji* “The Casquet of Remembrance”, of whatever worth, is complete and ready for publication.

**I dedicate this work to my dearest wife and our daughters and their families with love and blessings. May God bless them.**

# Prayer

Om Shri Ganeshaya Namaha



\*\*\* My Lord *Ganeshji* \*\*\*

**Most respectfully and humbly I pray that Your Lordship may be graciously pleased to sit by my side as you always did when I sat on the Bench and guide me to write the truth and nothing but the truth in the following pages.**

**Braja Nath Misra**

# Introduction

*Vox emissa volat, litera scripta Manet* - words spoken fly away, words written stand. That appears good enough justification for writing down what perhaps should have been presented long ago.

In short while real-life incidents, anecdotes and actions will come up for reading. On the premise that our world does admit such a basic simplistic separation, the transcript that follows relates to inter-actions over the past seven to eight decades with two kinds of people, one good, the other bad. From time immemorial these two clusters have retained their respective places in society forming the basic structure of the human race. Life is and has been worth living as I have learnt from personal experience that the overwhelming majority of people in our world are good people. Throughout their lives they have at all times provided to the needy selfless affection, overwhelming love and generous kindness without any thought of receiving something in return. Sincere and eternal feelings of gratitude to them are beyond expression. Obeisance at their feet can only be a symbolic acknowledgment of all the godly things received from them.

However, over the years, life with its typical uneven bounce has not always been a bed of roses for me. A few crooked and corrupt persons did mete out minor bruises and hurt on me during my professional career, but all their evil designs and actions faded away without leaving any permanent scars under the eternal divine protection and blissful shelter of my dearest Lord *Ganeshji*.

How strange that no career or profession ever seems to be complete without the omnipresence of a few hyperactive corrupt

self-servers! Our higher judiciary is no exception. A number of most undeserving persons were able to climb (crawl?) to very high positions by crafty manoeuvring and manipulation. Hope they bear in mind that like everybody else their day of judgment will arrive, and then if alive, I would simply endorse what Mark Twain had said on the death of a corrupt politician, "I refused to attend his funeral, but I wrote a very nice letter explaining that I approved of it". May be, later I would refer to some of these **Machiavellians in Disguise.**

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# Prologue

## How? What? Who?

“How” to write? As a teacher, lawyer and later as a judge I must have delivered hundreds of lectures, speeches, orders, judgments, etc. At present it is irrelevant that they were mostly ordinary prose. Merit-wise, sitting in judgment over my judgments I may pronounce that while a good number of them were agreeable and satisfying, some were inadequate and a few insensitive. In any case all that is history now, but they do generate a kind of self-belief and provide assurance to begin writing something.

“What” to write? It could very well be that one’s past personal experience of life can provide interesting reading material. There has never been any doubt that life draws heavily on experience loyally preserved in memory. The union of our thoughts and actions filtered in through our senses, see, hear, smell, taste and feel by touch, is what we call experience. No one knows what may happen tomorrow, the future is always uncertain; but today all past thoughts and actions, whether gloomy or joyful, are already known and stored in memory, untainted and unadulterated. The entry is automatic.

Always within reach as a responsive and obliging guide to future conduct, experience survives as a divine characteristic of human existence. Holy power gives it the right of free passage to endless storage space in a safe container known as memory. At times it so happens that with passage of time some of the stored information is partly or fully lost, but what’s left behind is always retained in the form of truth. If one is asked to describe his

experience, he knows he is being called upon to speak the truth from whatever he can recall from his memory. Experience can never coexist with falsehood. The affinity between experience and truth is momentous!

The third important question is “Who” to write about. Just in case you feel uncomfortable with the composition of the preceding sentence, then read what Sir Winston Churchill had once written, “From now on, ending a sentence with a preposition is something up with which I will not put”.

It is not humanly possible to write about every past interaction. Valueless contacts have been deliberately excluded, as the intention is not to fill the pages with useless items. Close association with law for over fifty years has naturally resulted in yielding primacy to the law-schools, courts of law and the legal profession. Also, there is no denying the fact that personal likes and dislikes have to some extent influenced the written text. Though every thing stated is true there is no apparent justification for the random selection and therefore no explanation is offered. Responsibility for the publication is accepted.

\* \* \* \* \*

I do not propose to moralize about honesty and integrity as I am aware of the limitations on my rights and duties in that regard. Once Sir Winston Churchill was on a lecture tour to the USA and while speaking on the importance of integrity, honesty, etc., found Mark Twain amongst the audience. After his speech Sir Winston went up to Mark Twain, handed over a book authored by him (Sir Winston) and asked for a message. Mark Twain wrote, “To be good is noble and to preach to others to be good is nobler and no trouble.” Think I should leave it at that!

\* \* \* \* \*

The written text that follows is bio-non-specific; it is not an autobiography much less an inspirational story of my life. It is not meant to be a biography of any sort, but simply an exposé of anecdotes and events that took place.

In keeping with my natural innate instinct and well trained home-grown sense of humility, I would be careful to keep ‘I’, ‘me’, ‘my’ and ‘mine’ to the barest minimum and keep away from applauding in my own glory – “I said this brilliant piece and earned thunderous ovation from the audience”, or, worse, “I did this marvellous thing here and that fabulous thing there”! The whole object of my writing is to highlight **what they had said and what they had done.**

\* \* \* \* \*

# Lineage

*Note – This chapter is meant mainly for the eyes of our family members. Others may choose to skip over pages 13 to 28.*

Though I have not found any authoritative backup documentation, hearsay indication from elders in the village has been that our forefathers were Kanauji Hindu Brahmins. Centuries ago our ancestors had migrated from Kanauj in Uttar Pradesh to Puri at the invitation of Raja of Puri to do *seva-puja* of Lord Jagannath. Again, may be a couple of centuries thereafter, at the invitation of Raja of Bishunpur some from our flock moved to a big village called Panchapalli, meaning five villages, located in the district of Jagatsinghpur in Orissa. The five villages are Naradia, Tikarapara, Govindpur, Pani Endula and Patna. Panchapalli is two miles away from Bishunpur and Raja of Bishunpur who had built the famous Grameswar temple for Lord Shiva at Panchapalli entrusted the *seva-puja* duties of Lord Grameswar to our fore-fathers.

Let me begin with **Radhika Debi**, grandmother of my father. She was born in village Agarakula near Jagatsinghpur. Her husband Raghunath Misra of Panchapalli died of cholera at a very young age and Radhika, who was then a child and had not yet come to her father-in-law's place, became a child widow. After her husband's death she continued to live at her father's place for two or three years at the request of her father and brothers. She was advised by the family to sell off Raghunath's share in the ancestral property at Panchapalli and settle down at Agarakula with her father and brothers.

However, she carefully considered the matter and based her final decision mainly on her religious duties to her late husband and responsibilities in respect of his properties at Panchapalli. She made up her mind, took leave of her family members at Agarakula, and at a very young age permanently moved to village Panchapalli. Soon she began to look after Raghunath's properties and with the help of servants got her agricultural lands properly cultivated. Before long there was considerable improvement in her financial situation. In his book *Atma-charita*, my father has written (translated by me to English) – Radhika Debi was very fair complexioned, strong-minded, well-built and hard-working. She lived a very simple, chaste and virtuous life and observed all the rituals and *pujas* that a Hindu widow was required to perform including whole-day fasts almost once every week. The villagers held her in high esteem and duly accepted her as a very important person in the village. Her brothers who loved her very much often stayed with her for two/three months and helped her in cultivation of her agricultural lands. Instead of depending on her servants she used to personally look after her cows and bullocks and clean the cowshed herself. Soon Radhika realised that being a widow, she ought to take a son in adoption to continue her lineage and look after her house and landed properties after her. Around the age of 21 years she requested her husband's younger brother Banambar Misra to give his second son Dayanidhi who was then aged about 4 years for adoption by her. After Banambar Misra acceded to her request, she changed Dayanidhi's name to Chintamoni and adopted him in 1861.

She was very interested in providing proper education for Chintamoni and got him admitted to the government Upper Primary school at Panchapalli. Chintamoni was the first and only Brahmin student of that school. This step was unprecedented. The entire Brahmin community at Panchapalli was infuriated

and offended that Chintamoni had joined a government school. They took a rigid decision so as to discourage other Brahmin boys from joining the government school and excommunicated Radhika and Chintamoni from the Brahmin community. The ban remained in force for about five years, but Radhika and Chintamoni did not bother. Both mother and son carried on as before. Chintamoni completed his studies at the government school and passed the Upper Primary exams. He next studied at the Middle Vernacular School at village Punanga for two years. After passing his Vernacular examination being eligible he joined the medical school at Cuttack where the subject of medicine was taught in class in Oriya, the local language. However, again there was very strong and loud protest from the Brahmin community at Panchapalli as studies at the medical school involved dissection of dead bodies. This time Chintamoni did not fight, but gave in as at that time Radhika was all alone in the village while he was in town at Cuttack. He left the medical school and joined the Upper Primary School known as Sevaka Vidyalaya at Alamchand Bazar, Cuttack as a teacher. Soon he got married, but unfortunately his wife had an untimely death a few days after her marriage. Radhika waited for some time and then persuaded Chintamoni to marry again for the sake of continuance of lineage.

Chintamoni agreed and married Janaki Devi, the third daughter of Arta Nanda of village Kothi, not very far from Panchapalli. Both of them got along very well and Radhika was also happy that her desire to have a son in the family to keep the line going was going to be fulfilled. However, her happiness in time turned to sorrow. The first baby born to Janaki was a boy, but he did not survive and died 5/6 days after birth. Janaki's second pregnancy ended in miscarriage because of an accidental injury. For 5/6 years thereafter Janaki did not conceive. This made

Radhika very sad and she blamed herself for her fate. Janaki was also feeling very miserable that she could not bear a child to the family. Once again, Radhika thought of adoption to continue the family-line. She persuaded Chintamoni and Janaki who adopted the second son of Maheswar Misra of the same village and named him Gadadhar. At the time of his adoption Gadadhar was about 2/3 years of age. Under the direction of Radhika, Janaki took good care of Gadadhar and gave him a great deal of love and affection. With Gadadhar around life in the house became a little easier and happier. However, at the back of her mind Janaki pined and prayed for her own natural born son. She had immense faith in Lord Grameswar. Daily she used to visit the temple and do *puja* besides observing various rituals to have a son of her own. Radhika also prayed to Lord Grameswar to bless Janaki with a son. Even little Gadadhar used to pray that Lord Grameswar might give him a younger brother. Janaki went to various places on pilgrimage, did full *puja* with devotion and renewed her prayers. Two years passed in this manner with various *pujas* and donations, yet Janaki did not conceive. She became very sad and depressed.

After a great deal of deliberation, Janaki took an extraordinary step. One evening without informing any one she left home in the cover of darkness, went inside the temple of Lord Grameswar and sat down in one corner near the Garuda Stambha of Nrusingha temple. She had pulled the veil of her sari to cover her face. The *sevak*s of Grameswar temple closed the main gates of the temple and left not knowing that Janaki was inside. At the other end when Radhika found that Janaki had not returned home till late night, she informed the villagers. With help of lights they began searching for Janaki through all the sections of the village, village tank sides and the river embankment. The search

was thorough but not productive. When Janaki was not found inspite of search for hours, Radhika assumed that Janaki had jumped into the river and committed suicide. Impulsively she proceeded to the tank behind her court-yard and jumped in to end her life. Fortunately, the villagers ran in and rescued her in an unconscious state from the tank. The villagers revived her and advised her to rest. Around that time good news came. Early in the morning the *sevaks* of the temple opened the temple gates and found that a lady who had covered her face was sitting near the Garuda Stambha. The lady was wearing silver toe-rings and the *sevaks* guessed that she ought to be from a well-to-do Brahmin family. Some of the villagers checked up and identified Janaki. Radhika was very happy when she heard that Janaki was alive. She arranged a big *puja* at the temple. Even after the *puja* Janaki refused to return home saying that she would continue her meditation and *puja* at the temple until she received some indication from Lord Grameswar. She did not take any food, but survived only on temple *paduka* and a little *prasad*. According to her, after about 20 days Lord Grameswar appeared in her dreams and said that she would be blessed with a son. The next day Janaki returned home, but she took a number of days to recover her normal health. Within a year of her *puja* at the temple of Lord Grameswar, Janaki's prayers were answered and she conceived. On 16<sup>th</sup> May, 1898 Janaki was blessed with a son, my dearest father, and both mother and son were well. On the twenty-first day a grand feast was held in the village and as per tradition on that day the son was given the name **Kashi Nath Misra**. However, Radhika called him **Fakira** and following her many elderly villagers also called him **Fakira**. Every one in the village loved Kashi Nath very much and he enjoyed himself as the dearest boy of the village. Gadadhar was five years older, and he was ever so happy that he had a brother at home to play

with. At that time Chintamoni was working as Head-Pundit of Panchapalli Upper Primary School and Gadadhar was studying in that school. At home Chintamoni used to wake up at 4 in the morning every day, wake up Kashi Nath and chant various Sanskrit *Stotras* in praise of God. In due course Kashi Nath got by heart the same *Stotras* and began to recite them. Radhika and Janaki were very impressed. Besides, every day Radhika used to take Kashi Nath to the temple of Lord Grameswar and make him clean the entrance section with a broom-stick. They were very happy that Kashi Nath was mostly cheerful and of very good nature. In the year 1904/05, Kashi Nath started his studies in the local Upper Primary School. Shortly thereafter, another Head *pundit* joined the school and Chintamoni had to seek employment in another nearby village.

In 1907 Kashi Nath was given the sacred thread at a formal *Bratopanayana* ceremony. In 1909 he came to Cuttack and joined the Victoria School. Almost every year he stood first in his class. At that time Chinatamoni's monthly salary as a Head-*Pundit* was Rs.8 and he used to send Rs.2 to Kashi Nath every month. Kashi Nath was staying in a small single room of a thatched house belonging to one Mahiya Ma. Monthly rent was fixed at 8 annas. Kashi Nath had to manage with the balance amount of one rupee eight annas. In spite of these difficulties Kashi Nath always secured the first or second position in his class. In 1912 Kashi Nath left Victoria School and joined the prestigious Ravenshaw Collegiate School. Subhas Chandra Bose was a student of this school and was two/three years senior to Kashi Nath. In the quarterly exams, Kashi Nath stood first in his new class. He was given a place in the school hostel which was very helpful for his studies. Soon he was drawn towards the religious order of Sri Ramakrishna and began to attend religious discourses

in the evenings. At that time Chintamani used to send Rs.9, his entire month's salary, to Kashi Nath. In the village he defrayed the family expenses from the adequate income he derived by cultivation of the agricultural lands. In 1915 Mr. W.W.Henderson joined as Headmaster of Ravenshaw Collegiate School. He was highly impressed with Kashi Nath's performance in class and gave him a great deal of encouragement in studies. At the same time Kashi Nath's sustained devotion to Lord Ramakrishna gave him moral and mental strength to remain competitive with his fellow students throughout his student days. Around 1915 Kashi Nath went to Calcutta in the company of one of his teachers and visited the famous temple of *Maa Kali* at Dakhineswar. On that occasion he also had *darshan* of Lord Ramakrishna's nephew Ram Lal Chattopadhyaya and niece Maa Lakshminani Debi. They blessed Kashi Nath and gave him prasada which made him very happy. Maa Lakshminani Debi asked Kashi Nath to come again and meet her. On his next visit he met Maa Lakshminani who gave him *Diksha* and accepted him as her disciple. Thus, Kashi Nath was inducted into the Ramakrishna order. He observed all the formal codes of discipline, meditation, *puja*, etc. as a part of daily routine. This spiritual contentment immensely helped him in his studies. In 1917 he passed the matriculation examination in high first division and got a scholarship of Rs.15 per month. The scholarship was of great help to him. The same year he joined Ravenshaw College as a science student. In 1919 he duly passed the Intermediate Science Examination of Patna University in the first division and secured the tenth position in order of merit. At that time Bihar and Orissa was one province and Patna was the capital. While on vacation at Panchapalli, Kashi Nath received a telegram from the I.G. of Civil Hospitals at Patna that he had been nominated to study medicine at the Calcutta Medical College with a scholarship grant. The grant comprised of Twelve

rupees per month for upkeep. Monthly college fees of Ten rupees eight annas were waived for him as a part of the scholarship scheme. The other condition was that the scholarship would continue for the full course of six years provided he regularly passed his annual exams without any break. On 19<sup>th</sup> July 1919 Kashi Nath got himself admitted to the Calcutta Medical College and began his studies.

While studying at Calcutta, almost every Sunday he used to go to Dakhineswar and do *seva-puja* of his Guru Maa Lakshmi Devi. He was very happy that his Guru gave him a great deal of love, affection and advice like she was his mother. He considered it a great privilege that he was allowed to join in while his Guru did *puja* of Lord Ramakrishna. He used to return to his college with pious and good thoughts which really helped him to avoid distraction and concentrate on his studies. After some time one morning Kashi Nath visited 'Matru Mandir' at Baghbazar in Calcutta. He requested for permission and was really lucky to have *darshan* of Maa Sarada Devi. He took blessings at her feet. The *darshan* made him inwardly very happy and contented and filled up his heart with highly spiritual feelings.

In 1920 he passed the preliminary MBBS exam. The same year on the highly auspicious *Akshaya Trutiya* day in the month of March he married my beloved mother Ichhamoni Devi, daughter of Sibacharan Sarangi of village Pankapal. Ichhamoni was born on 30<sup>th</sup> January 1908 and was about twelve years old at the time of her marriage.

In 1922 in his third year at the Medical College Kashi Nath passed his 1<sup>st</sup> MBBS exam. Next year while continuing his MBBS studies, with the permission of the University authorities he appeared at the B.Sc. (Honours) examination in Physiology as a non-collegiate candidate and passed in the first division.

His excellent result at the Honours examination brought him a good deal of admiration from his teachers and friends. Finally, he passed the final MBBS examination in November 1925. This was a rare achievement in those years.

In the meanwhile Radhika had passed away while Kashi Nath was in his fifth year at the Medical College. At Panchapalli, Chintamaoni, Janaki, Gadadhar and Ichhamoni were very happy that Kashi Nath had become a full-fledged doctor on his own right. What was most impressive was that he had never allowed lack of adequate funds get in the way of his luminous academic career. Soon he got his name registered at Patna in the Register of qualified medical graduates and began private practice at Puri. Next he joined the post of Chief Medical Officer at Dhenkanal, headquarters of Dhenkanal state under Raja Shankar Pratap Deo who was then the Ruler of the state. His salary was Rs.320 per month. He was given rent-free accommodation and a horse driven carriage for transport. Soon he established himself as an efficient and skilled doctor; and his private practice gave him a steady income of about Rs.200 per month. He took leave from duty and went to Panchapalli when Ichhamoni who was already there was close to the date of delivery of her first child. On 26<sup>th</sup> June 1926, a day after *Savitri Amabasya*, she was blessed with a baby girl, my respected eldest sister. She was very fair and pretty and was given the name 'Sulochana'. Kashi Nath returned to Dhenkanal and continued to work as the Chief Medical Officer. After some time he received official intimation from the office of the Inspector General of Civil Hospitals at Patna, that he had been selected for government service. In the circumstances the Ruler was kind enough to permit him to leave. So he resigned from his post and left Dhenkanal.



**Smt. Ichhamoni Debi**

On 19<sup>th</sup> July 1926 he joined at Puri head-quarters hospital as a Civil Assistant Surgeon. In July 1927 he was transferred to Kendrapara sub-divisional Hospital. Soon following a few complicated but successful surgeries performed by him, his reputation spread over the entire subdivision. There was considerable increase in the number of patients, both indoor and outdoor, at the sub-divisional hospital. Because of his ability as a doctor he had roaring private practice at Kendrapara. There was considerable improvement in his financial condition. Gone were the old days of struggle and hardship. While at Kendrapara, my respected elder brother Rama Nath was born in 1928. A few days thereafter Kashi Nath received orders of his transfer to Darbhanga in Bihar. He was asked to join the Medical School at Darbhanga as teacher in Physics, Chemistry and Physiology. As the twenty-first day *ekoisia* (naming) ceremony of my brother was yet to be held, Kashi Nath sent a telegram to the IG of Civil Hospitals at Patna seeking extension of joining time by a few days so that he could finish the ritual at Kendrapara. Within about two days he received the following telegram from the IG at Patna, **“Hand over charge to your successor who has**

**proceeded to Kendrapara. Join at Darbhanga when convenient**". Kashi Nath used to refer to the above message as an illustration of typical plus point of British administration. Immediately after the naming ceremony of his elder son was over Kashi Nath left for Darbhanga and joined the Medical School. He put in satisfactory work as a teacher and earned the affection of his superiors and students. He had very good private practice also.

On 20<sup>th</sup> November 1929 I was born and named 'Braja Nath' on my twenty-first day function. In 1931 Kashi Nath took leave for six months and went to Calcutta to study for the diploma in tropical medicine. My dearest younger sister Shakuntala was born the same year. After successful completion of DTM examination Kashi Nath returned from Calcutta to Darbhanga. In 1932 Kashi Nath was transferred to Buxar. The hospital at Buxar was a large one and Kashi Nath made a number of improvements to the hospital. Once again he began to earn a good deal of money from private practice. He purchased a motor car, a rarity in those days, to attend to his large number of private patients. In 1933 my dearest second younger sister Sarala was born. Sadly, she is no more. In 1934 he was transferred to Patna where my dearest youngest sister Sushila was born.

Orissa became a separate province on 1<sup>st</sup> April 1936. Kashi Nath was selected as teacher of Surgery at Cuttack Medical School and Deputy Superintendent of the Cuttack General Hospital. Around the last week of March 1936 he left Patna. On his way to Cuttack he purchased a new 1936 model 'Standard Twelve' car from French Motor Company at Calcutta which was delivered to him at Cuttack. He joined his new post on 31<sup>st</sup> March 1936. In 1937 he was elected to the Medical Council of India. Prolonged good and efficient work as a doctor, teacher and administrator earned him all round appreciation. In 1938 the

Government conferred on him the title of ***Rai Sahib*** in recognition of his contribution to the advance of medical and surgical treatment in the country. With a view to study for FRCS he left for England at the end of the year.

He took up residence at 117, Rill Bank Terrace at Edinburgh on payment of 3 pounds a week for food and stay. However, to his bad luck World War II started in September 1939 and soon thereafter he lost his father. Being the only son he could not forgive himself for having been absent from home at a time when his father and family needed him. These two adversities put him off completely and he returned to India without waiting to qualify for FRCS. He rejoined his old post and continued to work at Cuttack. In March/April 1942 he was promoted and joined as Civil Surgeon of Puri district with headquarters at Puri Town. He did a lot of good work and brought about many reforms in standards of medical treatment in the district. In recognition of his meritorious service, the title ***Rai Bahadur*** was conferred on him in 1945. Copy of the citation from the Secretary to the Governor is reproduced here:

“RAI BAHADUR DR. KASINATH MISRA

As Civil Surgeon you have shown marked professional ability, and, while employed on the staff of the General Hospital at Cuttack, you rendered conspicuous service in 1942 in treating the survivors of ships sunk off the Orissa coast. You have also done excellent work in connection with civil defence and the St. John Ambulance Brigade and as Secretary of Puri District Amenities Committee. Your 18 years of admirable service in the Medical Department have earned for you the title of *Rai Bahadur* of which I am pleased to present to you the badge and medal.

Sd/

Secretary to the Governor.”

In the year 1944 Utkal University was established and Cuttack Medical School was upgraded to a Medical College. In 1947 Kashi Nath was transferred to Cuttack and he joined as Professor of Medical Jurisprudence at the Medical College and Additional Civil Surgeon. After some time he was permanently appointed as Principal of the Medical College, Professor of Clinical Surgery and Superintendent of the Medical College Hospital. Finally, on 16<sup>th</sup> May 1953 he retired from service. Thus, a long and distinguished career in the service of humanity came to a glorious end.



**Dr. Kashi Nath Misra**

On 14<sup>th</sup> July 1953 Pramila and I got married. She is the eldest daughter of Dr. Radha Nath Misra, son of Chandrasekhar Misra of village Mathakaragola in the district of Dhenkanal. Chandrasekhar was the personal physician of the Ruler of Dhenkanal State. He was conferred the title *Raja Vaidya* and the Ruler had settled Mathakaragola and several other villages with

him for his services to the state. Radha Nath Misra was his third son born in 1908. He was a qualified doctor. Initially he held the diploma ‘LMP’ (Licentiate Medical Practitioner). However, during his service career he felt discriminated against because he did not possess the MBBS degree. So, after serious consideration, around 1941/42, although already 33 years old, he resigned government service and joined the Intermediate Science course at Ravenshaw College, Cuttack as an internal student. After passing the Inter-Science examination he left Pramila’s mother, Lakshmipriya Devi and his family at village Mathakaragola and proceeded to Patna where he joined the MBBS course at Patna Medical College.



**Dr. Radha Nath Misra and Smt. Lakshmipriya with family**

He studied for full five years, passed the MBBS examination, completed his internship and then returned to government service at Cuttack. He enjoyed the reputation of being a very good

surgeon. While every thing was going on well for him at Cuttack, once again he thought of further studies. At his not so young age of about 42 years and in spite of various difficulties that his family was likely to face, he left for Edinburgh to prepare and take the fellowship examination from the Royal College of Surgeons at Edinburgh. In two years time he passed the FRCS examination and returned to India around 1952. He was the second doctor from Orissa to pass the FRCS examination. His family and friends gave him a wonderful reception and they were justly very proud of him. He worked as Professor in the Surgery Department at Cuttack. Next he was transferred and posted as the Principal and Professor of Surgery at Burla Medical College which had just been established. He worked very hard and made sure that the college was accepted as one of the good colleges in India. He worked there till his retirement. His contribution to the Burla Medical College is still remembered and talked about by senior Professors and older people. He lived a happy retired life till his death in 1996. His wife Lakshmi Priya had predeceased him a few years earlier.

Kashi Nath had built a house at village Panchapalli and named it ‘Radhika Niwas’ after his grand-mother. The next house he built was at Bhubaneswar in 1948/49 and he named it ‘Ichha Niwas’ after my mother. The last house he built was at Cuttack and he named it ‘Janaki Niwas’ after his mother. After retirement in 1953 he lived at Ichha Niwas for three years. During this period he used to regularly attend to patients at the Ramakrishna Math at Bhubaneswar. He moved to Janaki Niwas at Cuttack in 1956/7. After a few years at the insistence of the government, he got a Childrens’ Hospital established at Cuttack in 1960. With his previous administrative and professional experience, it did not take him long to put up an efficient institution meant mainly

for medical treatment of children of tender age. In the year 1963 he faced another shocking and sad event of his life. On 2<sup>nd</sup> September 1963, on *Anantabrata* day, my dear beloved mother passed away at Cuttack. She was only 55 years old at the time of her death. I was in London at that time. I flew down, but by the time I reached home, every thing was over. Though I couldn't see mother before she closed her eyes, I was glad to have been with my father at the time of his grief. After about twelve days I returned to London and joined Pramila and our children. My father lived twenty-one long years after my mother's death. He died at Cuttack on 18<sup>th</sup> December 1984 at the age of eighty six and half years. At that time he was living at Janaki Niwas with my brother. I was staying at a distance of about one kilometre in the official bungalow allotted to me as a Judge of Orissa High Court. On that fateful night I received a telephone call from my brother's place that father's condition was serious. I immediately drove down to Janaki Niwas and was there in five minutes, but it was too late. He had already departed. I questioned myself why providence was so overly cruel to me? I had not seen my mother when she closed her eyes forever; it took more than one day to fly down from London. Again, sadly for me, I was not able to see my father before he passed away though I was not far away. My appalling luck!

# Narrative

*Memories of yester years, as if yesterdays, so sweet and sad!!!*

Faintly recollect, I was then about three years old. Mother was holding me in her arms while standing alongside father in front of our compartment on the platform at Cuttack railway station. They were talking with friends who had come to see us off on our journey to Buxar where my father was then posted. The train engine was close by. From over the shoulder of my mother I was looking at the engine when the driver suddenly blew the whistle. I still remember how the shrill sound had petrified me. Immediately I closed my eyes and not knowing what else to do pressed my head on to the shoulder of my mother and gave a loud shriek. She put her arms around me and hugged me close to her while gently stroking my hair. With life-support coming from mother I was so happy to be alive and breathing.

\* \* \* \* \*



**Brajanath and Ramanath at Buxar**

In 1934 father was posted at Buxar in the state of Bihar. Hazily recollect it was about 8 a.m. He was sitting on a mat on the floor

and having breakfast before going to the government hospital where he worked. I was sitting by his side also on the floor and eating whatever he was putting in my mouth. Suddenly I rolled over in a somersault. Every thing around us started shaking and a kind of terrorizing noise was coming from under the ground. Father asked me to immediately get out of the house. He went running and asking everyone else to leave the house and run out to the open ground outside. It was a severe earthquake. Except my father everyone was crying and praying to God. I looked around and saw father trying to re-enter the house to rescue my recently born baby sister who had been left behind in the bedroom, but mother was pulling him back and trying to go in ahead of him. Suddenly grandmother appeared from nowhere. She asked every one to be quiet and declared that as the eldest member of the family it was her duty to fetch the baby from inside. Before anybody could stop her, in a flash she had gone inside. All of us were loudly praying to God. After a while grandma came out of the house with minor bruises on her arms but safely carrying the baby covered within her sari. We all gathered around her and my parents fell at her feet and expressed their gratitude with tears flowing down their cheeks. As a rule elders in the family are usually right and generally have very good reasons for doing what they do!

\* \* \* \* \*

## School and College days:



### **Braja Nath at Ravenshaw Collegiate School, Cuttack**

In 1939 father was away in Scotland for higher studies. Mother, my sisters, brother, cousins and I, we were staying in a rented house in Telenga Bazaar, Cuttack. In my mother's bedroom there was a table on which a number of miscellaneous articles were kept. One was a miniature Taj Mahal picked up by father during one of his visits to Agra. It was small, about eight inches high, but beautiful, an exquisite piece made of pure white marble stone. The whole structure rested on a solid square marble base. One morning I found that out of the four minarets at the four corners one was loose and leaning on its side. I lifted it from its groove to tighten the screw at its base, but unfortunately it slipped out of my hand, fell on the floor and broke into two. I became very nervous. I thought serious consequences were likely to follow when it was found out that I had broken one of the minarets. My elder sister was then the only person present in the room. She was combing her hair in front of the wall mirror. I picked up the two broken pieces from the floor and first fixed the lower half tightening it on the screw at the base. It held strongly.

Next I put the upper half on top of the lower half and the minaret looked as before, as if it was one piece. My sister had seen the whole thing. I pleaded with her not to tell any one that I had broken it. She was very upset and taken aback at my request. She did not mince her words of admonition, “what a lousy boy you are! It is too bad you broke it and I am surprised you don’t have the courage to speak the truth. It is so wrong that you want some one else to take the blame for what you have done. I am really ashamed of you”.

That was it, couldn’t take any more. Right away went to mother and told her I had broken the minaret. She mildly pulled my ear and said I was only good at breaking things. Mother was always kind to us!!! I had learnt a great lesson from my sister that morning. Speak the truth regardless of the consequences and hold your head high.

\* \* \* \* \*

A very distinguished person I met in 1944 after admission to Ravenshaw College at Cuttack was Professor V. V. John. He was Professor of English and the first Registrar of Utkal University, which was established that year. We were proud to be the first batch of Utkal University students. After I paid my respects to him he spoke a few words about the usefulness of education to society.

It was a very interesting talk. He was respected as a highly learned person and considered an authority on adult education. As he was busy I had to leave after about ten minutes and there was no time to find out whether the following story attributed to him was true.

It was during the British Raj that the Government decided to construct a bridge across one of the rivers in Orissa. His

Excellency the Governor of Orissa was to lay the foundation stone at the bank of the river that was at some distance from the main road. On the appointed day immediately after arrival of His Excellency the entourage began the walk from the road to the spot at the riverbank where the foundation stone was to be laid. In front was the stiff and upright *Aide-de-Camp*. The Chief Secretary and Chief Engineer walked behind His Excellency. It was a very hot day and the tropical sun was really beating down mercilessly.

As it happened the Chief Secretary had serious hearing problems while the Chief Engineer's difficulty was his speech impediment. Perhaps unable to bear the scorching overhead heat any longer, after a while His Excellency turned to the Chief Secretary and softly enquired how far away was the site? Unable to hear, "Beg Your Excellency's pardon?" was all that the Chief Secretary said a couple of times. His Excellency next turned to the Chief Engineer, but unfortunately his words in reply were not clear because of his stammer. Anyway His Excellency finally reached the site, laid the foundation stone and returned to the Government House. When news of His Excellency's discomfiture leaked out, it was published in a local English newspaper with a suggestion that perhaps it would be better to have mobile foundation stones which could easily be inaugurated by His Excellency the Governor at the Government House and then physically carried to and laid at the respective sites by the engineers. Words came from the grapevine that Professor V. V. John was the author of that suggestion. No enquiry was held and the truth was never known. However, some people did get into trouble for that publication. Frankly, isn't it a wonderful suggestion for those aged politicians who in spite of serious old age problems affecting mobility and state of health carry on and on and on till death doth them part from their official chair?

Years later, Professor V.V. John had written in one of his articles, “...in India, everybody seems ready with answers, but the problem is we have forgotten what the questions are”. How appropriate!!!

\* \* \* \* \*

Sir John Austin Hubback was the Governor of Orissa when Utkal University came into existence in 1944. As the Chancellor of the University, Sir John delivered the first Convocation address. As students we were required to be at our seats in the balcony an hour before the function. Copies of the Convocation speech of the Chancellor, twelve pages as far as I recall, were distributed to the audience before commencement of the formal ceremony. Suddenly the bugle sounded and soon the Chancellor entered the Hall with all the imperialist regalia.



**1944/45 Centre on horse named “Pundit”**

We all stood up and sat only after the VIPs had taken their seats. Professor V. V. John, the Registrar, initiated the ceremony. Then the Chancellor stood up and delivered his speech. We were taken aback that he spoke without looking at the printed script.

Throughout his speech his eyes were on the audience. Apart from accurate verbatim rendering of the text, he ritually observed all the punctuation marks with correct pauses and postures. One may not believe this, but all the twelve pages were accurately recited from memory by the Governor with admirable elocution and accent. Decades have gone by since then; I am still waiting to see or hear a repeat performance.

\* \* \* \* \*

In 1945 I was studying in Ravenshaw College at Cuttack. The college closed around June for summer vacation. Father was then the Civil Surgeon of Puri District. At that time there were no buses; the only train from Cuttack took four hours to reach Puri. That morning after breakfast I left the hostel in high spirits eagerly looking forward to the journey back home.



**In College 3<sup>rd</sup> year**

On arrival at the railway station I was disappointed to find the ticket counter closed with a notice on the board that sale of tickets had been stopped as the train was booked to capacity on account

of Rath-Yatra festival and no further accommodation was available. Met the Station Master and explained to him I was no pilgrim and had to return home during the vacation as the college and hostel had closed. He pleaded helplessness and walked away. Within minutes the train steamed in. Without a ticket but with a brave face I climbed into a compartment. All the seats were taken and a number of passengers were standing. I put my suitcase on the floor and sat on it. The compartment was crowded and people were shoving and pushing each other. The big rush gave me a ray of hope that the ticket collector might not bother to check the compartment I was in. After what seemed an eternity the train began to move. Suddenly I heard passengers from the adjoining compartment shouting that the old woman was bound to slip and fall to her death and there was nothing they could do. Sensing that something dreadful was going to happen I rushed through the inter-connecting door and to my horror found an old beggar woman holding on to the handle outside the door and desperately trying to open it. It was a frightening sight. No one had gone near the door to help though there were plenty of loud sighs and moans. I moved forward, opened the door fully and held the door handle tightly with my left hand. Next with my right hand I firmly caught hold of one hand of the woman. After making sure that she was not going to fall I tightened my grip on her forearm and began pulling her up. Slowly I lifted her from her precarious position.

She was still holding the door handle with one hand while I held her other hand. Finally, I helped her put her feet on the top step and sit down on the floor. I had completed the job and she was alive. She was happy and with her broad smile conveyed her blessings. I was also happy I had helped her out of what might have been a terrible accident. While engaged in the rescue act I

had lost count of time. Once the woman was safely seated on the floor I turned round to leave. The passengers were eloquent in their praise and appreciation of my daring act. However my feeling of bravado soon disappeared! As some one had in the mean while pulled the alarm chain the train had come to a halt. Soon the guard and two ticket collectors came into the compartment. First they shouted at the beggar woman and asked her to leave. She obeyed, got down and walked away. Next they wanted the passengers to identify the person who had pulled the chain and explain why it was pulled. The passengers explained that the chain was pulled to save the life of a beggar woman. The guard declared that the train would not move unless the person who pulled the chain was identified. Strangely some passengers who had seen my rescue act began pushing me forward to go before the guard. As I did not have a ticket I turned back, had my face covered with handkerchief and managed to get out of that compartment, thank God, without any confrontation with the railway officials. Oh what relief! But what a pity that my real-life act of heroism ended more in embarrassment than honour!!!

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## Law practice and teaching :

On 11<sup>th</sup> August 1952 I was called to the Bar and became an Advocate of the Orissa High Court. After the enrolment ceremony in the Court of the Chief Justice was over, I came down to the High Court Bar Association Hall. Advocates and friends who were present offered their congratulations. The best feature of my call to the Bar was the challenge it posed to me as the first lawyer of our family.

My luck at the Bar definitely changed for the better after marriage on July 14, 1953. Pramila was then 14 years old and I was 23. Thank God at that time marriage of a minor Hindu girl was not forbidden under law. With her arrival Lady Luck gave a big smile and I am forever grateful.



**1953 Before Marriage**



**Pramila at 14**



**Wedding**



**Marriage Reception**

One evening in 1954 Senior Advocate Mr. K. M. Joardar called me. I went to his place and found him bed-ridden being afflicted with partial paralysis from waist downwards. I was shocked to see him like that. Only a few days ago I had seen him, so full of life and good will for all. He was respected and liked by every one. I was so sad to see him, fully awake, but lying helpless on his bed. As desired I helped him sit up. He thanked me and then said he wanted I should take over all his cases and conduct them on his behalf in civil, criminal and revenue courts and the High Court. I couldn't believe what I heard. He smiled and said he had personally seen and heard me argue a case in the Sessions Court and was impressed and further that he had full confidence in my integrity based on my family background and public reputation. I stood up, expressed my gratitude and politely agreed to take up all his cases. I assured him that I would do my best to safeguard his relationship with his clients.

Next morning Mr. Joardar's clerk, Ram Chandra Lenka, brought the cases over to my office. They were about eight hundred cases of various types, civil, criminal, revenue, etc. in the lower courts as well as the High Court. Next day Lenka registered himself as my clerk. It was a big break in my practice at the Bar. Never looked back after that day.

\* \* \* \* \*

On March 13 1956 our eldest daughter Jayshree (Ena) was born at Cuttack. We were simply thrilled and so happy! Her naming ceremony was a big and joyous event in the family. She brought with her good tidings from *Maa Lakshmi*. Soon afterwards I began teaching law with a monthly salary of Rs.250 on being appointed a part-time lecturer for a term of three years in the Madhusudan Law College at Cuttack. I was 25(+) years old at that time and as some of my friends said looked more like a

student than teacher. Our dearest daughter had after all persuaded *Maa Lakshmi* to bless us with a fixed monthly income. Being a young lecturer I had to study and work very hard to win the respect of students as a sincere and erudite teacher. I loved teaching. It was so refreshing! To be able to explain a principle of law, with the help of illustrations wherever possible to make it easier for the students to understand, gave tremendous satisfaction. However, even now one important aspect of legal education that generally suffers from insufficient coverage in the law colleges is that the students are not forewarned about the real difference between studying law in a classroom and practising law in a courtroom.

Before joining the Bar the students should be given a crash course and made ready to face and fight the evils of corruption, dishonesty, fraud and similar vices which have spread all over the judicial structure like cancer. In the recent past a former Central Minister of law remarked that incompetent judges were mainly responsible for delay in disposal of cases. Not always. Is he not aware that the source of recruitment of a judge is always the Bar which is famous for its all round evil impact? So far as delay in disposal of cases is concerned, the Bar should have a good look at itself and its role in the matter.

\* \* \* \* \*

What I am going to relate now is what happened when the late Lingaraj Panigrahi was the Chief Justice. He was going to retire after a few days. His greatness was beyond any doubt. His oratorical skills were of the highest order. That is why before his elevation to the Bench he had been selected as a delegate to the Round Table Conference in London. Once at a function in the University, on his arrival at the high table, the Vice Chancellor shook hands with him and requested him to take the chair next

to his. As he sat down, Chief Justice Panigrahi said, “Ladies and Gentlemen, am I not fortunate to be next to vice?” Very few people at the Bench and the Bar ever matched his wit. As Chief Justice he was not getting along well with a few senior lawyers whom he admonished time and again for carelessness and negligence when he found that there was no improvement in their work. We had assumed that Chief Justice Panigrahi would be given a farewell by the High Court Bar Association on the eve of his retirement as was the usual practice. However, I was surprised to find that there was a move by the aforesaid senior lawyers to stop the farewell party on the ground, as they made out in a cancel-farewell campaign, that as a Chief Justice he did not behave properly with them. I was not at all convinced that this could be a genuine ground to call off the farewell party. So I got moving and requisitioned a special meeting of the Bar Association with the active support of a large number of younger lawyers to discuss the matter of farewell to the outgoing Chief Justice. The special meeting was convened at 4 p.m. Unfortunately it so happened that around lunch time I received a telephone call from my father who asked me to immediately proceed to the Railway Station and get our wagon-load of cement which had already arrived, released from the goods shed and get it transported to the site at Cuttack where he was then building a house. I was apprehensive that I might not be able to return to the Bar Association by 4 p.m. and so I personally requested the Assistant Secretary of the Association to carry on with the meeting and ensure that in keeping with past practice a majority of members voted in favour of the farewell resolution. Sadly, that did not happen. The senior lawyers prevailed upon the Association office-bearers to withdraw the resolution and it was withdrawn. However, I was not prepared to accept defeat so

easily. With a group of my close friends I met Mr. Chintamani Acharya and next Mr. Madhusudan Mahanty, both of whom were very senior lawyers, to lead the “Chief Justice’s Farewell movement”, as one of them put it. They agreed with us and saw nothing wrong with a formal farewell to the outgoing Chief Justice. Next we went to the residence of the Chief Justice and invited him to the farewell ceremony to be held the next day at 5 p.m.

We returned to the Bar and after discussions amongst us decided we had to print and issue invitation cards immediately. As the High Court Bar Association was not in any way concerned with the farewell, we were constrained to print in our invitation card, “Lawyers of Orissa request the pleasure of your company.....” We knew these words did not read well, but had no other acceptable option. The invitation cards were distributed and about three to four hundred people attended the farewell ceremony. In his speech Mr. Chintamani Acharya casually mentioned about the Chief Justice’s proverbial loss of temper in court. I recall the Chief Justice’s reply, “I and my temper were born as twins sixty years ago. It was my duty to express my indignation at the repeated substandard conduct of some members of the Bar”. The disgruntled senior lawyers were visibly upset when next day they learnt about the farewell and they said it was an act of defiance and disrespect to them by the junior members of the Bar. Some of the seniors were sitting in a group when I happened to pass by. With folded hands I did *namaskar* to them. They smiled and one of them who was holding a copy of our invitation card in his hand asked me, “You have printed in your card ‘Lawyers of Orissa’. You see, I am a lawyer of Orissa, but surely I did not invite any one. Why did you print the card in this incorrect manner? Well, what do you say?”

Politely I replied, “Sir, the plural word ‘lawyers’ was the correct description and in the circumstances its use was unavoidable too.” You see, a fairly large number of lawyers were drawn in who had helped in organising the farewell function, but we were not sure about their exact number.

Just imagine how bizarre it would have read if we were to print, ‘about 200 to 300 lawyers of Orissa request the pleasure of your company.....’ Therefore, we hope you would appreciate that in the circumstances we had no option but to apply the doctrine of – “choice of lesser evil.” While some seniors chuckled at my explanation I respectfully did *namaskar* and withdrew from the scene.

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Generally speaking, in the fifties life went on quite smoothly at Cuttack. Teaching law early morning at the College and afterwards conducting cases in courts during the day brought about a distinctive and honest life style. To add to all this we were very happy that on October 8, 1958 our second daughter Pushpashree (Mina) was born at Cuttack. Oh what joy all round! She was really as delicate as a flower. To our good fortune she also brought to us blessings from *Maa Lakshmi*. I was once again selected and appointed as a part-time lecturer in law for a fresh term of three years. As before the job provided a steady monthly income for my family. More important, the teaching gave me invaluable experience and also exposure to diverse branches of law. I was feeling good and confident as everything was going on smoothly. Even my skill at tennis improved considerably. Actually things were too good to last for too long.

\* \* \* \* \*

One evening the then Advocate General Mr. D. Mohanty sent for me and when I met him said that the Law Minister was thinking of appointing me as the government standing counsel for the High Court and that I should give my consent.

Of course I was very happy when I heard this, but told him that I had to first ask my father and also Justice S. P. Mohapatra, who was my well-wisher and my ideal in the legal fraternity. He and my father agreed that it was a good break and advised that I should accept the appointment. Next morning I gave my consent to Advocate General Mohanty. Soon the news leaked out and spread like fire. I received congratulations from judges, lawyers and friends. The Law College students began arranging a farewell party in my honour to bid me good bye. I was told at the government level that my case was considered along with another gentleman. He was older to me in age but had lesser experience at the Bar. While I had already been teaching in the Law College for more than three years, he had no teaching experience. The Law Minister considered both the cases and selected me for appointment as Standing Counsel. The draft letter of my appointment was placed on file, which was submitted to the Chief Minister for approval. However, the Chief Minister returned the file to the Law Minister asking him to reconsider the matter in favour of the other gentleman. Within a fortnight government changed its mind and the other gentleman who had politically moved from the Communist Party to the Congress fold at the right time, was duly rewarded and appointed as standing counsel. God bless him! The episode did shake me up a bit, but there was hardly anything that I could do. Before long I arranged a head-on meeting with the Law Minister who at that time was none other than retired Chief Justice Panigrahi whose farewell function at the High Court has already been described.

On meeting him I politely enquired why the standing counsel's job was offered to me if government had not made up its mind as to who should be appointed. He explained that political considerations had forced his hands and offered me another government job as Liaison Officer in class I of the State Administrative Service. I tersely cut him short, declined his offer, and took leave. After leaving his office I straight away returned home and rested for a while to recover from the situation. Relations and friends were sad when I broke the news to them. That night I invoked the blessings of Lord *Ganeshji* and took a vow to leave the country for good.

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First I got my passport. Next I booked my passage by ship from Cochin to Genoa and then over-land by train via Rome and Paris to London. However, I was stunned with official intimation from the Reserve Bank of India that no foreign exchange would be released for studying law outside India. Invoked the blessings of Lord *Ganeshji* and met several persons seeking their help and guidance. I also failed to get any assistance from the State Government.

In those uncertain days the only good thing that happened was that our dearest third daughter Subhashree (Nina) was born at Cuttack on December 23, 1959. Our happiness with the little one knew no bounds. She was so cute! Also, she completely changed our luck most likely with support from Lord *Ganeshji* above. My plan to go abroad for further studies took a giant step forward because of the following divine intervention.

Around that time one day I was going around the stalls along with some friends at Ravenshaw College premises where an exhibition was being held as a part of the annual 'Old Boys'

Association Day' celebrations. Just by chance at one stall I met my former teacher Professor M. K. Rout of Ravenshaw College, who later became Vice Chancellor of Utkal University. When I did *namaskar* he asked why I was looking sad. I told him although I had booked my passage I was not able to arrange foreign exchange for my postgraduate studies abroad. He said one of his old students studying in USA regularly sent money to his family in India. So if I paid his family in Rupees in India he would write to his student to send the equivalent amount in pound sterling to my nominee in England. The most fascinating part of the story is that Dr. Rout's former student in USA was none other than Dr. Pujhari who was my dear wife Pramila's private tutor in 1953 the year of our marriage. With blessings of Lord *Ganeshji* everything fell into place. My biggest obstruction had been removed. Within a few days Dr. Rout wrote to Dr. Pujhari who immediately sent 300 pounds to my father's friend Dr. B. D. Chowdhury residing in Wales. Dr. Chowdhury duly received the amount on my behalf. I gladly paid the equivalent of 300 pounds, about Rs. 4000, at the then prevalent exchange rates, to his family. Thank God at that time there was no legal embargo on the transaction.

I can never forget how sad it was to say goodbye to Pramila, my family and friends at Cuttack Railway Station. As I bent down and touched my mother's feet, she picked me up into her arms and with tears flowing down her cheeks she said, "Son, will I ever see you again?" I cried in her arms, with difficulty extricated myself, bade goodbye to every one present and got into the train not aware that actually it was the last meeting with my dearest mother. Reached Madras the next day and from there took another train to Cochin. Finally, I left Cochin by ship with just **Five Pounds** (about sixty five rupees) in my pocket. But more

important, my dearest Lord *Ganeshji* was also in the same back pocket. In the ship there were three of us in the same cabin. One was an Italian gentleman returning home to Genoa and the other was a gentleman from Scotland. The three of us were at the same dining table and on the first night kept up a pleasant conversation going during dinner. I didn't have a clue as regards the items of food printed in the menu, so I told the member of staff serving at our table not to serve any item of beef to me. As we sailed through the Arabian Sea, in course of the night the sea became very rough. The big ship heaved side ways, once banking to the left side and next to its right side. After hours the sideway tilting stopped, but then the ship's front started rising upward as if to reach the sky and then abruptly came down heavily. These wobbly movements went on for about four days. As a result, a large number of passengers in the ship became seasick. The dining hall was nearly empty all these days. Finally, we touched the port of Eden and the sea was calm after that.

There was no rolling of the ship side ways or any up and down movement. Passengers returned to the dining hall for breakfast, lunch and dinner and it was nice to see smiles and greetings all round. Our next stop was Port Said. We had a few free hours at Port Said and so the Italian, the Scot and I went to the shore. As we sat down at a restaurant, the Italian first looked at the Scot and then turning to me said, "The easiest way to stop a Scot from becoming sick is to put a fiver between his teeth." Though the Scot was not amused, I enjoyed the joke thoroughly and from what I had heard as of my father, thought it was an appropriate description of persons of Scottish ancestry. A police officer drinking tea at a nearby table enquired whether we were from the ship that had dropped anchor and if so, he advised us that for our own safety we should return to the ship before it got

dark. We thanked him and promptly returned to the ship without waiting for the sunset.

We set sail during the night and after a few days finally made it to Genoa port. From there we took the over-land train to London. The train journey through Europe with its scenic beauty was wonderful, fascinating and remarkable.

# The eventful years in the United Kingdom

As our train came to a halt at Victoria railway station and I got out of my compartment, my dear childhood friend Bhuban Nanda met and hugged me. Oh I was so happy to see him after a gap of about ten years. We took a taxi and came to Warren Street and had dinner at New Taj. Then we took another taxi to 64 Forburg Road in north London where he was staying. He had arranged a separate room for me in the same house. Mr. Jacobson, the owner of the house, met me at the door and helped me with my suitcase to my room. He also told me that I would be required to pay 2 pounds 2 shillings rent per week, payable in advance. Bhuban paid the taxi fare and the first week's rent for me. Next morning I contacted my father's friend Dr. B. Chowdhury, who was holding my 300 pounds and he sent the money immediately. I paid back to Bhuban the taxi fare and the advance rent. I was about to settle down, but Mrs. Jacobson raised the weekly rent to 3 pounds when she found out that I was having hot bath every day. After two weeks I moved out to 57 Cartwright Gardens in central London. Mr. Salaria and Mr. Khan were the owners of the house. The weekly rent was 3 pounds for my single room with attached bathroom. This place was really close to London University and University College where I was registered. Russell Square was the nearest tube station.

I was quite happy with my accommodation and settled down to my studies. Soon I visited the four Inns of Court and joined the Inner Temple drawing inspiration from the fact that Mahatma Gandhi and Pundit Jawahar Lal Nehru had signed the Roll of Barristers at the Inner Temple.

I joined the chambers of Mr. S. P. Khambatta, Queen's Counsel, at Temple Gardens, and started practice after being called to the

Bar from the Hon'ble Society of the Inner Temple. Mr. Brook (Mr. Crook would be more appropriate) was Khambatta's clerk. Once he advised me to go and join the chambers of an English Barrister as, according to him, Solicitors in England were not likely to engage an Indian as junior counsel when the senior counsel was also an Indian. He was very right. In about six months time I found my expenses at the Bar were almost three times my income. Savings were not enough to take me beyond a month or two. Hence decided to temporarily give up practice and take up a job. Couldn't find any vacancies in law schools; so applied for a vacant Maths teacher's job under the London County Council. Mr. Tom Davis, Deputy Head Master, Thomas Calton Secondary School, Peckham, London, SE-15 interviewed me for the post of Maths teacher. As suggested by Tom we went down to a nearby coffee shop for discussions. After placing orders for coffee, Tom looked at me, smiled and remarked, "You remind me of Mohammad Ali Jinnah". I said I was from India, not Pakistan, and Jinnah was not my favourite politician. He said, "I see in your eyes the same look of determination that I had seen in one of Jinnah's pictures". Next he asked if I would be able to look after young boys and girls in the school. Told him we had three young girls at home and they had never complained. He smiled and I got the job. Started teaching the next day. Now it was time for my dear wife Pramila and our children Ena, Mina and Nina to come over to London. I didn't have enough money at that time, so my father very kindly paid their airfare.

He saw them off at the Calcutta airport when they took the flight from Calcutta to London. I had already arranged accommodation for all of us on monthly rental of thirty pounds on the first floor of Michael Robinson's two-storied house at 21 Tyson Road,

London, S.E. 23. Michael taught in the same school where I was teaching and we were good friends. We had two bedrooms, sitting room and kitchenette to ourselves. Our accommodation was good and adequate. Pramila, Ena, Mina, Nina and I, we all were very happy living together as one family once again following a brief separation.

After some time London County Council sent a letter certifying that I was recognised as a qualified teacher of the Council. The job as a teacher provided steady income for the family, which was most welcome. At the same time after being called to the Bar from the Inner Temple, continued part-time studies for the Master of Laws degree of the London University. Was registered at the University College where Professor Keeton and after he left, Professor Ryder taught the subject of 'law on mortgages and charities'. Professor SA De Smith took 'constitutional law' classes at the London School of Economics. Professor A. Gledhill taught 'Indian Constitutional Law' at the School of Oriental and African Studies. Also attended King's college for lectures by Professor Crane on law of 'landlord and tenant'. Professor D.H.N. Johnson taught 'International Institutions' at the London School of Economics. My routine during the five-day week - teaching at Thomas Calton School, Peckham, London, S.E.15 from eight in the morning to four in the afternoon and then rushing to Central London to attend the afternoon and evening law classes meant very hard work, but it was all well worth it. Generally, after classes, I used to have dinner, study in the library till nine thirty / ten at night and then return home. Attending evening classes at the London School of Economics was always a difficult job because most evenings it was just not possible to find space in the car-parking bay at the middle of the (then) two-way road in front of Holborn tube station. Still remember that freezing cold night in December 1961. I had to attend a

class on Constitutional law by Professor De Smith at five in the evening at London School of Economics. I drove down to Aldwych around four-thirty and went round and round the Indian and Australian High Commission Buildings a number of times looking for a space in the car-parking bay, but the place was fully packed. After making about four unsuccessful rounds I noticed a young gentleman driving a Lagonda parked his sports car on the area in the middle marked with bold letters “Taxi Rank” next to the car park. I mustered courage, drove into the “Taxi Rank” area and parked my Morris Oxford along side his car. We looked at each other, smiled and then left the place. When I returned to my car around ten at night there was not a soul anywhere nearby. I got inside my car and perhaps, if I had then driven off, nothing would have happened. But it was a very cold night and I felt like lighting up a cigarette. I took off my gloves, took out a cigarette from the packet in the glove compartment and pressed the cigarette lighter knob. It was then that the car door was opened by a police officer who said, “Good Evening, Sir. May I see your driving licence please?” After I showed my British Driving Licence, pointing his finger to the blacktop below, he asked, “Did you not see ‘Taxi Rank’ written here in such big bold letters?” I tried to explain, “Officer, I am really very sorry I have parked at the wrong place. You see this happened because I had to attend a lecture at the London School of Economics at five in the evening and at that time there was no space at all in the car-parking bay. Believe me I had gone round and round Aldwych about four times, but didn’t find any place to park. As time was running out, had no option but to park at this place although I knew it was reserved for taxis. I did not want to miss my important lecture”. The officer was good enough to let me go without prosecution but with the following admonition, “Well, in future I should not park my car at the

wrong place because you would find your lessons would become very expensive”. The polite but effective caution still rings in my ears. Officers of the Metropolitan Police of London were well known as very special.

By and large earnings as a regular teacher were adequate for all of us in the family to lead a decent life. However sometimes we faced problems. Remember, how once being presented with a University College fees bill for sixty pounds, I asked the girl at the counter if I could pay the amount in three consecutive monthly instalments. Sarcastically she replied that the College was not running any hire-purchase system. I did not say anything and was about to collect my bill and leave when an elderly gentleman, obviously a senior officer, sitting at a nearby table who had perhaps overheard our conversation walked across and wrote on my bill that I could pay the fees in three months at the rate of twenty pounds a month. I thanked him profusely, paid twenty pounds to the girl at the counter, collected the receipt and left more than pleased with the turn of events. This happened more than forty years ago, but my heart always fills up with gratitude whenever I think of that gentleman who had helped. The world survives and moves forward on the shoulders of good and kind people like him.

My LL.M. examination was held in October 1962. With blessings of Lord *Ganeshji* I passed with very good results. I met Professor Alan Gledhill, I.C.S., of the School of Oriental and African Studies, who was kind enough to show me my LL.M. marks as recorded in the University mark sheet. My papers were Constitutional Laws (I), Laws of International Institutions, Laws of Mortgages and Charities and Laws of Landlord and Tenant. I had secured overall 65 % marks, and 150 out of 200 in Constitutional law and also 150 out of 200 in International

Institutions. Straight went to the University office and asked for a copy of my mark sheet. The gentleman at the counter said the University did not provide mark sheets to students who had passed. Next I went on to meet Mr. Henderson who was then the Academic Registrar of London University. He confirmed “no mark sheet” and explained that my 150 out of 200, keeping in view the uncertainties of marking, could very well be 160 or who knows even 140. I thanked him for the time he had given me and left with a smile because he was absolutely right.

Next met Professor Denis Holland of University College and registered under him to do research and write a thesis in Constitutional Law for the Ph.D. degree of London University. The subject of my thesis was “The Legal Position of Aliens in the Commonwealth”. At our first meeting Professor Holland made it clear that I would have to do all the work by myself. He would, of course, provide reference to relevant articles, if any, in my field of study. I insisted that he should at least say something by way of guidance. With a big smile he replied, “All right, since you insist, I would say this; if I were you, while writing my thesis I would never rely on second hand sources.” Watching the look of surprise on my face he picked up a law journal, opened a page at random and continued, “The author of this article has discussed a judgment of the House of Lords and given the reference to that judgment at the bottom of the page. Now if instead of looking up and studying the quoted judgment you simply rely on the author’s interpretation of that judgment, then you are relying on a second hand source.” That advice was inherently so original and of such high-quality that I always followed it as *gayatri mantra* for my degree and throughout my career as well. It always raised the personal level of thinking a couple of notches for a correct assessment of the original

judgment and gave me confidence to critically analyse and discuss the principles decided therein.

Next we move on to 1963. After careful and detailed planning at home we decided that during the summer month of August we would go on a camping holiday through the country and visit as many places as possible in the United Kingdom. We bought a tent and other camping equipment. The Automobile Association of England of which I was a member sent us a route map - “Your Route” - setting out in detail the route for our entire journey by road guiding us through all the cities we wanted to visit. On the 7<sup>th</sup> of August 1963 we set out from London with our three children around seven in the morning.

The detailed description of the places and sites visited by us during our tour is taken from AA’s ‘Your Route’ and not only from my memory.



### **Camping**

Pramila was our navigator. With the route map on her lap she guided me through roadways while I concentrated on driving carefully on the motor-ways and highways. Ena, Mina and Nina were sitting at the back. All of us were very cheerful. We passed through Marble Arch, Oxford Street, Swiss Cottage and Hendon Central where we joined route A1. Around noon took A57 to Sheffield. There we had lunch with Mrs. and Dr. B. Patnaik, F.R.C.S. We spent about three happy hours with them. Next took

A61 to Leeds and then A64 to York where we stopped and camped at Acaster Malbis. That was the first night we spent in our tent. It was a wonderful experience. It took us approximately half-an-hour to pitch the tent. While children put their sleeping bags on the waterproof ground-sheet, we spread a mattress for our use. Outside the inner tent and under the flysheet we put up two armchairs, three folding chairs with a centre table, a portable cooker, a portable gas cylinder and a five-gallon fresh drinking water plastic jerry can. We were carrying these with us and they were adequate for our basic needs. We also had a battery operated light for use at night. I fetched food items and rations from the store inside the campus. We had tea within an hour. Pramila made dinner and we all ate with great relish. Next morning we visited Clifford's Tower and the famous Railway museum. We saw a range of locomotives from the oldest to the latest models. The visit was interesting and instructive. We moved out of York and drove through Durham to Newcastle-on-Tyne. There we visited Hancock Museum and a 12<sup>th</sup> century Castle. We also saw Remains of 14<sup>th</sup> century Town Walls. Next we drove through Little France and followed A7 to Edinburgh. It was about 4 'o' clock in the afternoon when we set up our tent and drank some tea. Pramila was an expert at making quick dinners for all of us and we went to bed early, as we were very tired after our long travel.

Next morning I went and met Dr. Bhakta Patnaik, my friend from early school days. With him I visited 117 Rill Bank Terrace where my father had stayed during his higher studies in the year 1939. Then we returned to our camping site. Bhakta seemed very happy to meet Pramila and the children. All of us went to Princes Street and spent long hours there in the famous gardens. There were such lovely flowers and the garden was incredibly well maintained. The 'Floral Clock' was very nice and interesting.

The following day we went and saw the palace of Holyrood House, Scottish National War memorial and a few other places of interest. The day was full of interesting visits. After coffee we bade goodbye to Bhakta and moved on.

On our way out we took A90, drove through fine open country with pleasant scenery and came to Dundee where we stopped for a couple of hours. We drove through Riverside Drive and slowly moved along the deep waters of the Firth of Tay. The scenery was beautiful and exquisite. Next we drove through Montrose and Stonehaven and in the evening reached Aberdeen on the eastern coast of northern Scotland, known as the ‘granite city’ and humorously credited with extremely ‘careful’ population. Although it was dark I could have pitched the tent with the help of our car headlights, but soon it began to drizzle. We waited for a while, but it appeared the rains were not going to abate soon. So we decided against camping at Aberdeen for the night. In spite of rains Ena got out of the car and got fish and chips for all of us. Outside it was pretty wet, but inside the car we relished the hot food very much. After dinner, and as unanimously decided, with Great Spirit of adventure we left Aberdeen and without choosing any particular destination drove westwards through the night. Visibility was poor and the rains did not help. So I had to drive slowly. We followed A96 to Inverness. Fortunately, after about an hour’s drive the rains stopped and the sky cleared. We took A82 to Fort William. During our drive I saw through the front mirror the headlights of a car following us. It appeared to me that car was not interested in overtaking us, so I pulled to the left and stopped. It was about 1 ‘o’clock in the morning. After two or three minutes a police car passed by. The officers gave us a charming smile and drove on.

We continued our journey and drove for another hour. Then I went off the main road and pulled up along side what at night appeared

to be a 'lay by'. Soon we all fell asleep inside the car. I woke up in the morning on hearing a bus blowing its horn from behind. We moved out because the place where we had parked our car was in fact a bus stop. Our next stop was Oban where we put up our tent close to Firth of Lorne. We read in the morning papers that the "Great Train Robbery" had taken place during the previous night and the police had been put on alert throughout the country. That explained why the police car had followed us for quite some distance the previous night. At Oban our camping site was at a wonderful location with exquisite views of Pulpit Hill. After spending a day there we moved on to Inveraray and then took A 83 to Arrochar at the head of Loch Long, where we camped. The scenic beauty of the place was really wonderful. We met some very nice people there. Ena, Mina and Nina lost no time in making friends all over the camping site. We rested at Arrochar for two full days. After that we went to Glasgow. Drove through the Queen's Dock Area and stopped for a while for lunch at Clydebank alongside the Firth of Clyde. Next drove through Carlisle, Penrith, and Keswick and then took A 591 to Ambleside where we camped.

Our camping site was at the head of Lake Windermere. We looked around and then walked for quite a while enjoying the very beautiful and varied scenery through the heart of the famous Lake District. Next morning we went to Grasmere, a small Lakeland town. We visited the Dove Cottage, home of William Wordsworth and his grave and memorial at St. Oswald's church.

The following day we drove down to Hawkshead. We visited the Grammar School, founded in 1585, which Wordsworth attended from 1778 to 1783 and also saw his desk. Next two days we drove around and took the road that skirts the lakes of Thirlmere, Grasmere and Rydal water and thoroughly enjoyed the picturesque woody slopes and the wild mountain valley. After spending five

days in the Lake District we moved on to Blackpool. Stuart Foster, my long-time friend and fellow schoolteacher at Thomas Calton in London and his wife Maureen had invited us for lunch at Preston where Stuart's parents lived. As it was past noon when we reached Blackpool, we decided to drive on to Preston that was 16/17 miles away. It was so decent of Stuart to meet us at the entry point and escort us to his house. We were really very happy to meet Stuart and his family. They were extremely nice to us and made all of us feel at home in a jiffy. After a sumptuous lunch, Stuart and Maureen took us around the city. We visited Maureen's house and saw the place where she was born. Her father owned the firm that produced the highly popular Smith's potato crisps. They very kindly gifted to us several big bundles of Smith's crisps that we kept munching for many many days. Finally, we took leave from them and returned to Blackpool. With help from Pramila and the children I put up our tent within fifteen minutes. We were awfully tired and went to sleep very early. Next morning Stuart and Maureen came over and met us. We drove through Queen's Drive and stopped for some time at the Promenade alongside the Irish Sea. We took some colour pictures of all of us. Stuart and Maureen went back to Preston in the evening.



**Pramila and children with Maureen, Stuart and their daughter**

We went to the Blackpool Tower and the Town Hall. For the first time I parked our car in a multi-storeyed car park and the drive up was quite exciting. Then we went to see the Tower Circus. We enjoyed the show thoroughly. One of the gentlemen doing the role of a clown started doing the twist with the backup music playing “let’s twist again”, a number that was then extremely popular. When he invited the audience to dance, our Ena stood up and started doing the twist. The overhead spotlight focussed on Ena. This went on for about five minutes and she received a thunderous applause from the clown and audience when she sat down at the end of music. After the circus was over, we all returned to our tent in a very happy mood that night. Next day we moved out and drove through the Preston By-pass to Liverpool. We were very happy to meet and then as requested had lunch with Dr. Lalit Mahapatra, F.R.C.S., who was Pramila’s first cousin. His mother was the elder sister of my mother-in-law. Following lunch we left Liverpool and after paying 1s.6d. at the entrance drove through the Mersey Tunnel. Dr. Lalit followed us in his car. We passed Birkinhead, Queens Ferry, and Flint and took a turn at Mostyn to come to Ffynnon Growe. We stopped there and enquired from a tobacconist the location of my father’s friend Dr. Braja D. Chowdhury’s house. He had kindly kept my three hundred pounds with him and had sent the amount to me after my arrival in London. I was actually grateful to him. Besides, my father had told me that I was named “Braja” after him. So we had decided to go and see him.

The gentlemen present at the tobacconist could not follow my pronunciation of the word “Chowdhury”, but when I said “Cordrey”, they all came forward and gladly pointed out to the majestic building not too far away as Cordrey’s house. We thanked them and drove up to the house. When Dr. Chowdhury

came out and saw us, obviously he did not know who we were as we had not informed him earlier that we were coming.

However, respectfully I touched his feet, offered my *pranams* and introduced all of us. I also thanked him for having sent 300 pounds over to me immediately after my arrival in London. He held both my hands warmly, looked at my face and said, "I am so happy to see all of you. You know Kashi Nath (my father) was my dearest and best friend at school. I always had the highest regard for his academic brilliance. How is he?" I told him father was in good health and doing well. Next he introduced us to his wife Mary who was very kind and affectionate. She had a long chat with Pramila. Their son Sunil who was studying medicine and daughter Sandra were not present at home at that time and so we could not meet them. After spending an hour with them, we took leave and left. Later Dr. Chowdhury was to be the first person from India to be elected as the city's Mayor. Dr. Lalit parted from us at Mostyn and went back to Liverpool. We went back to Queensferry and then drove through Wrexham, Shrewsbury, Bridgnorth and Kidderminster to Stratford-on-Avon, Shakespeare's birthplace. By the time we put up our tent it was almost evening. I got food items from the grocery store at the camping site and Pramila cooked our dinner. We were very tired and retired early to bed. Next day we visited Anne Hathaway's Cottage. The thatched roof and the thickly cushioned swing were still there and the whole place was admirably well preserved. After a good look we returned to our camp. We all had a good night's rest and woke up early next morning. We all felt that it was time to return home. So on Friday, the 30<sup>th</sup> August 1963 at about 8 a.m. we got ready, packed our tent and other camping equipment into our car and began our return journey to London. It was a bright and sunny day and we enjoyed our drive. First we came to Oxford. Driving through the city we had a

passing glance at the distinguished Oxford University with its famous colleges, particularly Christ Church, University and Queen's. We had lunch at a restaurant and then took A 40 out of the city. Drove through High Wycombe, Beaconsfield and finally reached Shepherd's Bush in London. We were no doubt tired after our hectic tour round the country for 24 days, 7th to 30th August, but were glad that we had almost reached home. However, as we shall see, the feeling of happiness did not last much longer. As we passed Marble Arch, Ena cautioned me that the petrol indicator in our car was showing almost empty. I saw the needle was resting on 'E', but I did not see any petrol pumps alongside the road. So I drove on with the hope that the much talked-about 'reserve petrol' would perhaps take me home or at least up to the nearest petrol pump. However, my luck ran out and the car engine stalled and then stopped right under the statue of Eros at Piccadilly Circus. The heavy traffic following our car screeched to halt and there was utter chaos all over the road. As I got out of the car three policemen came alongside and enquired what had happened. Told them I had run out of petrol. They helped me move the car to the side of the road and gave me the location of a nearby petrol pump. When I got there the attendant told me that I had to bring a petrol-can to carry the petrol. I returned to our car. As I didn't have any can for petrol I emptied our 5-gallon drinking-water jug and took it to the pump. I got 2 gallons of petrol and very carefully poured it into the petrol tank. Next I started the car and drove down to 21 Tyson Road in South East London where we lived. We reached home about 6 p.m. and picked up our letters from the letter box on the front door.

We went into the sitting room and the first letter I read was from my father that had been delivered about fifteen days earlier. I was really shocked and stunned to learn that my mother had

been suffering from cancer for quite some time and had only a few days to live. I collapsed on the floor refusing to believe what I had read. A few minutes later I booked a call to my father at Cuttack. Tried a number of times in the evening, but the telephone operator at Calcutta could not connect me during the night. I was very disturbed and unable to sleep that night. The next day around 11 a.m. (London time) I was able to talk with my father. I told him I was coming home within a day or two to see my mother but might have to return to London by the 12<sup>th</sup> or 13<sup>th</sup> of September to rejoin my duties at the school. I checked up and found at that time I had only about 100 pounds with me. The return airfare from London to Bhubaneswar, near Cuttack, was going to cost about 350 pounds. Besides I would need more money for other expenses. Unfortunately, it being a Saturday the Banks had already closed at 11.30 a.m. and would again open only on Monday. Though I felt very miserable, I had to wait. On Monday I met our Lloyds Bank Manager, Mr. Hoyles. I requested him for 500 pounds overdraft so that I could fly out to India and see my mother who had only a few days to live. He straight came to the point and bluntly asked how would the Bank get its money back if, God forbid, something happened to me. I assured him I was willing to offer as security my Ford car, Refrigerator, Television, Music System and a host of other electrical appliances. Mr. Hoyles smiled and said Mrs. Misra would never let the Bank touch these articles. To his further query told him I would leave the next day, 3<sup>rd</sup> September and return to London by the 13<sup>th</sup>. With a genuine desire to help he advised that I might consider taking an insurance cover on my life for 2,000 pounds for 15 days at a premium of 2 pounds. He explained that on being insured, if anything happened to me, the Bank would be able to collect its dues from my insurance money and the balance would be handed over to Mrs. Misra so

that if she so desired she could go back to India with the children. It was a wonderful suggestion and I immediately agreed with his proposal. What was most helpful was that I was not required to go to a notary for an affidavit or to any insurance office for my life-insurance policy. Mr. Hoyles took out an insurance proposal form from his drawer, put crosses at four dotted lines and asked me to sign next to the crosses. After I signed he asked me to make out a cheque for 500 pounds, which I did. Then he got the money and handed it over to me. I thanked him profusely and walked out of the Bank with 500 pounds overdraft within ten minutes. I was extremely grateful and very impressed with the Bank Manager's sincerity and assistance to a customer. Will forever remain grateful to him for his kindness and help.

Next went to the Travel Agents, booked a return ticket that cost 310 pounds and finalised my itinerary. I was to leave London on 3<sup>rd</sup> September by Air-India reaching Bombay very early in the morning on 4<sup>th</sup> and then to Calcutta after a couple of hours. Finally, the connecting one-hour Indian Air Lines Flight from Calcutta to Bhubaneswar was in the afternoon on the same day. I was to return by train on the 13<sup>th</sup> night from Cuttack, reach Calcutta at 8 a.m. on the 14<sup>th</sup> and then take the BOAC flight from Calcutta to London the same evening reaching London around 11 a.m. on the 15<sup>th</sup>. I was to rejoin my duties at London on the 16<sup>th</sup>. It was past six in the evening when I returned home from the Travel Agents. We sat down and I discussed my travel plans with Pramila and our children. They said if they could not come to India with me, they would at least come to Heathrow airport and see me off. I went downstairs and requested our friend Michael to come with us to the airport in our car next morning at 8 a.m., see me off and then return home with Pramila and children. It was very nice of him that he immediately agreed. What are good friends for! So, we left home around 7 a.m. on

the 3<sup>rd</sup> and reached the airport at 9 a.m. While moving around the lounge in the hall we heard it announced on the public address system that I should go to the Air-India counter immediately. I hurried over to the counter where the officer asked me to sit down and said he had got some bad news from my landlady at 21 Tyson Road. I guessed it must be about mother. Telephoned Michael's wife Pauline. She said two telegrams had come from Cuttack on 2<sup>nd</sup> September though they were delivered at our London address on the 3<sup>rd</sup> after we had left for the airport. The earlier one sent in the morning was that mother's condition was very serious and I should wait for further communication. The second one sent about 11.30 at night (6 p.m. GMT) was to the effect that mother expired at 11 p.m. (Indian Standard Time) on 2<sup>nd</sup> of September. After putting the phone down I collapsed into a state of shock. For a moment I forgot where I was and the world went round and round. I couldn't comprehend what was happening. My senses were restored when Pramila, with tears rolling down her cheeks, shook me up. The Air-India officer told me that my plane was due to leave in about 15 minutes and if I decided to cancel my ticket, in the circumstances Air-India would not impose any cancellation charges. It was a nice gesture and I thanked him. Pramila said I should go and see my father and whole-heartedly share with the family the grief that had befallen us. I couldn't agree more. So with a heavy heart I took leave of Pramila and Ena, Mina and Nina. Thanked Michael for helping us out and bade him goodbye. They left the lounge. I went and boarded the plane. It was about 11 a.m. when we got airborne. I didn't at all feel hungry and hardly ate anything in the plane.

The only thought in my mind was about my dearest mother. I felt terrible when it occurred to me that instead of holidaying in England I could have so easily spent a couple of weeks with my

dearest mother during her last days. However, that was not to be, and worst of all, I was never going to see her again for the rest of my life. Oh my Lord *Ganeshji*, why did this happen? With sad thoughts heavily loaded in my head and with a terrible headache, I landed in Bombay about 4 a.m. (IST) on 4<sup>th</sup> September. Left for Calcutta after four hours and landed there about 10 a.m. Finally took off at 3.30 p.m. and reached Bhubaneswar within an hour. My elder cousin Sudha bhaina and Dr. R. K. Parida, M.R.C.P., Professor of Medicine at SCB Medical College at Cuttack had come to the airport to receive me. It was indeed very nice of them. Around 5.30 p.m. I reached home at Cuttack. My father and family members were waiting to welcome me home. I rushed forward and prostrated myself at the feet of my father. As my head and hands touched his feet I felt a super sensation vibrating throughout my body, - it was as if my heart and soul were filling up with profound peace of mind, calm tranquillity and sublime divinity. How much I had wished at that moment to stay put at my father's feet for ever and ever and ever! I regained my senses when father gently touched me on my shoulders. As I picked myself up, with tears in his eyes my father said, "Mother was very keen to see you again, but fate ordained otherwise." Then he guided me inside. I did *namaskar* to the elders present there. We sat down and talked till very late at night. Next morning I accompanied my brother to the river bank where my mother's funeral rites were being performed on daily basis. I also visited the cremation ground at *Sati Chaura*, sat for a long time next to the spot where mother had been cremated and prayed to mother with a broken heart. Very reluctantly I returned home. A large number of near and dear ones met us and expressed their condolences during our days of mourning. Following conclusion of all the sacred funeral rites, on the 14<sup>th</sup> of September 1963 with a heavy heart I

took leave of my father and members of the family, took an overnight train from Cuttack to Calcutta and flew out from there reaching London on the 15<sup>th</sup>. Next day I returned to my duties at the school.

Around that time I started looking for a suitable job in the field of law. When a vacancy arose, I applied for the post of Research Officer (Commonwealth) at the British Institute of International and Comparative Law, 1 Temple Gardens, London, E.C.4. The Rt. Hon. Lord Denning, Master of the Rolls, was the Chairman of the Council of Management. After preliminary screening three of us out of 27 applicants were short-listed to appear before Lord Denning for an interview at the House of Lords. Never found out who the other two were because though we appeared for interview on the same day our times were staggered. Mine was at 2.30 p.m. by which time the other two had already left. I thought it was a good idea to stagger the time of interview when there was more than one candidate because in that case one would not be wasting his time doing nothing while another was taking his interview. You must give it to them; the British do have sound administrative sense.

It was about two-twenty in the afternoon when I arrived at the House of Lords on the appointed day. The huge door at the entrance was closed. There was no electrically operated calling bell. I knocked with the help of the shining brass doorbell. Within a minute a gentleman, looking more like Vasco De Gama than a contemporary usher, opened the door with a firm greeting, "Good-after-noon, Sir". On my showing him the Institute's letter, he said, "Please follow me this way" and did an army-style U-turn. I followed him to a room where he asked me to sit down and await his return. Next a lady appeared from inside the room, greeted me by my name and introduced herself as the person

dealing with the interview file. I stood up and said; “Hullo” (can not recall her name). She took my hat, gloves, and umbrella and then helped me out of my Chesterfield. Thanked her and sat down. She wished me good-luck as I left the room and followed the gentleman usher to another room. He opened the door for me, announced my name and shut the door after I had entered the room. The room was big, tastefully decorated and had an oval shaped table at the centre. I was overwhelmed and completely swept off my feet when I found Lord Denning, Mr. Norman S. Marsh, Director of the Institute (later became Chairman of the British Law Commission) and Mr. H. H. Marshall, C.M.G., Q.C. Assistant Secretary of the Institute in charge of Commonwealth Law (formerly Attorney General of Nigeria under Sir Abu Bakar Tafawa-Balewa) standing in front of their respective chairs with very reassuring smiles on their faces. I shook hands with Lord Denning who formally introduced me to Mr. Marsh and Mr. Marshall and then asked me to take my seat.

It was a pleasant surprise that my chair was not in any way different from theirs. It was really comfortable. Lord Denning looked at my papers and remarked, “It seems you have not wasted any time ever since you came over here for higher studies in law. Already you have passed the LL.M. examination and been called to the English Bar. Good that you are now doing your Ph.D. programme with Professor Holland. All this and earlier practice and teaching in India add up to a fine career in law.” These words were sweet music to my ears. I did not interrupt him because I wanted him to go on and on. And he did. Maintaining a smiling face he said, “Three children! Don’t you find it difficult to manage with your present income”? I invoked the blessings of my Lord *Ganeshji* and replied, “Well, my Lord,

we have found that life is a lot easier when during the holidays instead of a week at the French Riviera or a river cruise on the Rhine from Manheim, we go to the coastal town of Margate or Bournemouth or Preston and pitch our own tent for our stay. We do not look for accommodation in hotels, because apart from high costs towards accommodation for the family, baby-sitters were required to look after children who had to be confined within the limits of their rooms after seven in the evening. Once we decided to go for camping, holidays were always within our budget and we did enjoy our holidays together with our children.” All the three gentlemen were smiling and looked like they appreciated what I had said. They spoke softly and offensive words, like ‘who’, ‘why’, ‘what’, ‘when’, ‘where’, ‘how’, were never used by any of them during our conversation for about three-quarters of an hour. They were certainly gentlemen of high order, so well trained and disciplined in speech and manners. Mr Marsh wanted my opinion on the success or otherwise of the scheme of ‘separation of powers’ under the Constitution of India already in operation for more than ten years by then. Replied - countries with federal constitutions were often handed down judicial interpretations from the courts that at times were just the opposite of what the Constitution said or the founders had intended. Gave the example of Canada where though the residuary powers of legislation lay with the Centre, ‘property and civil rights’ in section 92 of the British North America Act dealing with the ‘State List’, were so interpreted by the Privy Council that the Centre could not legislate on the subject of ‘Television’ which had not been included in either the ‘Union List’ or the ‘State List’. In Australia as a result of judicial interpretation residuary powers of legislation though vested in the States under the Commonwealth Act 1900, were virtually taken over by the Centre under the cover of emergency during

the war and retained even after the war. As regards India I explained the constitutional scheme was so lopsided towards the Centre that experts have preferred to classify the Indian Constitution as quasi-federal rather than federal. Perhaps in view of overwhelming majority enjoyed by a single ruling party, the Supreme Court preferred to cooperate with the government in matters of preventive custody, though it remained stubborn and adamant in regard to government interference with right to private property.

During the interview another thing that impressed me was while I was talking, there was no interference at all. All three of them throughout looked straight at me. Their bearing and deportment gave me a great deal of reassurance and I felt completely at ease. When our meeting was over, again all three of them stood up, shook hands with me and bade me good-bye. I left in the company of the Usher who took me to the room where I had waited on arrival. The lady in there was making coffee and offered me a cup. I thanked her and sat down. Having nothing better to say, I asked the lady how long it would take to get the results of the interview. She said the papers should come to her table within an hour and she would then be able to say who was selected. She asked me where I would be later in the evening. I said I would be in the basement in ULU (University of London Union) in Malet Street playing snooker. She handed over my gloves, hat, umbrella and Chesterfield and said she would come to ULU around half past seven in the evening. I thanked her and left. She kept her word and did come to the snooker hall at half past seven. She had a big smile on her face as she shook my hand and congratulated me. She added that the Committee had fixed my salary at the maximum in the pay scale. I thanked her profusely for the trouble she took in coming over to inform me of the Committee's decision. Thereafter she left. I prayed to Lord *Ganeshji* to shower HIS blessings on the members of the Committee

and the lady. Though I had not said anything about salary that I expected, it was really generous of them to have fixed my initial salary at the maximum of the pay scale, obviously in view of the fact that we had three school-going children at home. Again, how nice it was that instead of making me go to her office, the lady came over and personally conveyed the good news. Can I ever forget these good people and their good turn towards me?

Selection for this legal job without recommendation of any godfather or political bigwig generated a great deal of confidence in my heart to boldly face the future. A few days later the formal appointment letter came. I resigned my job as a teacher. After a few days I joined the Commonwealth Section of the British Institute of International and Comparative Law at 1, Temple Gardens, London, E.C.4. I had an office room to myself. The furniture in the room comprised a table and a chair for my use and an armless chair at a corner for my Secretary, to be pulled forward by her to the table when necessary to take dictation. This arrangement meant that who ever wanted to meet me would knock, enter, finish his work from a standing position and leave within minutes. It saved a lot of my time during office hours. Every day as I took my seat at ten 'o'clock, all the official letters opened by my Secretary would already be in front on the table and my unopened private letters kept on the left side of the table. Very soon I learnt that replies to all official letters had to be sent the same day. In case more time was required for proper study of the matter under correspondence, the letter had to be acknowledged and the person concerned informed that a fuller reply would be sent as soon the subject is dealt with. Sound and civilised administrative principle indeed!

The Institute organised meetings and conferences, conducted and promoted research and published "**The International and Comparative Law Quarterly**" and its periodical Supplements,

as well as other works on international and comparative law. The Quarterly was recognised round the world as a reputed law journal of high quality. The publication included articles on contemporary legal topics, Notes and Comments, Book Reviews and Notices. My colleagues and I would study all references received from various countries and agencies seeking our opinion on diverse questions of law. After a good deal of research and study we formulated our opinions on the queries and replied accordingly. I might refer to the following note written by me in answer to a query from an Australian Shipping Company as to whether after their ship sank at sea adjoining Queensland their liability for goods lost at sea would be at the earlier rate of eight pounds a ton or twenty-four pounds a ton as per the more recent Geneva Convention. The research on this question was indeed quite interesting. After going through the laws on the subject I found to my dismay that on the question of liability of ship-owners the law applicable to Queensland would be the English Law and not the Australian Law although the Statute of Westminster had been enacted and adopted long ago in 1931.

I briefly discussed this anomaly with Sir William Dale, the then Legal Adviser to the United Kingdom Government, and he advised that the matter need not be pursued – “let the sleeping dogs lie” – were his precise words. However, I decided otherwise and sent my writing to the International and Comparative Law Quarterly for publication. The note is reproduced below.

### **A Note on Liability of Shipowners in Queensland**

The object of this note is to show the anomaly that exists in the field of liability of shipowners in the merchant shipping law of Queensland. The position has become somewhat more uncertain since the passing of the Merchant Shipping (Liability of

Shipowners and Others) Act, 1958,<sup>1</sup> by the United Kingdom Parliament, amending Part VIII of the Merchant Shipping Acts, 1894-1954, which deals with the liability of shipowners. As a result of this amendment the statutory limits of liability of shipowners have been raised from £8 to nearly £24 per ton. The short point raised here is whether or not this United Kingdom Act of 1958 extends to Queensland. This note is an attempt to find the law as it exists today.

It might be useful to start with a brief reference to the historical background to the merchant shipping law of Australia. Before the passing of the Statute of Westminster in 1931, the United Kingdom Parliament enjoyed considerable legislative supremacy in the Empire. For example, reservation, disallowance, the operation of the Colonial Laws Validity Act and the lack of extraterritorial power imposed extensive restrictions upon the Dominions. These practices were found in practice to be most irksome in the merchant shipping legislation of the Empire.<sup>2</sup>

The Merchant Shipping Act, 1894, although not a constitutional document, contains obligatory reservation provisions, *e.g.*, sections 735 and 736. Section 735 requires in effect the reservation of Bills passed by the legislature of any British possession relating to ships registered in that possession, while section 736 requires Bills passed by the legislature of a British possession to contain a suspending clause providing that they should not come into operation until the Sovereign's pleasure had been signified. A conference on the operation of Dominion Legislation and Merchant Shipping Legislation met in London

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1 6 & 7 Eliz. 2, c. 62.

2 See Wheare, *The Statute of Westminster and Dominion Status* (1953 ed.) pp. 37, 38.

in 1929. The conference presented its report<sup>3</sup> in January 1930, which contained *inter alia* as an examination of the extent of restrictions imposed upon the Dominions. The conference of 1929 recommended the framing of an agreement between the members of the British Commonwealth to regulate certain matters of mutual interest and importance. A draft of an agreement was drawn up in 1930 and circulated to the Dominions. It was considered at the Imperial conference of 1930 and was approved with certain modifications.<sup>4</sup> Upon the passing of the Statute of Westminster in 1931, it came into force throughout the Commonwealth. The agreement, however, did not specifically cover the subject of liability of shipowners. The Statute of Westminster endeavoured to remove the handicaps which limited the legislative powers of Dominion Parliaments. Section 4 limited the extraterritorial powers of the United Kingdom Parliament by providing: No Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to a Dominion as part of the law of that Dominion, unless it is expressly declared in that Act that that Dominion has requested, and consented to, the enactment thereof.

Section 5 on the other hand, gave new powers to Dominion Parliaments in respect of merchant shipping by providing: Without prejudice to the generality of the foregoing provisions of this Act, sections 735 and 736 of the Merchant Shipping Act, 1894, shall be construed as though reference therein to the legislature of a British possession did not include reference to the Parliament of a Dominion.

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3 Cmd. 3479.

4 Cmd. 3717, p. 25. For the draft agreement, see Annex to S. VI.

Section 10 of the Statute of Westminster providing that certain sections of the Statute (including sections 4 and 5) were not to extend to a Dominion unless they were adopted by the Parliament of the Dominion. These sections were adopted by the Commonwealth of Australia in 1942, by the Statute of Westminster Adoption Act, 1942,<sup>5</sup> as from September 3, 1939. The effect of the adoption of these provisions was that in the case of Australia, its Acts altering the provisions of the Merchant Shipping Act, 1894, relating to ships registered in Australia, no longer required confirmation under section 735, and its Acts regulating its own coasting trade were no longer subject to the limitations imposed by section 736 of the Merchant Shipping Act, 1894.<sup>6</sup>

The present legal position is that part of the Imperial Merchant Shipping Act is still directly effective although much of its substance has been independently enacted in Australia by Commonwealth and state legislation.<sup>7</sup> It can be stated that in general the Commonwealth Navigation Act, 1912-1961, as far as it extends, governs Australian and British merchant ships engaged in inter-state trade and commerce, or in overseas voyages where the first port of clearance and port of destination are in the Commonwealth. So far as state legislation is concerned, for the purpose of this note, reference need only be made to the Queensland Marine Act,<sup>8</sup> which was passed in 1958 to consolidate and amend the law of Queensland relating to merchant shipping. It follows, therefore, that in determining the law applicable to Queensland in a particular instance, it may be

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5 No. 56 of 1942.

6 See Temperley, *British Shipping Laws*, Vol. 11 (edited by Porges and Thomas, 1963), § 1044.

7 See G. W. Paton, *Australia: The Development of its Laws and Constitution* (1952) pp. 279, 280.

8 No. 37 of 1958, commenced on Feb. 2, 1959.

necessary to consider Imperial, Commonwealth and state legislation.

Liability of shipowners is dealt with in Part VIII (ss. 502-509) of the Imperial Merchant Shipping Act, 1894. Section 503 *inter alia* provides limitations on the liability of shipowners. Under section 509, Part VIII is expressed to apply, unless the context otherwise requires, to the whole of Her Majesty's Dominions. Legislatures of British possessions have power to legislate for ships registered therein and their own coasting trade, but neither the Parliament of Queensland nor that of the Commonwealth has passed any legislation having an object similar to that contained in this part.<sup>9</sup> Therefore, in the absence of local legislation governing the liability of shipowners, the Imperial Act must apply. In 1955 the High Court of Australia considered the scope and application of section 503 of the Imperial Merchant Shipping Act, 1894, in the case of *The Commonwealth of Australia v. Asiatic Steam Navigation Co. Ltd., The River Loddon and others*.<sup>10</sup> The High Court held:

'That section' [s. 503] is found in an Imperial statute which treats "merchant shipping as an Imperial subject" and which evidences "an endeavour to provide on a national basis for all contingencies of British mercantile navigation throughout the Empire, partly by direct enactment and partly by optional local enactment Imperially sanctioned" (*per* Isaacs J. in *Union Steamship Company of New Zealand Ltd. and another v. The Commonwealth of Australia and another*<sup>11</sup>). I should add that Part VIII of the Act, which includes section 503, extends

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9 "Note" under s. 509, Merchant Shipping Act, 1894 (with subsequent amendments). The Public Acts of Queensland, 1828-1936, Vol. 8.

10 (1955) 1 Lloyd's Rep. 503, 505.

11 (1925) 36 CLB 130, 142 and 143.

expressly to “the whole of Her Majesty’s Dominions.” Accordingly, although section 503 may be said to be part of the local law in the sense that it *operates* within the Commonwealth, its local operation merely flows from the circumstance that it is contained in an Imperial statute which expressly extended the operation of that section to the Commonwealth. Indeed, it was so little a part of the local law in the true sense that, apart from the provisions of sections 735 and 736, its continued operation within the Commonwealth did not and could not depend upon the desires or intentions, however expressed, of any local legislature. The first of the sections to which I have referred did give a limited power of repeal, with the consent of Her Majesty in Council, to local legislatures, and the second authorised local legislatures, subject to the conditions expressed therein, to regulate the local coasting trade. Until adoption, as from September 3, 1939, of the Statutes of Westminster, 1931, the position, therefore, was that, apart from these sections, a local legislative provision which was repugnant to any provision of the Merchant Shipping Act, 1894, was void. Nothing has occurred since the Statute of Westminster Adoption Act, 1942, to affect or modify the operation in the Commonwealth of section 503 of the Imperial Merchant Shipping Act, 1894, and the position at the present time, therefore, is that it still continues to operate as part of an Imperial statute which extends to this country.”

The United Kingdom Parliament amended Part VIII of the Merchant Shipping Act in 1958<sup>12</sup> and increased the statutory limits of liability from £8 to nearly £24 per ton. Section 509, which extends the operation of Part VIII to the Dominions, has not been affected by the 1958 amendment. In order to ascertain

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12 6 & 7 Eliz. 2, c. 62.

whether the Imperial Act of 1958 would extend to Queensland, an answer has to be found to the question whether any Act of the United Kingdom Parliament amending the Imperial Merchant Shipping Act, 1894, passed after the adoption in Australia, as from September 3, 1939, of the Statute of Westminster, 1931, would extend to Queensland. As has been pointed out earlier, section 4 of the Statute of Westminster provides that no Act of the United Kingdom Parliament shall extend to a Dominion as part of the law of that Dominion unless it is expressly declared in that Act that Dominion has requested and consented to the enactment. It may be noted that the United Kingdom Merchant Shipping (Liability of Shipowners and Others) Act of 1958 does not contain any such declaration of request or consent. Odd though it may seem, it would appear that the fact that the United Kingdom Act of 1958 was passed without the request and consent of the Parliament and Government of the Commonwealth of Australia would not prevent its application to Queensland. The law of Queensland is not a part of the law of the Commonwealth of Australia. The words “as part of the law of that Dominion” in section 4 of the Statute of Westminster do not refer to the law of Queensland. As has been said by Sir Ivor Jennings: “.....the law of the Dominion is the law of the Commonwealth of Australia, not of the states. Consequently, it seems that Parliament [of the United Kingdom] may continue to amend the respective legal systems of the states without receiving the request or the consent of the respective Dominions.”<sup>13</sup> Again, in section 8 of the Queensland Marine Act of 1958, “Merchant Shipping Act” is said to mean: “The Imperial Act, the Merchant Shipping Act, 1894, and includes any Imperial Act amending the same or in substitution therefor.” Section 255 of the Queensland Marine

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13 Constitutional Laws of the Commonwealth, Vol. I, The Monarchies (1957 ed.) P. 136.

Act provides: “Parts II and V of the Merchant Shipping Act are hereby repealed so far as regards coasters and harbour and river ships in Queensland waters or in any part in Queensland, and the owners, masters and crews thereof, where such ships are within the jurisdiction.” It may be seen that, while Parts II and V of the Merchant Shipping Act of 1894 have been repealed by the Queensland Marine Act, Part VIII has not been touched. The position of merchant shipping in Queensland, therefore, would seem to be governed by the Imperial Act, the Merchant Shipping Act, 1894 including “any Imperial Act amending the same or in substitution therefor,” except Parts II and V, which have been expressly repealed, and such other aspects of merchant shipping law which are expressly covered by Commonwealth and state legislation. It may be pointed out in this connection that in the Australian Pilot of Halsbury’s *Laws of England* the United Kingdom Merchant Shipping (Liability of Shipowners and Others) Act of 1958 is mentioned in sections 2, 3 and 4 of Part 10, which deals with limitation of liability. This would also seem to indicate that the United Kingdom Act of 1958 is applicable to Queensland.

Finally, there is yet another aspect to this matter which merits a short discussion although the overall position is not affected thereby. The main object of the United Kingdom Merchant Shipping (Liability of Shipowners and Others) Act, 1958, was to give effect to the international convention relating to the limitation of the liability of owners of sea-going ships signed at Brussels on October 10, 1957. The United Kingdom Government was a signatory to this Convention, which it ratified on February 18, 1959. The 1957 Convention replaced the earlier Convention, signed at Brussels in 1924. In signing the 1924 Convention the

British Ambassador had declared that his signature applied only to Great Britain and Northern Ireland. He had reserved the right of each of the British Dominions, Colonies, Overseas Possessions and Protectorates, and of each of the Territories over which His Britannic Majesty exercised a mandate, to accede to that Convention under Article 18. Australia was not a party to the 1924 Convention, nor is it a party to the 1957 Convention. It seems odd that the implementation of an international convention by the United Kingdom Parliament would have statutory force in Queensland, a constituent unit of Australia, which itself is not party to the said Convention.

The whole position, it would appear, is rather uncertain and may continue to be so unless clarified either by a judicial pronouncement or, preferably, by legislation.

B. N. Misra

Another note on the subject of reimbursement of costs incurred by litigants following unavoidable litigation in courts of law is reproduced below.

### **An Indemnity for the Cost of Litigation in Australia**

Every lawyer is familiar with cases in which it is difficult to advise the client as to the result of litigation, particularly on appeal, when debatable issues of law are involved. The potential litigant in such circumstances may be deterred from entering the courts, having regard to the risks involved, when not only is he denied justice but the opportunity for a necessary clarification of the law is missed. On the other hand if he engages in litigation, the point of law may be decided against him to the benefit of the law but at his expense, in circumstances where even the best legal advice could have afforded him little certain guidance. It

is therefore of considerable interest to consider two Commonwealth attempts to deal with this problem.

The Suitors' Fund Act, 1951-60,<sup>1</sup> of New South Wales provides relief in the form of indemnity for costs out of public funds to unsuccessful respondents to appeals which succeed upon questions of law and to persons who are parties to abortive proceedings, to new trials commenced after the original proceedings have been discontinued and to new trials directed as to the question of weight of evidence or quantum of damages. The fund had, between 1951 and 1959, paid eighty-six claims involving a total amount of £21,932; with an annual intake about £18,000 the fund had a credit balance of £122,886.<sup>2</sup>

Encouraged by the success of the New South Wales scheme the Victorian legislature passed the Appeal Costs Fund Act in 1964.<sup>3</sup> The guiding principles and objects of the two Acts are similar, although there are some differences. Under both systems the total amount to be indemnified in each case is fixed at £1,000, and jurisdiction is conferred on the Supreme Court of the state to grant indemnity certificates in cases of appeals to the Privy Council or to the High Court (as well as of appeals to the Supreme Court) where an appeal on a question of law has succeeded, but no provision is made for a person to be indemnified against costs incurred in the court of first instance. Under the New South Wales Act the fund is financed by revenue obtained from court fees. Court fees generally have been raised by one-ninth to

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1 The Suitors' Fund Act, No. 3 of 1951, was amended by Act 20 of 1959 and Act 8 of 1960. These amendments were incorporated after the many limitations on the benefits conferred by the 1951 Act were disclosed by judicial decisions.

2 (1959) 33 Australian Law Journal 289 (Note).

3 The Appeal Costs Fund Act, No. 7117 of 1964.

prevent diminution of the revenue of the State from that source and a proportion, not exceeding 10 per cent of all court fees collected in any court is paid into the fund. The system used in Victoria is different. The Victoria Act imposes “surcharges” on the issue of process in the various courts. The additional fee payable upon the issue of any writ or summons in the Supreme Court is £1, of any summons in the county court is ten shillings and of any complaint or summons in a court of petty sessions or before justices is one shilling. The task of administering the fund is entrusted to the Under-Secretary of the Department of the Attorney-General and of Justice under the New South Wales Act while in Victoria it is the function of the Appeal Costs Board consisting of three persons appointed by the Attorney-General of whom one is appointed Chairman, one is nominated by the Law Institute Council and one by the Bar Council.<sup>4</sup>

The New South Wales scheme was commented on by the Evershed Committee on Supreme Court Practice and Procedure in paragraphs 634 and 635 of its Final Report.<sup>5</sup> The Committee pointed out that consideration of such a scheme was outside the terms of its reference, but suggested that, when sufficient time had passed to enable experience to be gained from its practical operation, the question might further be considered whether a scheme on similar lines might, with advantage, be introduced in the United Kingdom. So far no such scheme has been formulated, but in view of the successful operation of the New South Wales scheme for several years and its recent adoption by Victoria, the issues involved might well be considered by the proposed Law Reform Commissioners in the United Kingdom.

B. N. Misra

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4 For detailed discussions, see P. J. Jeffrey, (1959) 33 Australian Law Journal 306; and J. Winneke, (1964) 5 The Australian Lawyer 161.

5 Cmd. 8878, 1953.

Two of my Book Reviews published by the Institute are reproduced below.

**Introduction to the Constitution of India, 3<sup>rd</sup> edition. By Durga Das Basu [Calcutta : S. C. Sarkar & Sons (Private) Ltd. 1964. xiv, 122 and 251 pp. Rs.14]**

The second edition of this book was published in 1962 and reviewed in (1963) 12 I.C.L.Q. 1075, 1077. The new edition incorporates the important developments brought about by the six amendments to the Constitution made between 1962 and 1964 (pp. 120 and 121). The case law has also been brought up to date by the inclusion of several recent decisions of the Supreme Court. One interesting case is the first suit of its kind brought in the original jurisdiction of the Supreme Court by the State of West Bengal against the Union of India in 1961, to declare the unconstitutionality of the Coal Bearing Areas (Acquisition and Development) Act, 1957, which was dismissed by the Supreme Court in 1962 (p. 119). A new feature of this edition is a chapter on “How the Constitution has worked” wherein the author with his admirable knowledge of the Indian Constitution analyses some of the problems leading to seventeen constitutional amendments (within fourteen years), notes the gradual growth of more and more Central control at the expense of the States and expresses his satisfaction at the overall “exercise of the power of judicial review” by the Courts.

The chapter on “Fundamental Rights” continues to dominate the rest (47 pp.). The book is directed primarily to the students’ needs and hence it has to be concise. It is, however, important to get the balance of the book right. Indeed, if the author reduces the volume of material set out in the chapter on “Fundamental Rights” he will have plenty of space to devote to a greater elaboration of some other topics, perhaps, of greater practical

significance, *viz.*, rights and liabilities of the government and public servants (which at present receives only 8 pages); distribution of financial powers and taxation (8 pp.) and freedom of inter-state trade and commerce (1-1/2 pp.) all of which seem to suffer from insufficient treatment.

Altogether, this is a useful book for students.

B. N. Misra

**Banaras Law Journal, Volume 1, No.1 1965. [Varanasi, India:  
Banaras Hindu University, 1965]**

The appearance of the *Banaras Law Journal* is a matter of great pleasure. In fact a law journal from Banaras, where “scholars of eminence at all times, from all over the country, have striven to establish their merit” was long overdue. The editorial board of this *Journal* is composed of four members of the Law College staff. The first issue of the *Journal* contains an excellent contribution on legal education by Dr. Anandjee under the title “Dean’s Report”. Although this comprehensive report is primarily concerned with legal education at Banaras, it contains sufficient material of a general nature to be of great interest and value to one interested in the field of legal education in India. This is followed by an article on “The Joint Hindu Family Retrospect and Prospect” by Mr. B. N. Sampath. According to him (p. 74), “The institution (joint family) could not withstand the stresses and complexities of this century and thereby had already shown signs of decay. Even without the promulgation of many of these statutes, the institution would have disappeared within a few more decades. When such is the case, the recent legislations have just accelerated the end of the system and the burying pit is set ready for the dying institution.” Traditions die hard, especially religious ones. It is, therefore, not surprising

that the article ends with a passionate plea (p. 77) for “revivifying that ancient institution handed over to us from our great ancestors, with sufficient modifications to suit the hubbubs of this ‘cosmos’ age.” On the whole, the article depicts an interesting account of the evolution and development of the joint Hindu Family. The other articles are: “International Double Taxation with special reference to India and the United States” by M. C. Bijawat; “Industrial Tribunals’ Intervention in wrongful dismissals” by D. Prasad; and “Judicial delineation of the word ‘Civil Post’ under Article 311(2) of the Indian Constitution” by M. N. Chaturvedi, and these cover a wide cross-section of contemporary legal problems. Lastly, one hopes to see some kind of student participation in the *Journal* in later issues.

B. N. Misra

The above minuscule publications are merely illustrative. If interested in the Institute’s voluminous publications you may refer to the International and Comparative Law Quarterlies which are regularly published from London.

Also we used to have periodical evening lectures at the Institute’s office at 32, Furnival Street, London, E.C. 4 addressed by Professors, Judges and lawyers from the legal community. One evening while a judge and a professor were the two speakers, a solicitor was presiding over the meeting. Fail to recall their names. After formal introductions were over, the president requested the judge to speak. The judge stood before the podium and delivered his lecture that was very good and also well received by the audience.

Next it was the turn of the Professor. As he was not feeling too well with permission of the President he remained seated while delivering his speech. The views expressed by the Professor were

divergent to that of the judge, but were made convincingly with good reasons. The audience applauded in appreciation. After the Professor it was for the President to wind up the proceedings. He started, “The two opposing views of the learned speakers represent rigid and conflicting points of view. The reason for their difference is not far to seek. If you make a judge stand up and he is made to deliver his speech from a standing position he forgets the law and when a Professor sits down on a chair to deliver his lecture, he also forgets his text.....” The remarks were very apt and brought peals of laughter from the audience. Like a good lawyer quite cleverly he argued and justified his conclusion with a reasonable reconciliation of the two contradictory views. Everyone left the meeting with a happy face.

On Saturday, 6<sup>th</sup> of March 1965 on my way to a one-day conference at Leeds University, on board the train I had the pleasure and privilege of meeting Professor Clive Parry of Oxford University. He was a highly learned and respected Professor. His book “Nationality and Citizenship Laws” was a work of profound learning with authoritative and exhaustive analysis of statute and case law. I had found it very useful as a guide to my Ph.D. research work. As already stated, an important activity of our Institute was to organise weekend conferences at St. Catherine’s Cumberland Lodge, Windsor Great Park.

One such Conference which comes to mind is “Law in East Africa Today” held from Friday, April 30<sup>th</sup> to May 3<sup>rd</sup>, 1965. Discussion papers were presented by legal luminaries from the concerned Commonwealth country and also learned judges and Professors of the United Kingdom. Lord Denning usually presided over the meeting at our Institute for selection of the speakers to address the seminars. At one such meeting once I proposed the name of Professor Clive Parry to speak on

‘Citizenship laws’, which was the topic for discussion at the seminar. I thought I had made a first-rate suggestion. Lord Denning, however, very politely observed, “Braj (that is I), I have not read any recent articles of his on the subject of citizenship, his book ‘Nationality and Citizenship Laws’ has not been revised since 1957. I do not think he would have anything useful to contribute to the seminar”. That was the standard that Lord Denning had laid down for the guest speakers and therefore these seminars were highly intellectual in content and emphasis was always on current and contemporary developments in the field of law. Another significant feature was that all those who presented papers were excellent speakers. Often they would not hesitate to pull each other’s legs. I forget which particular conference it was, but I distinctly remember that a judge while speaking about a professor who was the next speaker praised him sky-high for his profound knowledge and learning in a most charming manner and wound up his introduction saying, and I quote, “The only folly, of course, early in the academic career of so brilliant a person was that he had chosen Oxford instead of Cambridge”. This was no doubt a friendly jab and the subtle humour was well appreciated.

One evening I was having a drink with a colleague at a party at our Institute when Mr. M. E. Bathhurst, CMG, CBE, Q.C. happened to pass by. I turned round towards him and said “Good Evening”. He put his hand on my shoulder and enquired, “What are you drinking, Braj?” “Vat 69”, I replied. He smiled and said, “Did you know that was the Pope’s telephone number?” What could I have possibly said after that? The witty remark comes back to mind as if the party was last night.

While days passed by, Pramila and I thought that it was time we had a house of our own instead of living at a rented place. After

looking into brochures and visiting several housing sites, selected a new double-storied semi-detached house at 7, Suncroft Place, Sydenham, London, SE 26. The price quoted was 5,100 pounds. We paid a token deposit to Mr. Lowe, the builders' representative, and booked the place. Showed the house to Ena, Mina and Nina who loved it and were very happy that soon we would be moving in to our own house. Suncroft Place came within the jurisdiction of Catford County Council and I applied to the Council for a 30-year loan of 4,900 pounds, as the rules required that I should contribute at least 200 pounds towards equity. At that point of time I had about 300 pounds in my Bank account and on a modest calculation found that we would need about 500 pounds for our furniture and furnishing the new house. Met my Bank Manager Mr. Hoyles and requested him for an over-draft of 500 pounds. As helpful as ever, he agreed and I went ahead to settle the deed for purchase of the semi-detached house at Sydenham, S.E.26, London.

Within a few days of my application to the Catford County Council, I was called to a meeting with the Town Clerk. The first question he asked me was whether I was going to permanently settle down in London. I fumbled for an answer, the easiest answer would have been 'yes', but I hesitated, because I knew if I were to go back to India after a few years, 'yes' would not be the right answer. He noticed my discomfiture and with a cheerful face went on to say, "Perhaps you would like the weather to improve before you make up your mind". With a sense of great relief I answered smilingly, "Yes, of course". A few more formal questions and answers and our meeting was over. The cheque came within a week. Payment to Mr. Lowe was made and after completion of all paper work, he handed over the keys of our semi-detached house to us on the Boxing Day, 27<sup>th</sup> December 1964. We started buying curtains, carpets,

furniture, etc. Getting the house ready for occupation was no doubt exciting but it was a tiring and time-consuming job. We had to apply, make necessary payments and then get electricity and telephone connections. Every thing done and ready, with blessings of Lord *Ganeshji*, we left 21, Tyson Road, Michael's place where we were tenants, and moved into our own house at 7, Suncroft Place, Sydenham, London, S.E.26 on Wednesday, 20<sup>th</sup> January 1965. Pramila, Ena, Mina, Nina and I, we all were so happy that we were in our own house, our first one. We had a nice house-warming party and spent a very pleasant evening with our close friends. We got a new telephone set and still remember, our telephone number was FOR 8443.

Sitting back, I recall those good old days, now gone forever! Life went on as usual, hectic in a way, work, study and back home. Weekends provided good rest, when quite often, friends came visiting.

The next important event in our lives was our fourth child expected end September or early October 1965. On completion of my Ph.D. thesis, I had submitted it to my guide Professor Holland. After he had examined it, 8<sup>th</sup> October was fixed as the day for the next meeting. I was ready and fully prepared. On the 7<sup>th</sup> when after work I returned home in the evening, Pramila suggested we should finish dinner early, as she was feeling uneasy. I was at my wit's end as my meeting with Professor Holland regarding my Ph.D. thesis had already been fixed to 8<sup>th</sup>. However there was nothing that we could do. After we finished dinner around eight thirty Pramila asked me to call the ambulance. I dialled 999 and within about ten minutes of my call the ambulance came with its blue light flashing and siren blowing loud and clear. The driver was the only person in the ambulance, but he appeared quite well informed. He enquired

from Pramila if her labour pain was intermittent or continuous. When Pramila said it was intermittent, he switched off the siren and the warning light as he felt they were not necessary at that moment. While Pramila went upstairs to take leave of our children the gentleman with the ambulance picked up a conversation with me and this is how it went. “Your first child?” he asked. “No, our fourth” I replied. He gave a mischievous look at me from head to toe and with a wink in his eye said “Really! You haven’t wasted any time in your precious life, have you?”

We both laughed and Pramila who had just come near the ambulance didn’t have a clue as to what the merriment was for. I said I would explain to her later. The gentleman helped Pramila to get in and then started the ambulance. I followed in my car NAP358. In about ten minutes we were at Beckenham Hospital in the Borough of Bromley in London where Pramila was registered. The sister-in-charge took Pramila inside. After preliminary examination she came out and said delivery was not imminent. She further said that hospital rules having been modified I could stay inside the delivery room with Pramila during her labour. I simply didn’t have the courage to be at Pramila’s side through the process of childbirth. I had never done it before. So politely I declined the offer, gave my telephone number to the lady and requested her to give me a call when the baby was born. Then I said goodbye to Pramila and left. It was about ten thirty when I got back home. Ena, Mina and Nina were fast asleep. I came to the sitting room, sat down and was wondering about my meeting with Professor Holland the next day when there was a soft knock on the door. I found our immediate neighbour David at the door. He enquired if there were any good news yet. I said I was expecting a call from the

hospital. He suggested, instead of sitting alone, I could join him for a drink next door at his place till news came from the hospital. We decided to leave our front doors open so that we could hear the telephone ring. After a short while Stuart's wife Carol joined us. It was perhaps around midnight that I took the telephone call at my place. It was from the hospital.

The sister on duty informed me that a baby daughter was born to Pramila at quarter to twelve and both mother and daughter were doing fine. I was so happy! All my anxiety turned to sheer joy. Oh Lord *Ganeshji* !!! Ever so grateful!!! I was greatly relieved that although we were in a foreign land every thing had been well taken care of by the hospital staff. God bless them! Immediately I telephoned and passed on the good news to my father, father-in-law and close friends in India. Though visiting hours in the hospital were five thirty in the evening, at my request, the duty sister had agreed to let me meet Pramila and see my daughter at the hospital at six in the morning. I went to the hospital on time and walked up to Pramila's bed, but didn't disturb her as she was sleeping. The sister gave me a tag with a number. I went to the room where the newborn babies were. No one was permitted inside. On my showing the tag to the sister inside, she went to a baby cot, picked up our daughter, brought her to the glass door and held her up so I could see from outside the glass partition. I looked at the little one, smiled, thanked the sister and left. On going back home I woke up Ena, Mina and Nina and informed them that their baby sister and Mummy were both well and would return home after three days. I also assured them that we all would visit the hospital at five thirty in the evening. Next the children started getting ready for school and I also got ready to leave for University College for my meeting with Professor Holland. Around eight-o'clock our friend Elizabeth picked up Ena, Mina and Nina and drove them to their

school. She was also to pick them up after school, give them dinner at her place and then bring them home to our place around eight-o'clock at night.

It was really nice of her to have come forward to help us during Pramila's absence from home. Their help meant that I had nothing to worry about my children. The second day it was Diedre's turn and on the third day it was Joyce who helped us out. We remain ever so grateful to these ladies for their gracious help. Kind people as these make the world a much happier place to live in. God bless them and may their tribe increase!

I went and met Professor Holland at eleven in the morning. After exchange of customary greetings he said, "I have good news for you. The University has accepted your Ph.D. thesis. We will soon fix a date for a meeting with your External Examiner." I thanked him for having supervised my doctoral research work and continued, "Sir, the other good news is that God has blessed us with our fourth daughter at quarter to twelve last night." Professor Holland stood up, offered his congratulations with a big smile and shook hands with me. Then I took leave and left as he had to go to another meeting. Met him again on November 25 and learnt that my Ph.D. viva voce would be held on December 13 at 2.15 p.m. I appeared at the examination on that day. Professor Hood Phillips of Leeds University was my external examiner. My discussions with the Professors started at 2.15 p.m. Some of the questions they asked were taken from the conclusion I had drawn in my Ph.D. thesis regarding the law and practice of admission and expulsion of aliens in the Commonwealth. I had prepared my subject well and gave good answers to the queries. The examination was over around 3.30 pm. The next day Professor Holland congratulated me as I had cleared the viva voce and my name had been recommended to the University of London for conferment of Ph.D. degree.

As I drove back home I invoked the blessings of Lord *Ganeshji* for having ungrudgingly given us so much happiness and joy. I was also overwhelmed with affection for our baby whose arrival I thought certainly had something to do with acceptance of my Ph.D. thesis by the University. At that tender age and so soon after birth what more could she have given!

After I reached home Pramila and children were very happy to hear about my success at the Ph.D. examination. We all sat around Pramila and began our celebrations. We also discussed about a suitable name for the latest addition to our family. Finally we settled that “Gitashree” would be her proper name and “Anna” her pet name. According to our family tradition the ‘naming ceremony’ for girls is held thirty days and boys twenty-one days after birth. Accordingly we invited our close friends to a get-together and dinner on Sunday the seventh of November 1965.

The next day I went to office and when I met Mrs. Lang at 32 Furnival Street she said, “Please don’t feel disappointed because you didn’t have a son. As they say, a son is a son till he gets a wife but a daughter is a daughter all your life.” Immediately a champagne party was organised and all our colleagues were called in. They raised their glasses and offered their compliments. How nice and good of them! At home on the seventh of November we had a grand party. After a few rounds of drinks Indian cuisine personally made by Pramila was laid on the table. The food was excellent and very tasty and guests were full of praise for Pramila’s cooking skills. That night we all thoroughly enjoyed ourselves and every one seemed so happy! It was well past midnight when our last guest left. The memory of that evening is still fresh in mind.

From next morning onwards it was once again back to work as usual. However, for the first time after having been in England

for so many years, I began to feel homesick. Thoughts and memories of time spent in India, particularly at home, gave rise to uneasy feelings. Nostalgic memories of the days gone by haunted me from time to time. Our village ‘Panchapalli’, its coconut trees, mango orchards, banana plantations, magnificent green paddy fields and the ever so silently flowing river ‘Saunlia’, – they all seemed to call me back. Surprisingly, I began to miss my fundamental freedom to walk up and down the village roads without a shirt or ‘kurta’ on my back. Oh! What pleasant and melancholy memories!

Anyway, the whole matter required careful consideration.

It was very true that in London over the years we had made ourselves quite comfortable in our own semi-detached house in Sydenham. Without doubt I was doing well in life and had no problems as such, but somehow I began to feel overpoweringly guilty that instead of going back and trying to do something good in my own country, I was wasting my life in England just for the sake of a higher life-style for self and family. It was also true and worthy of note that in London apart from providing to its residents proper hygienic environment, it was not a small achievement of the civic authorities that there was no hazard of mosquitoes, flies, cockroaches, etc., but could all these be good enough reason to continue to stay in London and not return home?

Besides, I began to feel that it was my duty to be with my father at his old age in case he needed me for advice or consultation. Also staying so far away from our home in India I was unable to participate in family functions where our near and dear ones always missed us. Some close friends were also writing and urging us to return home. I had already passed the Ph.D. examination and so, the defence for staying in London in pursuit of higher studies was no longer available. It was during Christmas that I more or less

made up my mind to return to India. With all the aforementioned thoughts in my mind, the New Year resolution was no problem. At midnight on 31<sup>st</sup> December 1965 I invoked the blessings of Lord *Ganeshji* and resolved to return to India as early as possible. After waking up in the morning I informed Pramila and Ena, Mina and Nina about my resolution. They took time to consider the pros and cons and happily for me, after some hesitation, came round to accept my explanation and decision.

The most important step that had to be taken next was to sell our house in Sydenham. The process took longer than I had expected. So many people came, went round the house and said they liked it. However, they left without agreeing to our quoted price of 6,000 pounds. Finally, Pramila found the right buyer. Her driving instructor agreed to buy the house for 5, 800 pounds.

On enquiry I learnt from London University that my Ph.D. degree certificate admitting me to the degree of Doctor of Philosophy in the Faculty of Law, the field of study being Comparative Constitutional Law had been signed by Mr. Henderson, the Academic Registrar and I could collect it any day.

The following day I collected my Ph.D. degree Certificate, met Mr. Henderson and said good-bye to him. Next I went round the premises of London University and University College and left with a very heavy heart realising that after a few days it was quite likely that I might not see these places again.

The final step was to resign my job. Drafting the letter of resignation was not difficult. The real difficulty was to convince Lord Denning about the wisdom of my proposed step. After I handed over my resignation letter to him he read it and to me it appeared he read it twice. Then he looked straight at me and asked, “Is it your pay, Braj?” Immediately I assured him that it was not so and that the Institute paid me reasonably well. I explained, “I

want to go back to my state and teach law”. He enquired if any vacancy was there. I replied that though no vacancy was there at that point of time, a vacancy was likely to arise in a month’s time and that interview for the job would be held soon. Then he suggested that instead of taking the whole family, I could go by myself, take the interview and if selected, resign my job and then take my family back. He was kind and willing to grant me leave of absence for a month. I thanked him profusely for his kind advice and generous offer, but said we all had to go back as I had already entered into an agreement to sell our house latest by the end of the month. After that, he stood up, smilingly shook my hands and wished me best of luck. I took leave and left.

Within the next fortnight we sold our house, paid off the County Council loan and purchased air tickets for all of us for our flight from London to Bombay. Finally, we bade good-bye to our friends and left London on 16<sup>th</sup> June 1966. We flew through Paris and Rome and landed at Bombay on the next day after overnight halt at Karachi. Cannot describe in words how I felt on landing at Bombay. It was a soul-satisfying divine experience. There is nothing else on earth like *Matru Bhumi*. Another three days and we were home at Cuttack. Felt very happy meeting my father, brother and members of the family after a long time. Soon dear friends also came over and greeted us. We talked for hours and never felt tired.

While in London I had applied for the vacant post of Principal-cum-Professor of Law, Madhusudan Law College at Cuttack.

I was a student of this College for two years, 1949 to 1951 and very keen to rejoin the College and work towards its all-round improvement. I was called to the interview taken by the Vice Chancellor of Utkal University. Three experts who really grilled me for almost three hours assisted him and all the while I was

most uncomfortable on a small armless wooden chair. Fondly remembered the thickly cushioned and comfortable chair offered to me in the House of Lords in London by Lord Denning during my interview. Any way the interview was over and a few days thereafter I was offered the job. I joined immediately. The first thing that struck me when I entered the Law College premises was the atmosphere of total disarray prevailing all over the place. For the first few days the students were watching me and my moves. I was also waiting to let the dust settle down.

I found there was no discipline; the students would enter and leave the class as and when they liked. It seemed they had come to college only to get their attendance marked. The teaching hours were from seven to nine-thirty in the morning with three periods a day. Each period was of fifty minutes' duration. There were four part-time lecturers, all practising advocates, who shared the teaching work with me. About seven days after my joining I started to enforce discipline in the college. I refused to allow students to enter my class if they were late. I took the class roll call at the end of my lecture to make sure no one left before my class was over. The part-time lecturers followed suit and sooner than expected full time classes became the regular feature and not the exception. In spite of all kinds of pressures I refused to forward the names of students who had failed to secure the required percentage of class attendance during the session. At the law examinations I had to punish and expel twenty-seven students for resorting to unfair means. Soon thereafter, perhaps in retaliation to my strict action of expulsion, unknown hands broke the head-lights of my brand-new car and threw cow dung at the entrance door of my office room. The persons responsible for these acts of misconduct were never found out and so no action was taken against any one. I did feel a little vulnerable, but then I was young and very soon with a sense of bravado

brushed aside the incidents as part of occupational hazard. As always Lord *Ganeshji* continued to shower His blessings and gradually within a period of about three to four months the atmosphere in the college changed for the better. The teaching staff and students settled down to a regular routine.

I found response from the students most hopeful and encouraging. Life in the college slowly became orderly and peaceful. Attendance of students at the classes showed marked improvement. Teaching was taken up quite seriously even by the part-time teachers.

I proposed to the University authorities to introduce full-time law classes from nine to four for the under-graduate course and begin a two-year 'Master of Laws' degree course. I intensely pleaded that the reason why I had come back to India was to teach law and I was more than willing to organise the law courses and advance the study of law in the state. However it seemed all the reasons advanced by me fell on deaf ears. Nothing moved! Not a soul moved! I failed to convince the University authorities. My exhausting efforts did not bear any fruit. At the end of it all I found myself in an absurd situation. My daily work started at 7 in the morning and classes were over at 9.30. Till twelve noon I was left to myself having virtually nothing to do. Two office Assistants and a Librarian kept me company till noon when the college bell rang and we all left for home. I was then thirty seven years old and thought to myself however tempting it might appear it was too early in my life to give up dedicated work and take *sanyas*. I felt it was not right for me to take full-time salary, but actually do only part-time teaching. That was certainly not right. Finally, after serious consideration, I resigned. The students were shocked and sincerely requested me to continue, but I refused politely. Their emotional and affectionate farewell addresses are reproduced in the three following pages. One is in English and the other in Oriya.

**Farewell address to Dr. B. N. Misra, LL. M. (London), Ph. D. (London) of Inner Temple, Barrister-at-law**

Outgoing Principal of The Madhusudan Law College, Cuttack.

Revered Sir,

We the inmates of the M. S. Law College Hostel, Cuttack having been overwhelmed with a deep and profound sense of grief at your leaving the college, find no words to express adequately our gratitude and thankfulness for all that you have done as the Principal for development of the college, the hostel, and particularly of the student. Though your association with us has been brief, yet your performances have been the highest. To be candid sir, in you there was an unusual meeting and mingling of firmness and flexibility that went a long way in bringing this much neglected M. S. Law College to a normal standard of life. This happy blending of firmness and flexibility coupled with mellowing love for students, has endeared yourself to every one of us and be it your firmness or flexibility which the occasion warranted, the highest good of the alumni was the ruling passion.

Sir, to an otherwise tepid and morbid, decadent milieu of our educational seat, you have injected and instilled life and the college has begun throbbing with activities.

As a teacher sir, your profundity and know-how of teaching the most difficult subject in a most simplified manner, will ever be remembered. During your stewardship your contribution towards cordial student-teacher relationship has been immense. Pre-occupied with a devotion to helping the students, understanding their problems and difficulties, your invaluable advice to them helped them in loosening many Gordian knots. Your unquestionable integrity, scholarship and versatility and

preoccupation with the summum bonum of the students will remain evergreen and fresh in our minds. Strict disciplinarian by disposition and cultivation, your absence will always be felt in keeping the wheels of the college constantly on the move.

Your departure from us and assumption of a greater responsibility give us an aching joy-aching because you have been rather cruel, if we may say so, in leaving us – and joy because it will open new horizons and vistas and you will administer justice to our country men, nay humanity. We have not any of doubt about your impeccable impartiality and tempering justice with mercy.

Sir, we are sanguine that wherever you be and in which ever office, we the students of the M. S. Law College will continue to occupy a soft corner in your heart.

Lastly, we all pray God to shower new honours and successes on you.

Yours ever affectionate  
Boarders of the M. S. Law College Hostel

Cuttack  
The 11<sup>th</sup> March, 1968.



Deep inside me I was badly hurting and felt really very sad that I had left the Law College. After all, why did I come back to India? My main object for returning to India was to teach law. Other reasons were not so important. Frankly, I had almost everything going for me in London, I was part of a happy family, had a good job, my own house and a car. There was hardly any thing else that we needed urgently or badly. Days were passing by smoothly. My only reason or justification to leave London was to return to my Alma Mater and strive to improve the standards of law teaching. However, providence had provided otherwise. Destiny was not on my side. And, London is not Calcutta that I could fly back immediately and once again put together the shredded pieces of my life.

At that time I really wanted to practice law, but had no funds to get going. Reviewed my financial position and found that I was bordering on bankruptcy. So gave up the idea of rejoining the Bar. Soon a vacancy for direct recruitment to the Orissa Superior Judicial Service (Senior Branch) was advertised. I applied and after interview and selection I joined as Additional District and Sessions Judge, Cuttack on 18<sup>th</sup> March 1968.

Soon thereafter a wonderful thing happened in our family. We were blessed with our fifth daughter who was born at home at Cuttack on 16<sup>th</sup> June 1968. She was really cute and gorgeous with curly black hair. As soon as Pramila was well again we convened a joint family meeting to give her a name.

The sacred naming ceremony was celebrated after a month. We held a fabulous party with family and friends. ‘Smitashree’ was the name chosen for her and ‘Lyn’ was her pet name. On her way down from above to our midst she had brought for me so much good luck! I was already a District Judge in the Orissa Superior Judicial Service. Also very soon I was selected to be the District &

Sessions Judge of the premier judgship of Cuttack and Dhenkanal districts, a post which till my appointment was held by one of the senior most District Judges. And that is not all. My good luck seemed to continue. Perhaps our baby daughter was working out something along with Lord *Ganeshji*. I joined as District & Sessions Judge, Cuttack-Dhenkanal, on 1<sup>st</sup> July 1968 and in the seniority list of District Judges my position was No.11. At that time the retirement age of District Judges was 58 years. Within a month or two the state elections which were due were held. The then existing government was voted out of power and the 'Swatantra' party of Ganatantra Parishad formed the new government. One of the first things the new government did was to reduce the retirement age of government servants from 58 to 55 years. As a result of this decision about 8 District Judges had to retire and my seniority shot up to No.3. Some good fortune indeed!

Apart from a period of six months in 1980 when I was on deputation to Berhampur University as Administrator, I worked as a District Judge, Legal Remembrancer and Law Secretary to the State Government in the Superior Judicial Service (Senior Branch) up to 5<sup>th</sup> January 1981 when I was appointed a Judge of Orissa High Court.



**Judge, Orissa High Court**

In March 1986 I was the senior-most Judge in Orissa and as such appointed as the Acting Chief Justice of Orissa High Court.

In July that year I was transferred to Allahabad High Court. As mentioned earlier I was the senior-most judge in Orissa, but in Allahabad High Court my seniority dropped to Serial No.13.

As the President had signed my transfer order which he was constitutionally empowered to do, I decided I should proceed to Allahabad. It would not be out of place to mention here that as a mark of protest against my unjustified transfer from Orissa to Allahabad the entire Bar in the whole state of Orissa went on strike for seventeen days. I was unofficially informed by a very senior officer in the Law Ministry at Delhi that my transfer was made at the instance of a former Chief Justice of Orissa High Court who was then a judge of the Supreme Court. I never bothered to verify the truth of this information. Before my departure from Cuttack I was really overwhelmed when hundreds of people from all walks of life met me at my official residence and expressed their sympathies. It was really very embarrassing for me. Through my visitors I earnestly appealed to the Bar to call off the strike immediately. I also requested the President of the High Court Bar Association to use his good offices to end the strike. The strike was finally called off after seventeen days and normalcy restored in the courts. I am forever grateful to the Bar in Orissa for their unqualified support. I would add that from Delhi informal justification for my transfer was conveyed to the Orissa High Court Bar pointing out that my transfer from Orissa to Allahabad was not because of any personal reasons, but to implement the salutary policy of transfer of about one-third of the local judges from one High Court to another.

Frankly, I would firmly state that quite a number of those judges who were responsible for introduction of the policy of transfer

of High Court Judges had craftily managed to creep up to the Supreme Court, while some of them, thank God, had retired.

I had never been to Allahabad before, but I was so well received at Allahabad High Court that my transfer was really a blessing in disguise. Really I am grateful to whosoever was responsible for my transfer. My brother judges, the Bar and the public at large gave me so much love and affection as if I was one of them and had been born and brought up at Allahabad. After Allahabad I joined as Chief Justice of Sikkim High Court on 20<sup>th</sup> January 1990 and finally retired on 9<sup>th</sup> November 1992.



**With wife in 1992- Chief Justice, Sikkim High Court**

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I worked in various District and Sessions Courts, the Government Law Department and three High Courts for more than twenty-four years, 18<sup>th</sup> March 1968 to 9<sup>th</sup> November 1992. Now dear reader let me recall an assortment of anecdotes and events mostly connected with those years.

In July 1968 on joining as District and Sessions Judge at Cuttack what hit me hard on my face were pervasive and rampant corruption, inefficiency and harassment meted out to parties and witnesses in and around the courts. My principal court was no exception. The reality in the courts was so different to the courts described in the law books and taught in the law classes. A

member of the Bar told me that the monthly income of the Bench-clerk of my court was more than double of my monthly salary of Rs.1, 250/-. Well, I had to do something and so got started. First I transferred a section of Class III staff that had stayed at one station for years and years to another place within the judgeship.

This move surprised many, but it had good effect. No longer could one take it for granted that he would continue at one place almost for ever by manoeuvring. In 1968/69, there was a violent communal flare-up for a day or two in the city of Cuttack. At that time I was the District & Sessions Judge of Cuttack & Dhenkanal with headquarters at Cuttack. Around midnight I received a telephone call from Gulam Rasool, my Muslim office peon, that about 7 to 8 Muslim Grade IV staff along with him was stuck in my chamber as Hindus were all over the Court premises and threatening to kill them when they came out of the chamber. I asked Rasool to lock my chamber from inside and stay there with the other staff till I called him back. Immediately I tried to contact the Collector and the Superintendent of Police, and I tried several times, but both of them were not available. I informed Rasool over telephone that I would not be able to help during the night, but would certainly do something in the morning. As soon as my car driver came the next morning I left my official residence a little early and went to the court in my car. The road to the court was almost empty. As I entered the court premises, I found some persons running away from my sight. At that time I was myself a little nervous. However, there was no untoward incident and I reached my chamber safely. I asked Rasool and the others with him to follow me. As I walked down to my car, non-Muslim court staff were watching but did

not dare to stop us. On reaching the car at the portico I asked Rasool and his friends to squeeze into the back seat and I myself got into the front seat next to the driver. We returned to our residence.

I asked them to freshen up as early as possible, eat breakfast-cum-lunch at our place and then avoiding the main roads run across the river-bed through generally unused routes to their respective native villages. I advised them to return to duty after a fortnight, by which time I thought peace would have been restored. Next I returned to court for the day's work. All of them returned to duty when harmony was restored in the city two/three days after the communal incident.

Once on a surprise check of the court premises late in the afternoon on a working day, on hearing noise from inside, I quietly opened the back door of a big office room. However, instead of entering I immediately pulled out when I found about twenty to thirty members of the civil court staff had pulled the tables together and sitting around the tables. They were having a nice party with a lot of refreshments and cold drinks stacked at the centre of the tables. I thought it was a farewell party for one of the staff who might have been transferred. But it was not so. I ascertained from my personal peon that what I had seen was the daily routine of the clerical staff. Every day they would wait till all the judicial officers finished their day's work and left. Thereafter they would contribute to the common fund and buy the food-stuff. After eating they would begin their file-work. It didn't take me long to guess that during the day time they kept chasing the parties, witnesses and even the lawyers and collected as much bribe as possible and therefore never had sufficient time to attend to file-work during the official court

hours. I thought it would be proper that the court premises should be locked up an hour or two after court hours.

Once on a working day during lunch recess I walked into the Sheristadar's room. Sheristadar is the senior-most ministerial officer of the District Judge's court. I moved around the room and asked a clerk to open an almirah which I had picked up at random. We found a couple of steel trunks and three to four beddings inside the almirah. The trunks contained wearing apparel and the bed rolls were obviously for sleeping. On enquiry I learnt that some of the clerical staff slept at night in that room on the tables and made good use of the ceiling fans in the room. Apparently no charges had to be paid for such unauthorised use of fans and lights. A couple of other big rooms in the court premises were also being used by some of the staff in the same manner. After serious consideration and in order to maintain the solemnity of court premises, I decided to have the court premises locked up by 5.30 in the evening. My orders in this regard were duly notified. Some of the concerned clerks met me and represented that they had not been provided government accommodation and that they could not afford to take private houses on rent as rents were pretty high in the city. I told them I would allot government accommodation when their turn came and vacancies arose. I suggested they could go to mofussil stations where there was no accommodation problem.

Actually I transferred many of them whose transfers were over due. There were no other problems in this regard and the court premises were locked up at 5.30 p.m. every day.

On another occasion again during lunch recess I went down to the Nizarrat (Cash Branch). I checked up the cash in the cash box. I started counting and stopped at Rs.85,000 as lunch recess was almost over and it was time to resume sitting in court, but

there were still bundles of notes left in the cash box. I asked the Registrar to count the cash carefully and meet me in my chamber at 4 p.m after I finished work in court. Later I called the Cashier and asked him to explain why he was holding more than Rs.1 lakh in cash. His reply was that outstanding electricity bills amounting to Rs.70 to 80 thousand were due to be paid within a day or two. Anyway I put him under Departmental proceedings and requested the Registrar to leave about Rs.5,000 in the cash box and deposit the balance in the government treasury upon proper receipt. Interestingly, within a day or two of this incident, I received an unsigned letter wherein it was stated that the cash branch of the court ran a money-lending business. Money was generally advanced to the needy staff of the court at exorbitant rates of interest and when the staff would come to collect their monthly salary, part of the borrowed amount and interest would be retained by the cash branch in charge and the balance paid to the borrower. This obnoxious practice had to stop and it was stopped immediately.

In 1969 I attended a seminar on '**Criminal Law And Contemporary Social Changes**' organised by the Central Bureau of Investigation at New Delhi. I had read a paper on "Confessions before the Police" in Group D which discussed "Reforms in Criminal Law and its Administration".

The Chairman of this Group was the Retired Chief Justice of Patna High Court. As readers would presently see in my article I had very strongly advocated making confessions before the police admissible in law courts as proper evidence. However, the Chairman of our Group quite forcefully opposed my point of view and at the end of the day our Group D failed to find a consensus. My article is reproduced below.

## **Confessions before the Police**

**by**

**Dr. B. N. Misra, LL. M. (London), Ph. D. (London), Bar-at-Law**

1. Hardly a day passes in which our Courts are not called upon to consider the problem of admissibility of confessions in criminal matters and the problem by no means has ever been a simple one. The following four features have generally predominated the approach of succeeding generations of legislators, lawyers and academicians:

- (i) The truth of the confessional statement;
- (ii) The voluntary nature of the confession;
- (iii) The safeguarding of the public interest by punishing the guilty; and
- (iv) The need for protection of the private rights of the individuals.

2. The requirement of voluntariness as a fundamental condition of the admissibility of confessions is uniformly applied throughout the Commonwealth except in some countries where a test of truth is applied. For example, Section 149 of the Evidence Act, 1958 of the State of Victoria provides that “No confession which is tendered in evidence shall be rejected on the ground that a promise or threat has been held out to the person confessing, unless the judge or other Presiding Officer is of the opinion that the inducement was really calculated to cause an untrue admission of guilt to be made;..... The clash between the public interest and the private rights of an individual has been sought to be solved by different countries of the

Commonwealth in their own ways. Most countries in the Commonwealth allow confessions before Police Officers to be admitted in evidence in the public interest so that valuable evidence may not be lost; in a few countries, *e.g.*, India, Pakistan and Ceylon, confessions to police officers are made wholly inadmissible in evidence with a view to protect the private rights of an individual. The danger of tilting the balance excessively in favour of the individual as against the society was underlined by Lord Shawcross in 1964. Speaking to a meeting of West Riding Magistrates in Leeds, he said, "I am not suggesting that we should go back to the rack or the thumb screws, nor that we should be one whit less vigilant in making sure that innocent people are not convicted. I merely ask whether our present procedures do not compel us to pay an unnecessarily high price for protecting the innocent by letting the guilty go free". In order to appreciate the difference in approach between the common law countries which make confessions before Police Officers admissible and countries like ours which make them inadmissible, it would be helpful to examine the historical background and the development of the laws under these two systems.

3. While considering "confessions", we cannot but refer to two terms 'statements' and 'admissions' which are frequently used along with 'confessions'. The Shorter Oxford English Dictionary defines a 'statement' as "a written or oral communication setting forth facts, arguments, demands or the like."<sup>1</sup> A statement may be either inculpatory or exculpatory. No statement that contains self exculpatory matter can amount to a confession, if the exculpatory statement is of some fact which if true would

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negative the offence alleged to be confessed.<sup>2</sup> A statement so worded that some of the facts establish the commission of an offence while some others are exculpatory in nature, thereby negative the offence, would obviously not be a confession. A statement, although not amounting to a confession, may amount to an admission. It may, therefore, be said that 'statement' is a generic term which encompasses both 'admission' and 'confession'.

4. An admission has been defined as a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact.<sup>3</sup> Although there is a tendency to distinguish admissions from confessions on the basis of classifying the former as belonging to civil law and the latter to criminal law, it would appear that this distinction is not very sound. For example, under the Indian Evidence Act an admission would include a point conceded in a civil suit and also a statement made by a person accused of a crime in relation to the transaction which is not a confession, such as the accused person's excuses, evasions, etc. Thus 'admission' is a term of wider connotation than 'confession' and a 'confession' is treated as a species of admission. Under the common law too, voluntary confessions, when they are not made under an inducement held out by some one in authority, are governed by the law regulating the reception of a party's admission.<sup>4</sup>

5. Of the three terms 'statements' 'admissions' and 'confessions' 'confession' is of the narrowest ambit. It would appear that in the Commonwealth the statutory definition of 'confession' is not uniform. In Ceylon and Nigeria, for example, a confession

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2 Pakala Narayan Swami v. Emperor, (1939) Indian Appeals; 66 at p. 81 (1939)

3 See, for example S. 17 of the Indian Evidence Act.

4 See Cross Evidence (2nd Edition), p. 445.

is defined “as an admission made at any time by a person accused of an offence stating or suggesting the inference that he committed that offence.” This definition, which has been taken from Art.22 of Stephen’s Digest of the law of Evidence, was considered and rejected by the Privy Council<sup>5</sup> in its application to India where there is no statutory definition of ‘confession’. The Privy Council held that a confession must either admit in terms the offence, or at any rate substantially all the facts which constitute an offence. In line with this reasoning, in Ceylon, in spite of the statutory definition, the Courts have held<sup>6</sup> that it is not every statement which suggests any inference as to any fact in issue or relevant fact which is a confession, but only a statement made by a person accused of an offence whereby he states that he committed that offence. The most recent definition of confession may be found in Kenya and this definition is much wider in its scope. In the Kenya Evidence Act, 1963 confession is defined as follows: “A confession comprises words or conduct or a combination of words and conduct, from which, whether taken alone or in conjunction with other facts proved, an inference may reasonably be drawn that the person making it has committed the offence.”

6. Lastly, in Australia, it would appear that the earlier restrictive interpretation of a confession being either a direct admission of guilt, or of some fact or facts which may tend to prove the prisoner’s guilt at the trial<sup>7</sup>, no longer holds good; the present position being that a confession will include any statement obtained from the prisoner which could lead to the inference of guilt or which would tend to prove it.<sup>8</sup>

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5 Pakala Narayan Swami v. Emp. (1939) 66 Ind. 4 App. 66, 81.

6 King v. Cooray, (1926) 28 NLR 74.

7 A. G. for N.S.W. v. Martin, (1909) 9 CLR 713.

8 R. v. Lindsay, (1963) Qd. R. 363, 393.

**7. The position under English Law:** We may begin with a survey of the position under the common law. The law of confessions has been subjected to varying degrees of stresses and strains in different periods, the opposite norms being a liberal acceptance of all confessions on the one hand and a very narrow construction put on their admissibility on the other. The principle and practice of accepting confessions as a basis for conviction is of very ancient origin. In the sixteenth and seventeenth centuries confessions were indiscriminately accepted and admitted in evidence without any enquiry as to whether they were made from hope of advantage or from fear of threats or torture.<sup>9</sup> The term ‘confession’ itself had not received its modern connotation. It seemed to have a different meaning. In simple terms, it was a plea of guilty. Its application had not been extended to extra judicial confessions. Being construed as a plea of guilty, strictly speaking, it belonged to the domain of criminal procedure and was not so much a rule of evidence. It was subject, however, to important qualifications that under certain circumstances a plea of guilty should not be received or recorded. The earlier treaties on criminal law show that ‘confessions’ were described as ‘convictions’ and were not properly within the field of evidence.<sup>10</sup> The very object of tendering evidence in a criminal trial was to assist the court in ascertaining if the accused was guilty of the charge made against him. Therefore, where the accused himself declared his guilt, there was no need for other proof and evidence became unnecessary. The duty of the Court was to take judicial notice of and record a man as guilty because he had pleaded it. The Courts, however, were reluctant and unwilling to record a plea of guilty if the accused was found to

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9 Wigmore, Evidence (3rd Edn.), Vol. III, 816

10 Hale, Pleas of the Crown, 225 Hawkins, A treatise of the Pleas of the Crown (Leach’s Edn.) 1787, 6th Ed. Vol. 2, 508.

have been over-powered by ‘fear, menace or duress’, or from weakness or ignorance’. The same principle of ‘confession’ as a plea of guilty and in itself a conviction, found expression in the Statutes of Edward VI and William III<sup>11</sup>. During this period the confusion in the law, it seems, was as to the mere admissibility of a confession and its sufficiency to convict<sup>12</sup>. The two doctrines involved the notion of ‘confession’ as a plea of guilty and therefore as dispensing with the necessity of evidence; and dealt with the conditions under which the effect of immediate conviction was to follow such a confession.<sup>13</sup> Reports of trials, down to the reign of Charles I<sup>14</sup>, show that the method was for the Court to interrogate the prisoner and try to convict him from his own mouth. The use of torture to extract confessions was fairly common during this period<sup>15</sup>. The rack was often used and even Lord Coke was prepared to wink at, if not to justify, its use; while Lord Bacon did not hesitate, as Attorney General, to superintend, in person, the torture of an aged clergyman<sup>16</sup>.

8. Gradually, however, the attitude of the Bench and Bar changed. In 1775, in *The King v. Rudd*<sup>17</sup> Lord Mansfield stated that - “The instance has frequently happened, of persons having made confessions under threats or promises: the consequence as frequently has been, that such examinations and confessions have not been made use of against them on their trial.” It will be seen that this dictum is not so much an enunciation of a principle as a

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11 1547, St. 1, Ed. VI, C.12 S. 22.1552, St. 5&6 Ed. VI, C-11, S. 12. 1695, St. 7, Wm. III, C. 32; Statutes at Large, Vol.9, Page 390.

12 East, Pleas of the Crown (1803), Vol. I, 132.

13 Ibid, 816, 817.

14 1625-1649.

15 Stephen, History of the Criminal Law of England, Vol. I, 222.

16 Taylor, (12th Edn.) (1931) Vol. I, 562.

17 (1775) 1 Leach 115, 118 (168 E. R. 160).

statement of fact. However for the first time a Court had taken judicial notice of the fact of exclusion of ‘confessions’ made under threats or promises. Eight years later, in *Jane Warwickshall’s case*<sup>18</sup> the modern rules of exclusion received a full and clear expression. The court refused to accept the proposition that confessions obtained by promises or threats are to be rejected from a regard to public faith. The Court held: “confessions are received in evidence, or rejected as inadmissible, under a consideration whether they are or are not entitled to credit. A free and voluntary confession is deserving the highest credit, because it is presumed to flow from the strongest sense of guilt, and therefore it is admitted as proof of the crime to which it refers; but a confession forced from the mind by the flattery of hope, or by the torture of fear, comes in so questionable a shape when it is to be considered as the evidence of guilt, that no credit ought to be given to it, and therefore, it is rejected.” Thus by the end of the eighteenth century confessions not entitled to credit because of the promises or threats by which they had been obtained were inadmissible in evidence.

9. The fifty years that followed marked a complete change in the attitude of the Judges. During this period there was a general suspicion of all confessions, a prejudice against them as such, and an inclination to repudiate them upon the most trivial grounds. This phase, it would seem, was the outcome of an excessive zeal on the part of Judges to be fair to the accused and the test of ‘fairness’ was carried so far that the trend was completely in favour of the accused. In *R. V. Drew*<sup>19</sup> a statement by a person was excluded because he had been told “not to say

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18 (1783) 1 Leach 263: (168 E.R. 234).

19 (1837) 8 C&P. 140 (173 E.R. 433).

anything to prejudice himself, as what he said would be taken down and would be used for him or against him at his trial.” So also in *R. V. Morton*<sup>20</sup> a statement was excluded because a constable said to the prisoner ‘what you are charged with is a very heavy offence, and you must be very careful in making any statement to me or anybody else, that may tend to injure you; but anything you can say in your defence we shall be ready to hear, or to send to assist you.’

10. Down to the middle of the nineteenth century the common law took an extremely wide view of what constituted a threat or promise and of what constituted a person in authority: and was very ready to infer inducement.<sup>21</sup> Thus, during this period exclusion became the rule, admission the exception. Kelly, C.B.’s remarks<sup>22</sup> in *R. v. Reeve and another* that the cases excluding confessions on the ground of unlawful inducement have gone too far for the protection of guilt is an apt description of the state of affairs as they existed at that time. It was left to Parke, B. in *R. v. Baldry*<sup>23</sup> to state openly that one could not look at the decisions without some shame. He added that in many cases where confessions have been excluded, justice and common sense have been sacrificed, not at the shrine of mercy, but at the shrine of guilt. In *Baldry*’s case, the constable’s warning to the accused was, that “what he did say would be taken down and used as evidence against him.” In admitting the confession made by the accused following the constable’s warning: Chief Baron Pollock said: “The question now is whether the words employed by the constable... amount either to a promise or a threat? We

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20 (1843) 2 M&R 514 (174 E.R. 367).

21 See *The King v. Lee* (1950) 82 C.L.R. 133.

22 (1872) 12 Cox C.C. 179, 180.

23 (1852) 2 Den. 430, (169 E.R. 568).

are not to torture this expression, or to say whether a man might have misunderstood their meaning, for..... the words are to be taken in their obvious meaning.” He observed that there was no presumption of law that a confession was false and that the ground for rejecting such evidence was that it would be dangerous to leave it to the jury. In the same case, Erle, J. said: “When a confession is well proved it is the best evidence that can be produced”, and thus reaffirmed what had already been said in *R. v. Warwickshall*.<sup>24</sup> The law has changed very little ever since, although efforts have been made from time to time to harmonise the procedure. It was settled in *Reg. v. Thompson*<sup>25</sup> that the legal burden of proving that a confession was voluntary rests on the prosecution. In the course of his judgment, Cave, J. said that ‘a confession proceeding from remorse or a desire to make reparation for the crime’ was admissible as evidence; but if it ‘flows from hope or fear excited by a person in authority’, it must not be admitted. Thompson’s case also made it clear that Judges still had reservations and doubts regarding the use of confessions. This was the position at the end of the nineteenth century.

11. Then in 1914, in *Ibrahim v. Rex*<sup>26</sup> the principles underlying the law of confessions were stated with great clarity and in unambiguous terms. In the course of his judgment, Lord Sumner said, “It has long been established as a positive rule of English Criminal Law, that no statement by an accused is admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement, in the sense that it has not been obtained from him either by fear of prejudice or hope of

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24 (1783) 1 Leach 263, (168 E. R. 234).

25 (1893) 2 Q.B. 12

26 (1914) A. C. 599

advantage exercised or held out by a person in authority..... The principle is as old as Lord Hale.... The rule.... is a rule of policy..... It is not that the law presumes such statements to be untrue, but from the danger of receiving such evidence Judges have thought it better to reject it for the due administration of justice.... The burden of proof in the matter has been decided by high authority in recent times in *Reg. v. Thompson.*” Lord Sumner also pointed out that logically these considerations go to the value of the statement rather than to its admissibility. Although this case did not solve all the problems, it certainly removed many doubts and cleared the air of many uncertainties and ambiguities. With the judgment in Ibrahim’s case the foundation of the modern law of confession had been firmly laid to serve as a guide for many Courts in many countries for a long long time.

12. Although the rules of exclusion have undergone periodic changes, the basic law of confessions remains much the same to-day. The attitude of the Judges has not changed much either. Courts of Law still require stringent conditions to be satisfied before receiving a confession.

13. The case law discussed in the earlier pages forms the background to the modern law of confessions under the common law. Summarising the contribution made by some of the important cases to the growth of the common law it might be said that Rudd’s<sup>27</sup> case noted an improvement in the judicial attitude; the modern rules of exclusion found expression for the first time in *Warwickshall’s*<sup>28</sup> case; *R. v. Baldry*<sup>29</sup> was a bold attempt at harmonization of liberal extremism; *R. v. Thompson*<sup>30</sup>

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27 (1775) 1 Leach, 115 (168 E.R. 160)

28 (1783) 1 Leach 263 (168 E.R. 234)

29 (1852) 2 Den. 430 (169 E.R. 568).

30 (1893) 2 Q.B. 12

laid it down that the burden of proving the voluntary nature of a confession was on the prosecution; and Ibrahim's case<sup>31</sup> brought great clarity into the law and is famous for its enunciation of clear principles.

14. *Judges' Rules*: We may now consider the Judges' Rules prevailing in England which guide the Police Officers investigating into crimes. Before the creation of the regular police force it was usual for a magistrate to do the work of investigation which a police officer does to-day.<sup>32</sup> It was customary to forward a confession, when made by the accused, to the trial Judge with the preparatory words: This examinant confesseth and saith, .....<sup>33</sup> In the nineteenth century when it was proposed to create a modern police force it was thought in some quarters that the existence of a police force was inconsistent with the liberty of the individual. Sir Robert Peel effectively met this argument by pointing out that "liberty does not consist of having your house robbed by organised gangs of thieves." It was only natural that soon after the creation of the police force the task of investigation of offence was taken over by police officers. It must be emphasised that the accused's right to say nothing in reply to police questioning was as absolute as his right to remain silent at his examination by the magistrate. With the growth of the modern police force some form of control of police methods of investigation became necessary. The origin of the Judges' Rules is probably to be found in a letter dated October 26, 1906 which the then Lord Chief Justice, Lord Alverstone, wrote to the Chief Constable of Birmingham in answer to a request for advice in

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31 (1914) A.C. 599

32 See Stephen, *History of the Criminal Law of England*, Vol. 1, 219, 222 to 225 and 228, 229.

33 See, for example, *R. v. White* (1741) XVII How. St. Tr. 1054.

consequence of the fact that on the same circuit one Judge had censured a member of his force for having cautioned a prisoner, while another Judge had censured a constable for having omitted to do so. This clearly shows the early confusion as to the proper method of questioning prisoners. In 1912, at the request of the British Home Secretary, four rules were formulated and approved by the Judges of the King's Bench Division. Five more were added in 1918. The rules were clarified by a circular from the Home Secretary based on a statement made by the Judges of the King's Bench Division in 1930. A new set of rules was made by all the Judges of the Queen's Bench Division in January, 1964 which superseded the Rules previously made by the Judges and is now in force.

15. **Status:** There has always been a certain ambiguity regarding the legal status of these Rules. It must be borne in mind that the Rules are a statement of policy, made by all the judges, not from the Bench, but extra-judicially. The Rules operate wholly within the common law principle of voluntariness, which is overriding and applicable in all cases.<sup>34</sup> The Rules are meant to serve as a guide to police officers conducting investigations.<sup>35</sup> The Rules are concerned with the admissibility in evidence against a person of answers, oral or written, given by that person to questions asked by police officers and of statements made by that person.<sup>36</sup> The question of status was first considered in the case of *R. v. Voisio*.<sup>37</sup> In the course of his judgment, Lawrence, J., said "In 1912 the Judges at the request of the Home Secretary, drew up some rules as guides for police officers. These rules have not

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34 Paragraph 'e' of the Judges' Rules 5

35 Home Office Circular No.31/1964, Paragraph 4

36 Ibid, paragraph 5.

37 (1918) 1 K.B. 531.

the force of law; they are administrative directions the observance of which the police authorities should enforce upon their subordinates as tending to the fair administration of justice. It is important that they should do so, for statements obtained from prisoners, contrary to the spirit of these rules, may be rejected as evidence by the Judge presiding at the trial.” The Judges have made the Rules and not unnaturally have sought to insist on their observance. The tendency appears to be strong to treat them as standards of propriety for the purpose of deciding whether confessional statements should be received.<sup>38</sup>

**16. Questioning Suspects:** In the first half of the nineteenth century the absence of a warning was sufficient to cause a statement to be rejected. It must not be forgotten, however, that during this fifty-year period all confessions were looked upon with suspicion and rejected upon the slightest pretext. The second half of the nineteenth century did not see much change in the attitude of the judges although the liberalism in favour of the accused had abated. *R. v. Gavin*<sup>39</sup> is an illustration of the judicial approach of the time wherein it was held that “when a prisoner is in custody, the police have no right to ask him questions. Reading a statement over and then saying to him, “what have you to say?” is cross-examining the prisoner, and therefore I shut it out. A prisoner’s mouth is closed after once given in charge, and he ought not to be asked anything.” But in *R. v. Brackenburry*<sup>40</sup> where an accused had made some admissions after questioning, the statement was admitted in evidence and Day, J. dissented from the ruling given in the Gavin case. The position was reversed yet again by Cave J. in *R. v. Male &*

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38 See *Mc. Dermoti v. The King* (1948) C.L.R. 501

39 (1885) 17 Cox C.C. 689.

40 (1893) 17 Cox C.C. 628

Cooper<sup>41</sup> with his famous remarks; “A policeman should keep his mouth shut and ears open”. That the common law was indefinite on the point was made clear by Channell, J. in *R. v. Knight and Tyayre*<sup>42</sup>, wherein he said; “When he (police officer) has taken any one into custody.... he ought not to question the prisoner.... I am not aware of any distinct rule of evidence, that if such improper questions are asked the answers to them are inadmissible.” Five years later, the same Judge said in *R. v. Boot and Jones*<sup>43</sup>, “.... the moment you have decided to charge him and practically have him in custody, then in as much as a judge even cannot ask a question, or a magistrate, it is ridiculous to suppose that a policeman can. But there is no actual authority yet that if a policeman does ask a question it is inadmissible.” In *Ibrahim v. The King*<sup>44</sup>, Lord Summer remarked that this dictum was probable opinion of the present law, if it is not actually the better opinion.

17. The Judges’ Rules came into being in 1912 by which time the police officer’s caution had become established in practice and the Rules gave it formal recognition. The first four rules of 1912, the five additional ones of 1918 and the important rider of 1930 are all now part of history.

18. The new “Judges’ Rules” are not merely a collection of a set rules. They start with an introductory note, followed by a re-statement of some basic overriding principles; the rules appear next and administrative directions on interrogation and the taking of statements form the last part. The introductory note gives a short historical background to the origin of the rules and goes

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41 (1893) 17 Cox C.C. 689

42 (1905) 20 Cox C.C. 711

43 (1910) 5 Cr. App. R. 177

44 (1914) A.C. 599

on to emphasise the element of voluntariness as being the crux of all statements made to police officer. It is made clear that the 'Rules' are not exhaustive in as much as there are 'many varieties of conduct which might render answers and statements involuntary and therefore inadmissible.'

19. The following principles are set out as being supreme and applicable irrespective of the operation of the Judges' Rules. It is the duty of citizens to co-operate with the police to discover and apprehend offenders. The police are not authorised to compel any person against his will to come to or remain in a police station except by arresting him. Every person has a right to the services of a law agent at any stage of investigation, subject to the exception that "no unreasonable delay or hindrance is caused to the processes of investigation or the administration of justice". As soon as there is enough evidence to prefer a charge, a person should be charged or informed that he may be prosecuted. The fundamental condition of the admissibility of a statement is that it must be voluntary. It is further indicated that the Judges' Rules operate wholly within the principle of 'voluntariness' and that non-compliance with the Rules might render answers and statements liable to exclusion. The statement of principles set out above is followed by the Rules.

20. Rule I empowers a police officer, in the course of his investigation, to question any person, including a person in custody, so long as the person has not been charged or informed that he may be prosecuted. The change brought about by this Rule is that for the purpose of interrogation without caution the question of custody is immaterial so long as the person has not been charged or informed that he may be prosecuted.

21 Rule II deals in objective terms in as much as the police officer has to administer a caution as soon as there is "evidence which

would afford reasonable grounds for suspecting that a person has committed an offence”. Under the old Rules, the caution had to be administered when the police officer had “made up his mind to charge a person”. In effect the new Rule 2 provides a fresh safeguard for accused persons in the form of a preliminary caution. The duty to caution now arises at a much earlier stage, i.e. as soon as there are reasonable grounds for suspicion. A standard form of caution is provided for the Rule. The questioning might continue after the administration of a caution. Another important new requirement is that a record must be kept of the time and place at which any questioning or statement after the administration of caution began and ended, and of the persons present. On the whole Rule 2 covers the period between reasonable suspicion and the decision to charge. It is important to note that this period cannot be indefinitely extended as principle (e) at P.4 of the Judges’ Rules requires a charge to be formed or information about prosecution to be given as soon as there is enough evidence.

22. Rule III deals with the stage when a decision to charge is made. Clause (a) of Rule III provides that a caution must be given when a person is charged or informed that he may be prosecuted. The prescribed form of caution is a slightly expanded version of the form of caution in Rule II.

23. Clause (b) of Rule III deals with two exceptional cases where questioning might continue even after a person has been charged or informed that he may be prosecuted. They are: where such questions “are necessary for the purpose of preventing or minimising harm or loss to some other person or to the public” or “for clearing up an ambiguity in a previous answer or statement.” The second situation as regards clearing up ambiguities was also permissible under the old Rules. However, before any such questions can be put, a caution has to be

administered in yet another form prescribed. These questions and answers must be recorded in full and the record signed by the person questioned, or in case of his refusal, by the interrogating Officer. Clause (c) of Rule 3 lays down a further requirement that a record be kept of the time and place at which the questioning or statement began and ended and of the persons present. Although Rule 3 clears up much of the ambiguity that is attached to the old Rule 3 and the 1930 Circular, this is a provision which needs to be carefully watched.

24. Rule IV deals with the manner of recording all written statements made after caution. Its important features are that persons desirous of making statements must always be given the opportunity to write their own statements. In case a statement is dictated to a police officer it must be taken down in the exact words spoken by the person making the statement without any prompting or questioning except “such as may be needed to make the statement coherent, intelligible and relevant to the material matters”. The maker of the statement shall be given the opportunity to read it and amend it and then certify that the statement is true and voluntary and in case he refuses to do so, his refusal shall be recorded.

25. Rule V relates to joint offenders both or all of whom have been charged or informed that they may be prosecuted, in respect of the same offence. If one of them makes a statement, it may be brought to the notice of the other accused “but nothing shall be said or done to invite any reply or comment”. If the person to whom the statement is shown wishes to reply or say something, he must at once be cautioned or further cautioned as prescribed by Rule III (a). It may be noted that Rule V does not apply to the pre-charge stage.

26. Rule VI requires persons, other than police officers charged with the duty of investigating officers or charging offenders to comply with the provisions contained in the Judges' Rules.

27. The Rules are accompanied by a series of "Administrative Directions on interrogation and the taking of Statements". Paragraphs 1 and 2 relate to the procedure and the manner in which statements are to be recorded. Paragraph 3 deals with providing reasonably comfortable conditions, rest and refreshment to persons being questioned. Paragraph 4 and 5 prescribe special procedure in the case of children and young persons and of persons unfamiliar with the English language respectively. Paragraph 6 requires that the accused be given a copy of the entry in the charge sheet giving particulars of the offence with which he is charged. Paragraph 7 provides that a person in custody should be allowed to speak to his solicitor or friends on the telephone "provided that no hindrance is reasonably likely to be caused to the processes of investigation, or the administration of justice by his doing so." Notices describing the rights and facilities available to persons in custody should be displayed at conspicuous places at police stations.

28. The new Rules are certainly more elaborate than the old ones. Detailed provisions and additional requirements practically cover the entire scope of police interrogation, and provide clearer guidance and probably better safeguards than the old.

29. Unfortunately, the Rules are silent as to the practice of arresting on one charge usually a minor one, pending inquiries into another offence, usually a major crime. This practice was deprecated and condemned by the Royal Commission in 1929<sup>45</sup>. However, in Buchan's case<sup>46</sup> the Court of Criminal Appeal held:

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45 Cmd. 3297, para 159.

46 (1964) r. App. R. 126, 129

“It is always permissible for a police officer to question a person with regard to offences other than for the one for which he is held”.

30. The now Judges’ Rules were considered in *R. V. Brackenbury*<sup>47</sup> (Liverpool Winter Assizes 1965) where a police officer on making an arrest informed the arrested man that he was being arrested “on suspicion of having committed the offence of rape.” It was held that answer and statements made thereafter by him to the police without his having been cautioned were admissible in evidence at his trial. Discussing the Judges’ Rules John Stephenson, J. said: “In my opinion, the concluding words of r.1 and the opening words of r.3(a) and (b) and, I would add, the same words in para (d) of the introduction to the Rules mean what they say. “Charged with the offence” means what every police officer would understand it to mean, that is formally charged with the offence. “Informed that he may be prosecuted for it” may be more ambiguous. It does not mean “informed that he will be prosecuted for it,.....but it is something which para (d) of the introduction suggests that a police officer would normally do after he has enough evidence to prefer a charge and it does not extend to “informed that he is being arrested on suspicion of committing the offence”, something which a police officer would normally do before he has enough evidence to prefer a charge..... If r.1 had been intended to apply to persons taken into custody only if taken into custody for another offence, nothing would have been easier than to say so. It would have been equally easy to say that a person might be questioned so long as he had not been charged with the offence or arrested on suspicion of committing it, if that had been the intention of r.1. More recently, in *R. V. Collier & Stenning* the Court of Criminal

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47 (1965) 1 All. E. R. 960, 961 and 962.

Appeal held that arrest on suspicion of having committed an offence was not tantamount to informing a defendant that he might be prosecuted for an offence and the police in such circumstances did not have to comply with r.3 of the Judges' Rules. The Lord Chief Justice stated that the words in r.3.....or informed that he may be prosecuted "were only intended to apply to cases where a man had not been arrested and where a summons might be taken out". He added that under r.3 the person must have been actually charged and that there was no warrant for reading the rule as "when a person is or ought to be charged". As regards the principle in paragraph (d) of the notes to the rules, the Court said that the test was whether the police acting reasonably should have thought they had sufficient evidence to bring a prosecution. In the view of the Court there was no breach of principle(d)<sup>48</sup>.

31. **Discretionary Rule:** As a further safe-guard against irregular or improper police practices there has developed in the English Criminal Jurisprudence what has come to be termed the 'discretionary rule'. It is, however, important to note that no question of discretion can arise unless the statement made by an accused person to the police is a voluntary statement in the common law sense. If it is non-voluntary, it is inadmissible. If it is voluntary, circumstances may be proved which call for the exercise of discretion.

32. In Ibrahim V.R.<sup>49</sup> Lord Summer, after discussing the English Law as to the questioning of prisoners, went on to say, "Many Judges, in their discretion, exclude such evidence, for they fear that nothing less than the exclusion of all such statements can

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48 See "The Times" July, 6, 1965, p. 16.

49 (1914) A.C. 599, 614.

prevent improper questioning of prisoners by removing the inducement to resort to it....others, less tender to the prisoner or more mindful of the balance of decided authority, would admit such statements, nor would the Court of Criminal Appeal quash the conviction thereafter obtained, if no substantial miscarriage of justice had occurred.” The nature of the discretion in the English law was set out in **Harris v. Director of Public Prosecutions**<sup>50</sup>. Viscount Simon, L.C., said: “There is a second proposition which ought to be added under this head. It is not a rule of law governing the admissibility of evidence, but a rule of Judicial practice followed by a judge who is trying a charge of crime when he thinks that the application of the practice is called for. Lord Du Parcq referred to it in **Noor Mohamod V. R.**<sup>51</sup>. The passage from that case was then set out, and the Lord Chancellor continued: “This second proposition flows from the duty of the Judge when trying a charge of crime to set the essentials of justice above the technical rule if the strict application of the latter would operate unfairly against the accused.”

33. **Kuruma v. The Queen**<sup>52</sup> involved an illegal search by the police without warrant, resulting in seizure of ammunition which was illegally possessed. In the course of his judgment, Lord Goddard said:<sup>53</sup> “The test to be applied in considering whether evidence is admissible is whether it is relevant to the matters in issue. If it is, it is admissible and the court is not concerned with how the evidence was obtained.” He quoted the following

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50 (1952) A.C. 694, 707.

51 (1949) A.C. 182 at p. 192.

52 (1955) A.C. 197.

53 Ibid, p. 203

passage<sup>54</sup> from **Noor Mohamed v. The King**<sup>55</sup>“No doubt in a criminal case the judge always has a discretion to disallow evidence if the strict rules of admissibility would operate unfairly against the accused.”

34. It is important to distinguish between the imperative rules of common law requiring the rejection of confessional statements unless made voluntarily and the ‘discretion rule’ which gives to trial Judges a discretionary power to exclude statements, voluntary in the common law sense, if upon a review of all the facts and circumstances they consider there has been impropriety or unfairness by the police. Although of comparatively recent growth the ‘discretion rule’ plays an important role in criminal trials to-day. Its historical source seems to be found in what Lord Summer in **Ibrahim v. The King**<sup>1</sup> calls “The growth of a police force of the modern type” and its legal source probably in the statutory power of the Court of Criminal Appeal to quash a conviction if “on any ground there was a miscarriage of Justice.”<sup>56</sup>

### 35. Historical Background to the Indian Law of Confessions:

We may next examine the development of the laws relating to confessions in India. Under the Moslem Law it was perfectly legal to convict a person on his confession, whether made before the court or elsewhere, provided it was voluntary and made by a person of sane mind and mature age<sup>57</sup>.

36. To found a conviction under “Quisas” (retaliation) it was necessary that the confession should expressly declare that the

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54 Ibid, p. 204.

55 (1949) A.C. 182, 191.

56 See *The King v. Lee* (1950) 82 c.L.R. 133.

57 Harrington, Analysis, Etc. Vol. 1, 260

cause of homicide had been willful. For a conviction of “Zinna”<sup>58</sup> the confession was to be made four times at four different sittings of the Quadi. The procedure was to turn the party away the first three times without receiving his confession. He was also permitted to retract his confession even at the time of passing of sentence, and if his sentence was based purely on his confession he was to be discharged<sup>59</sup>.

37. No difference was made between slaves and free Moslems with respect to confessions<sup>60</sup>. Confessions were very much a part of the criminal laws of the land at the time when the East India Company was establishing its offices in Bengal. In 1773, Hastings was “struck with surprise to observe, that almost every malefactor confesses himself guilty of the crime for which he is tried, although he thereby subjects himself to the loss of life. As this is a circumstance so extraordinary in itself, and so very repugnant to the principle of self-interest by which mankind in general is actuated, I cannot help mentioning it in hope of obtaining from you some account of the manner in which this confession is procured-whether it is not made until after conviction, whether extorted or whether won by fair promises of forgiveness<sup>61</sup>.”

38. At the beginning of the nineteenth century the practice of extorting and fabricating confessions was widely present. As a confession was generally regarded as the strongest proof of guilt, the idea was to get one and if possible, to get it confirmed before a magistrate. Police officials frequently resorted to unfair and

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58 Or Whoredom, meaning either adultery or fornication, Hedaya, 176

59 Hedaya, 177, 178

60 T.K. Banerjee, Background to Indian Criminal Law (1963), 259.

61 Letter of Hastings to Middleton, May 24, 1773, B.R.C. August 3, 1773. Quoted at p. 260 above.

undesirable investigative methods in order to fabricate false confession<sup>62</sup>. Some improvement in the situation came about in 1817 with the passing of Regulation XX, which, inter alia, had for its object the consolidation of the rules for the guidance of police officers. The important features of Section 19 of the Regulation which dealt with the subject of confessions were as follows: A confession made by a prisoner must be immediately written down. The prisoner must be given an opportunity to read his statement, and where he could not read, the statement must be read over to him. The statement must be witnessed by three or more credible witnesses. The police officer recording the statement must state the day of the week, the date and the time when the statement was recorded. The original statement must be sent to the magistrate. Police officers must not offer any inducement to a prisoner by threat or promise or otherwise to make a confession. If the confession was recorded at night, the special reasons for doing so must be given by the police.

39. Before the passing of the Indian Evidence Act(1 of 1872), India did not possess any uniform law on the subject of evidence. In the Presidency towns, the English law of Evidence was followed, subject to such modifications as contained in specific legislative enactments. In the Muffasil, there were scattered rules of evidence based upon the practice of the courts, and the English law was not applied in all its strictness.<sup>63</sup> The first Act which dealt with evidence, strictly so called, was passed in 1835<sup>64</sup>. It applied to all Courts in British India and dealt with the proof of

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62 See Report of E. Watson Dt. 11th Sept., 1810, Appendix to the 5th Report of the Select Committee on the affairs of the East India Company, 1813, 594 to 599 (Quoted at p. 262 in Banerjee, "Background to Indian Criminal Law.)

63 See, remarks of Mitter, J. in Gujja Lall v. Fateh Lall, (1880) I.L.R. 6 Cal. 171 (F.B.)

64 Act X of 1835

Acts of the Governor-General in Council. In 1837<sup>65</sup> a person convicted of any offence became a competent witness. An Act of 1853<sup>66</sup> brought in a fresh wave of English rules of evidence to the civil courts of the East India Company. Although an Act of 1855<sup>67</sup> covered a wider field, it was still not a complete code. By the year 1861, the uniformity in the substantive and the procedural criminal law was achieved with the passing of the Indian Penal Code<sup>68</sup> and the Indian Code of Criminal Procedure.<sup>69</sup> Sections 147 to 150 of the Code of Criminal Procedure dealt with the subject of confessions. Section 147 prohibited a police officer from recording a confession although he could reduce it into writing for his own information or guidance. Section 148 excluded from evidence confessions made to police officers. Under Section 149 confessions made by accused persons while in the custody of police officers were inadmissible unless made in the immediate presence of a magistrate. Section 150<sup>70</sup>, however, permitted the proving of a statement, whether it amounted to a confession or admission of guilt or not if, in consequence of that statement any fact was discovered. It may be noted that although the Code of Criminal Procedure of 1861 did not expressly and immediately repeal section 19 of Regulation XX of 1817<sup>71</sup>, it reproduced the rules contained in that section (except the last clause which dealt with

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65 Act XIX of 1837

66 Act XIX of 1853

67 Act II of 1855

68 Act XLV of 1860

69 Act XXV of 1861 was repealed by Act X of 1872. The provisions of ss. 148, 149 and 150 of the repealed Act were not introduced into Act X of 1872 which was repealed by Act X of 1882. Act V of 1898 repealed Act X of 1882.

70 This section was altered by Act VIII of 1869 and put in the form of a proviso.

71 Regulation XX, 1817 was repealed by Act XVII of 1862.

confessions recorded at night) but modified and reversed them in some important and essential details, so as to render them even more stringent a circumstance which shows that the checks placed by the Regulation of 1817 on the malpractices of police officers had proved inadequate<sup>72</sup>.

40. In 1868 the Indian Law Commissioners produced a draft on evidence which had many important differences from English law. When this draft was sought to be introduced into India it met with considerable opposition.<sup>73</sup> As a result of this, the draft had to be revised and its revised form was enacted in 1872 as the Evidence Act<sup>74</sup>. The object of the Indian Evidence Act was to consolidate, define and amend the law of evidence with such exceptions and modifications as were thought desirable to meet the requirements of India<sup>75</sup>. Part of the Act was based on Taylor on Evidence, but there were notable departures from English Law, and the early sections of the Act, stating what kinds of facts were admissible in evidence, were original, and were doubtless of considerable assistance to the judges in the Muffasil courts<sup>76</sup>. Sections 25 to 30 of the Evidence Act deal with the subject of confessions. Under the scheme of the Act confessions made to police officers are inadmissible in evidence. It may be noted that sections 25,26 and 27 of the Evidence Act were transferred to it from the Code of Criminal Procedure, Act XXV

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72 Queen Empress v. Babu Lal, (1884) I.L.R. 6 All. 509 (F.B.)

73 See, Woodroffe & Ameer Ali, The Law of Evidence applicable to British India, 6th Edition, Appendix B.

74 Act 1 of 1872.

75 See, remarks of Garth, C.J.in Gujja Lal v. Fateh Lall, (1880) I.L.R. 6 Cal 171 (F.B.).

76 See, Gledhill, India, the Development its Laws and Constitutions, (1964) p. 242.

of 1861, sections 148, 149 and 150<sup>77</sup> with very slight alterations of language. The reasons which influenced the Legislature in excluding a confession made to a police officer will appear from the following extract from the First Report of the Indian Law Commissioners:<sup>78</sup> “The police in the provinces of Bengal are armed with very extensive powers. They are prohibited from inquiring into cases of a petty nature, but complaints in cases of the more serious offences are usually laid before the police darogah (constable), who is authorised to examine the complainant, to issue process of arrest, to summon witnesses, to examine the accused and to forward the case to the magistrate, or submit a report of his proceedings according as the evidence may, in his judgment, warrant the one or the other course. The evidence taken by the Parliamentary Committees on Indian Affairs during the sessions of 1852 and 1853 and other papers, which have been brought to our notice abundantly show that the powers of the police are often abused for purposes of extortion and oppression; and we have considered whether the powers now exercised by the police might not be greatly abridged. We have arrived at the conclusion that, considering the extensive jurisdiction of the magistrate, the facilities which exist for the escape of parties concerned in serious crimes and the necessity for the immediate adoption in many cases of the most prompt and energetic measures, it is requisite to arm the police with some such powers as they now possess; and we have accordingly adopted many of the provisions of the Bengal Code on this head. **In one material point we propose a change in the duties of the police..... By the adoption of a rule prohibiting any**

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77 These sections were not retained in the Code of Criminal Procedure, Act X of 1872 which repealed the former Code, Act XXV of 1861.

78 See, extract from the First Report of the Indian Law Commissioners, cited in Field; Law of Evidence, (6th Ed., 1907) 101.

**examination, whatever of an accused party by the police, the result of which is to constitute a written document.** This, of course, will not prevent a police officer from receiving any information which any one may voluntarily offer to him; but **the police will not be permitted to put upon record any statement made by a party accused of an offence”.**

41. From 1861 till to-day the law in India has remained the same so far admissibility of confessions made before police officers is concerned. In our country confessions before police officers are made inadmissible not because of any intrinsic or inherent weakness in the nature or quality of the evidentiary value of the confession itself, but because of suspicion as to the integrity of the person recording it. It may be pointed out that in Indian system, the Police can compel the attendance of any person who may be acquainted with the facts and circumstances of the case and such person is obliged to answer all questions put to him except those which might expose him to a criminal charge or other penalty. On the other hand, in England and those countries which follow the English system, the police cannot compel the attendance of any person except by arresting him and further, a person under interrogation has a right to remain silent.

42. It has already been said that under the Indian system confessions made to police officers are wholly inadmissible whereas under the English system they are admissible in evidence subject to certain safeguards. The two systems represent the two extremes and the common problem of both is to strike the right balance between public interest on the one hand and the interest of the individual (accused) on the other. The Indian Law Commission has already applied its mind to this problem. With regard to our police force, the Law Commission remarked “In dealing with the question of the want of co-operation on the part

of the Public with the police, we cannot ignore the erstwhile traditions of the Indian Police, the part they were compelled to play in the history of the country and the use to which they were put in the past. The police force was not unoften employed as a weapon of oppression by the ruling power.....what is needed is an orientation in the outlook of the police officers towards their duties and their attitude towards the public so that the people should consider them as friends to whom they could resort for succour and aid. This is bound to take time.” During the period of foreign rule, it has already been pointed out, that the role of the police in investigating offences was considered highly suspicious by the foreigners as a result of which laws were drafted to shut out confessions made before police officers. Even 22 years after independence our suspicion against the police officers still continues unabated. This is unfortunate. It is not fair for us to magnify the part played by the police in the history by our country and wink at the part played by other units of Government under the foreign rule, e.g., the Civil Service, under whose orders, perhaps, the police were “not unoften employed as a weapon of oppression” and “compelled” to play the part it played in the past. We should not single out the police force as the only unit in the administrative set-up of our country whose standards have irretrievably fallen. In these days of falling standards we must admit that our police force is just as good or as bad as any other department. Although the police cannot be said to be blameless in the matter of investigation into crimes they will surely not take the entire blame. It is all too easy for us to sit back and blame the police without considering the difficult duties which they have to perform and the difficult position in which they are put. Administrative and political interference even in matter of police investigations are too well known. We criticise the police force for corruption and yet when we are arrested, we try to

bribe them; we invite them to question our neighbours when our own property is lost, but we resent their questioning us about lost property; we despise them for enforcing the laws against us but blame them for not enforcing them against others. Therefore what is no less necessary is an orientation of our own approach towards our police force. While saying this I do not wish to undermine the heavy responsibility lying on the shoulders of our police force to win the confidence and esteem of the public. Only by following the course of right conduct and action can our police force expect to get the co-operation of our public which is so essential for investigation into crimes. The suggestion of the Indian Law Commission that a separate wing for investigation into crimes be formed within the police force is a wholesome suggestion and should be accepted forthwith.

43. The Law Commission was of the view that to make a confession made to a subordinate police officer admissible in evidence, would be fraught with dangerous consequences. It has, however, recommended relaxation of the existing rule to make confessions made to superior police officers of the rank of Deputy Superintendent of Police and above admissible in evidence; the suggestion is that it should be first tried in the Presidency towns or places of like importance where investigations can be conducted by superior police officers and where the average citizen would be more educated and conscious of his rights. The able suggestion of the Indian Law Commission should be given effect to as early as possible especially in the States where the process of separation of the Executive from the Judiciary is complete. It must be remembered that in all cases the suspect or the accused may not make a confessional statement out of his own accord. In such cases it is inevitable that some form of questioning will take place in the course of investigation by the police. This questioning,

however, must never assume an inquisitorial character and must always remain subject to Article 20(3) of our Constitution. In this context the suggestion of the Indian Law Commission that amendments of Sections 25 and 26 of the Indian Evidence Act would solve the problem may not be enough. It is necessary that for the guidance of investigating police officers some rules or laws with regard to questioning of suspects must be laid down. These rules may be modelled on “Judges’ Rules” which are in force in England and have already been discussed. Keeping the conditions of our country in mind, it is also desirable that the said rules regarding the questioning of suspects must be made a part of our statute law.

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More than fifty years have passed after the conference, but unfortunately confessions before the police are still not accepted as proper evidence.

The then I.G. of Police, Orissa, the late R.K.Padhi, I.P., who was 5 to 10 years older to me, had also participated in the CBI conference at Delhi. Both of us returned to Bhubaneshwar by the same flight. As I took leave of him, he shook my hands and said, “Dr.Misra, now I don’t know whether I am being released from judicial custody or you are being released from police custody.” I did *namaskar* respectfully, but failed to find words to match his wit.

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The following episode took place when I was District and Sessions Judge of Sambalpur-Sundergarh. After hearing of an appeal was over the Bench Clerk called out the next appeal fixed for hearing. Counsel appearing for the appellant requested for an adjournment.

I did not agree as the appeal was already three years old. Then counsel said he was not well and because of weakness would not be able to remain standing for long to argue his appeal. I permitted him to sit down and argue. I had no problem on that count.

However, he insisted that I should at least take a look at his adjournment petition before declining his request. The bench clerk then handed over his adjournment petition which inter-alia read, "As I am not pulling on well with dysentery the case may kindly be adjourned." I was dazed at counsel's choice of words. For a minute or two I did not know what to say except reading out his adjournment petition loudly to the Bar. Then, I returned his adjournment petition to him and on being requested by a majority of the members of the Bar present; I adjourned the hearing for two days.

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Once on a Saturday, which was an administrative day, I received the following application from a Judicial Magistrate, duly forwarded through proper channel by the Chief Judicial Magistrate. The application stated, "I may kindly be permitted to leave headquarters and go to Rourkela after Court hours on Saturday to dispose of my wife and return to headquarters on the following Monday to rejoin my duty."

I sent for the Chief Judicial Magistrate and asked him how he had forwarded the Magistrate's application, which perhaps should have been summarily rejected. He explained that the Magistrate's wife worked at Rourkela and he simply wanted station-leaving permission to go, leave her there and then return to headquarters. I asked him to inform the Magistrate that as requested he could go to Rourkela with his wife and return by

Monday, although his prayer to dispose of his wife was summarily rejected.

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There was a Sub-divisional Judicial Magistrate who as required under the law, committed to the Court of Sessions for trial cases exclusively triable by only sessions courts. He rightly followed the requirements of law, but invariably wrote his committal order in the following manner:

“The case is committed to the Court of Sessions for disposal according to law.” Though there was nothing wrong with the aforesaid order, I advised him not to use the expression “for disposal according to law” which is normally used by a superior court while remitting a case back to a subordinate court. To his query, I added that he should simply write, “xxxxxx xxxxxx this case is committed to the Court of Sessions” and he should rest assured that the Sessions Court would certainly dispose of the case in accordance with law.

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Once the State Public Prosecutor appeared in my court along with a police officer. He submitted that the police officer was in serious trouble for no fault of his. He explained that about two months back this Police Officer saw 10 to 12 bags of rice being smuggled out of the State to the neighbouring State in a bullock cart. The Police Officer arrested the two persons who were taking the rice bags in the bullock cart, seized the bullock-cart along with the rice and also the pair of bullocks. He brought all the seized articles to the police station. So far as bags of rice and bullock-cart were concerned, there was no problem. The problem was that about a month had passed since the seizure and he was having a hell of time arranging food for the pair of bullocks. He

didn't know what to do for the next time. I remarked that as the accused persons were on bail he could have allowed them to remain in possession of the bullocks with an undertaking from them to produce them in court when required.

He said as the law strictly prescribed confiscation of the 'means of transport' and so he thought it might not be right for him to let go of the bullocks as they were a part of the means of transport. I brought to mind the oft quoted statement of that wise man that 'law is an ass'. He did have a point to make. Anyway, I asked the Public Prosecutor to file a formal application and then I passed an appropriate order for release of the bullocks to the custody of the local panchayat office.

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In another case in a particular village two women were sitting at the washing area of a tank where they had gone for their daily chores. After some time their friendly talk gradually changed to strong difference of opinion. They started pushing and assaulting each other and in course of their fight, one of them bit the hand of the other. The woman who had bitten was charged and convicted under Sec.325 IPC, for having caused hurt with a sharp cutting instrument.

I asked the Public Prosecutor whether natural teeth of a living person inside his mouth could really be called a 'cutting instrument'. He said he didn't have a clue and asked for a couple of weeks' adjournment which I granted. However, I was transferred before the next date and so didn't know what the final outcome of the debate was. Even today, I am not sure!

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I recall a murder case in my court around 1972 when I was Sessions Judge at Sambalpur. The accused was one Govind

Munda belonging to a tribal family. After reading over the charge under Section 302 IPC to him, I asked him, as is done in criminal trials, “do you plead guilty or not guilty”? Govind Munda looked straight at my face into my eyes, and said “yes I killed him”. For the first time I heard this kind of a straight forward confession from the accused in a murder case. I couldn’t believe my ears! I asked the Public Prosecutor and the defence counsel to put the same question once again to the accused in his own language. Though, I did not follow his language, he again admitted that he had committed the murder. I thought for some time and then dictated my order indicating therein that the accused had pleaded guilty to the charge, but as the offence was a serious one punishable with death or imprisonment for life a proper trial should be held for the ends of justice. The trial was held; he was convicted and sentenced to imprisonment for life.

After a few months, I was on a routine visit to the District Jail. As was my practice, I got rid of peons and other attendants as I wanted to be left on my own. I did not also take any help from the Jail Staff. Quietly I walked around and noticed that Govinda Munda was attending a class and learning something from the black-board. Quietly and mischievously I went behind him and sat down by his side. First he did not recognize me, but when he turned and looked closely at me, he jumped up and asked me what I was doing there. I said I was on inspection and asked him about the well-being of his family. I had no answer for him when he replied that ever since I had sent him to jail, he had no information about his family. I felt rather sad. With a feeling of guilt I stood up, took leave and quietly walked away.

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In another murder case in Kuchinda circuit in Sambalpur district the three accused persons on trial were the father, his son and

daughter-in-law. Mother was long dead. The murder had taken place on a paddy field. The prosecution case was that the three accused persons jointly assaulted the deceased and held him down on the ground. While the son held the legs of the deceased, the daughter-in-law held his arms and the father dealt fatal axe blows on the neck of the deceased killing him instantly at the spot. All three of them who had been charged under Section 302 read with Section 34 IPC, were found guilty, convicted thereunder and sentenced to imprisonment for life. After pronouncing the judgment as I was about to rise, an old man knelt down on the floor and requested that he should be immediately released and permitted to go back to his village. To my query the staff said that he was the surety for the accused. I told him that shortly the accused persons would be taken to jail and so his bail bonds would be cancelled and he would be free to go home. I came back to my chamber and was waiting to sign the orders when I heard piercing cries of a young boy. I asked the Bench Clerk to find out who was crying and why. He came back with the information that a boy of about 8 years of age who was the elder son of the accused parents was crying as his father, mother and grandfather were all being taken away to the jail and he was left alone in the court premises with no one to turn to. He didn't know where to go or what to do. I asked the Bench Clerk to stop the police party from proceeding to the jail with the accused persons. Next I sent for the Public Prosecutor and discussed the problem with him. During the trial I had noticed that the accused-mother had a suckling baby in her arms.

While the jail rules permitted a suckling baby to accompany and stay with his mother inside the jail, the rules were of no help to the elder son who was about 8 years old. I was confronted with the grim reality that the father, his son and daughter-in-law

with her suckling baby would all be accommodated in the jail, but not the older boy. Obviously on going back to village he would be all alone left to himself. I wondered what he was going to do and who would give him food to eat? I did not find any guidance in any law book or journal as to what the court should do in such circumstances. I requested the Public Prosecutor to persuade and bring the old man who was the surety to my chamber. When he came I pleaded with him and requested him to look after the young boy who was after all indirectly related to him till the boy was able to look after himself. His moving reply still rings in my ears. He explained that hazards of accidents from the river, village ponds or trees always existed in the village. While the boy was 8 years old his age was more than 65 years and he just didn't have the physical strength to keep a 24-hour vigil on the young boy and chase him around. He added that, god forbid, but if something were to happen to the boy, for example, if he got drowned in a village pond or fell from a tree and broke his neck, what explanation he could possibly give to his parents when they came back home from the prison after 15/20 years? Having attentively listened to the old man for so long, ultimately I failed to find the right words to allay his reservations. I simply requested him to wait outside.

Pooling together our immediate personal funds we managed to raise a reasonable sum of money for the old man and the boy. Then I called the old man inside and with folded hands requested him to accept the money, take the boy with him to the village and look after him with help from the elders in the village. I also assured him that if there was any consequential problem, he should get in touch with me and I would certainly help him. To our great relief, after some hesitation the old man agreed to take the boy with him to the village and look after him. Thereafter I

did not receive any further communication from the old man. I hope Lord *Ganeshji* listened to our prayers and the boy continued to live in the village.

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One day I was resting at home with high fever and had taken leave from the court. The telephone rang and my wife took the call and said that Sub-Divisional Judicial Magistrate wanted to speak to me. I said as I was ill I would not be able to talk with him. My wife came back and said that the Magistrate insisted to talk with me as the matter was extremely important. Reluctantly I took the telephone and asked him what the problem was. He explained that a few minutes back a man walked in to his court room and pulled out from his canvas bag fully soaked with blood the severed head of a human being. The Magistrate said he didn't know what to do and so wanted my directions. I replied I had no previous experience in a matter like that, but advised him to record that person's statement and then have him escorted by policemen to the police station who should take over from there.

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At one time there was a Judge in Orissa High Court who about a couple of years before his retirement translated several law books in English language into Oriya, the local language. Initially I had thought it was a praiseworthy endeavour. But I was shocked to learn that this Judge went around the entire State at Government expense fixing official tours irrespective of whether they were necessary or not and sold books in hundreds in every Judgeship. I was then working as District Judge and at one meeting he advised me to buy a set of his books because his books were selling out like hot cakes and the third edition was about to be completely sold out. I politely said 'no thank you', and walked out. But that

is not the end of the story. He came to Berhampur, the District Headquarters of Ganjam & Boudh judgship where I was posted and forcibly sold books worth about 2 or 3 thousand rupees to the Registrar, Civil Courts working directly under me. When the Registrar showed the bill to me I refused to sanction the amount. Perhaps that bill was never paid.

Roughly at the same time I was asked by the High Court to hold an enquiry into the following matter. The allegation was that the Civil Judge of Parlakhemendi, while hearing a case, refused to follow a judgment of the Supreme Court on the ground that it had been written by a Communist Judge. During the enquiry to my query the Civil Judge denied having ever made any such remark. I examined 3 or 4 senior lawyers and the Bench Clerk who were present in the court on that day. All of them denied that the Civil Judge had made any such statement as alleged. So, I closed the enquiry finding that the allegation had not at all been proved and hence rejected. I sent my enquiry report to the High Court.

Soon after that at a camp at Kalinga I met the then Chief Justice for breakfast. He asked me whether I had ‘caught’ the Civil Judge who had remarked that the Supreme Court Judge was a communist. I replied that the allegation was not proved and I had already submitted my report to the High Court. Then I asked the Chief Justice “Sir, what have you done about the misconduct of a High Court Judge improperly and forcibly selling hundreds of books written and published by him to the Subordinate Judicial Officers, throughout the State”? The Chief Justice pleaded his helplessness saying that the concerned judge was a permanent and senior Judge of the High Court and there was nothing he could do to forbid his business of selling books. Then I said “Sir, if you can’t do anything about that, then please leave the

Civil Judges to us District Judges and we would be able to adequately deal with them”.

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This I had heard from a highly respectable old member of the Officers’ Club, popularly known as Cuttack Club and I believe his narration is true.

A young I.C.S. Officer on joining the civil service was posted at Cuttack under a highly learned Commissioner, a very senior I.C.S. Officer. He was an acknowledged expert in Latin with tripos from Cambridge University. Wherever possible he loved to write in Latin particularly when it was not mandatory to write in English. It appears that one evening the young Officer walked into the Officers’ Club and asked for beer. As the beer served to him was not ice cold he lost his temper and shouted at the serving boy. This outburst created some commotion and the episode reached the ears of the Commissioner.

The club maintained a record book in the same lines as the Hansard, which contains special reports of proceedings and debates in the British Parliament. The Commissioner wrote in Latin in the club’s record book that persons engaged by the club to serve the Officers should never be verbally abused. Complaint, if any, should be made in writing to the Secretary of the Club who would enquire into the matter and take appropriate action. When the young officer returned to the club later at night, some of his friends told him that on coming to know about the earlier incident the Commissioner had written something in the record book. The young officer looked into the pertinent page in the record book, but couldn’t make out anything as he did not know any Latin. Not to quit, he wrote under the Latin words “Non-understandium - Kuchh Parwa Nahin”.

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While I was working as Legal Remembrancer in the Secretariat, once the Secretary of Transport Department walked into my chamber with a file. He showed me the opinion of Transport Standing Counsel regarding a motor accident recorded in the file. One of the expressions used in the opinion was ‘res ipsa loquitor’. The Transport Secretary wanted to know what that expression meant. I said it meant “the thing speaks for itself”. I explained if in case of a motor accident, heavy skid marks were seen on the road, the car itself was found thrown beyond the road with all four tyres pointing skywards, the court could apply the doctrine of ‘res ipsa loquitor’ to infer that it was a case of rash and negligent driving. The Transport Secretary thanked me and was about to leave, when I suggested to him that after the opinion of the standing counsel he should write ‘Non-understandium’ and then send the file back to the standing counsel.

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In 1971 I represented the Sate Government at the 4<sup>th</sup> Commonwealth Law Conference that was held at New Delhi from 6<sup>th</sup> to 13<sup>th</sup> January, 1971. Two Judges of Orissa High Court were also attending the conference. On the inaugural day while we were walking around at Vigyan Bhavan, the Conference venue, we met Mr. Marsh, the then Member of the English Law Commission and Mr. Marshall, Asst. Director of the Commonwealth Section at the British Institute of International and Comparative Law where I had been working in London. Mr. Marsh was then the Director of the Institute and I worked directly under Mr. Marshall. I introduced both of them to the judges and the following is the essence of their conversation:

“One of the Judges – We have heard a lot about both of you from Dr. Misra (myself).

Mr. Marshall – Hope he has said nice things about us, he was very close to us, you know.

Mr. Marsh to the judges – Are you presenting any papers at the conference?

Judge – Actually we are not ready with any papers because after heavy court work we just didn't have time to write any articles.

Mr. Marshall – You would of course participate in the discussions.

Judge – Well! I don't know; let us see (noticeable hesitation and reluctance to reply as if not knowing what would be the right thing to say).

Mr. Marsh (with a big smile on his face and a friendly pat on the shoulders of the Judge). – Oh! Just enjoying yourself, are you? Jolly good, jolly good!”

That completed the conversation and we took leave of each other. That was a jolly good anecdote, wasn't it?

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One of the first lessons I learnt after I joined as Law Secretary was that if the Law Department needed Rs.20 lakhs for its annual expenditure, it should inflate its demands and ask for at least Rs.30 lakhs so that the Finance Department would reduce that demand by Rs.5 to 10 lakhs and the Law Department would get what it actually needed. What a system to work in!

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In 1977 while I was Law Secretary, one morning while walking down the Secretariat corridor I heard some one calling me from behind by my first name. I turned around and saw a dear friend of mine waving to me. Both of us walked into my office room.

After a couple of minutes he asked me whether I knew the meaning of ‘logomachy’. Of course, I didn’t know the meaning and told him so. He said in a light hearted manner that if I did not read judgments of the Supreme Court, I had no chance to be appointed a Judge of the High Court. Next he gave me the reference of the Supreme Court decision. I got the book and he opened the relevant page. I saw that the word was very much there in the judgment. So, the next thing for me to do was to send for the Dictionary. I checked up and found that the word ‘logomachy’ means ‘dispute about words, controversy turning on merely verbal points’. Well! That word produced a frosty reaction in me. I was upset and couldn’t find a single good reason why such words as were not fully intelligible to the average educated person of the country should at all be used in judgments. If at all, these words should be earmarked for law journals, never in judgments. Who was the judge trying to impress? I told my friend that perhaps the judge had not read, or if read, had forgotten, the following apprehension of Sir James Fitz-James Stephen: “Law exists not for scientific satisfaction of the legal mind, but for the convenience of the lay people who sue and are sued.” How accurate the observation is! I further told my friend that Sir James had very ably drafted the Indian Evidence Act, 1872 and put the vast area of evidence into only 167 sections and that law still holds good. With due respect and sincere apologies to the ‘logomachy’ judge, I shudder to think what the language of our Evidence Act would have been had he been entrusted with the task of drafting it!

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After the death of an employee of the Home Department his widow and his father both filed claims before the Department for payment of the late subscriber’s Provident Fund and other dues. The

Department sought information from the office of the Accountant General as to who was the subscriber's nominee to whom the payment could be made. After a few weeks the Accountant General replied that the nomination could not be traced in spite of thorough search and consequently the subscriber might be asked to file a fresh nomination. How stupid! This request was impossible of performance as the subscriber was long dead and the question of nomination arose only after his death. Instead of directly dealing with such a bizarre suggestion from the office of the Accountant General, the Department marked the file to me for advice. What opinion could I possibly give on the question of fresh nomination by a dead employee? I returned the file pointing out the glaring non-application of mind by all the officers who had dealt with that file.

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While working as a Judge in Orissa High Court I was confronted with the following case.

An advocate (M.A.LL.B.) had filed a writ petition asking for appropriate orders for return of his original application to the Collector for grant of land records along with the documents filed by him. The allegation of non-return of his application and documents was duly supported by his personal affidavit. The Collector, an I.A.S. Officer, had stated in his affidavit that the documents referred to by the petitioner were never filed before him. It was a case of 'oath' against 'oath'. I asked how would one decide who was speaking the truth? I requested the petitioner and the Government Advocate representing the Collector to decide the case on merits on my behalf. Both of them just smiled. After the matter was argued for about two hours, the advocate withdrew his writ petition on an assurance by the Government

Advocate that they would again search their cupboards and see if the documents could be traced. The matter did not come before me again and I assume the Advocate's documents were found.

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In 1986 I had an opportunity to meet the respected Supreme Court Judge, who had used the word 'logomachy' in his judgment, when as the Acting Chief Justice of Orissa High Court I had presided over a meeting organised by the High Court Bar Association at the Barabati Stadium at Cuttack. The respected Judge was one of the speakers. I was to deliver the concluding address and he was the last speaker before me. I began to feel fidgety when he went on and on with his speech for a very, very long time and even after what seemed an eternity, did not appear to be nearing the end.

What his long speech did was to encroach upon the time which I had allotted to myself for my presidential remarks. Many of us who had a long day were really tired by then and already late for dinner. He chose to speak very extensively on the problems of pollution of high seas, pollution of air and many other contemporary hazards facing the country, but his speech was notably silent about the law courts. After he finished, within the truncated time available to me I thanked the speakers for the time that they had spent with us but expressed my unreserved disappointment over the fact that while we had covered contemporary topics of pollution of high seas, pollution of air which no doubt were matters of serious concern, not a single word was mentioned about pollution of the fountain of justice. I pointed out that the vice of corruption so deftly swept under thick carpets and hidden behind large curtains adorning court halls certainly deserved public exposure and discussion. Then

the meeting ended and we took leave of our guests. When I folded my hands and did *namaskar* I received a friendly pat of appreciation on my back from the concerned judge. Thank you!

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At Allahabad High Court there was one counsel who had a dreadfully sharp and loud voice. Whenever he appeared in my court, always I used to very politely remind him that my power of hearing had not diminished and so there was no need for him to raise his voice. In a particular case, he was appearing for the Gas Pipe Authority of India Ltd. Yet again after some time he turned on the volume and raised his voice to an agonizing level when I decided to intervene.

Politely I interrupted and asked him which party he represented? He replied 'the Gas Pipe Authority'. So in friendly banter I advised him to bear in mind that success of 'Gas Pipe' depended entirely on the control of his 'wind pipe'. Perhaps he took my remark in good spirit. He smiled and continued his argument but at a considerably lower pitch.

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In another case at Allahabad High Court, I saw that the lawyer appearing for the petitioner was chewing Pan when he began arguing his case. Years ago I had read in Ratanlal's 'Law of Crimes' that during the British Rule an English Judge had convicted a lawyer for chewing Pan inside the court. I did not want to follow that precedent because times had changed. I simply told the lawyer that I was unable to follow what he was saying because he was eating something. He immediately apologised and wanted leave to go out and clean his mouth. I told him that there was no need for that as 'Pans' had become

very expensive and he need not throw it out, but should sit down and finish chewing as early as possible. After that I called the bench clerk to hand over the next case and took up hearing that case. From that day there was never again any pan-chewing in my court.

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While I was Chief Justice of Sikkim High Court, one day the Governor of Sikkim invited me to dinner at the Raj Bhavan. At the dinner party there was a senior lawyer from the Supreme Court, very well known as a distinguished jurist, who had almost monopolized the group conversation. I was listening to him but did not approve his wide sardonic remarks against judges of the High Courts and Supreme Court. According to him, many of these Judges did not have adequate foundation in law and as a consequence often failed to grasp intricate points of law argued by counsel before them. This deficit, he went on, was because of lack of sufficient knowledge. At that stage I thought I must intervene and I did. With apologies for intervention I said while I was in London once at a private dinner party I had heard a very spiteful remark by one who had come to dinner against an Australian guest. He remarked that the original European-Australians comprised only the worst criminals who had been convicted of heinous crimes in England and then transported for life to Australia. The reason why I recalled that remark, I explained was that in India as in other countries the judges in all the courts were transported almost for life from the Bar to the Bench. One must keep in mind that as the judges were all the time recruited from the Bar their performance and standard would always depend on the pattern of the Bar. An incompetent Bar would invariably produce incompetent Judges. And where did the members of the Bar come from? All of them came from the

Law Colleges. The logical conclusion therefore was that the standard of the Bar depended directly on the standard of legal education. If legal education improved, the Bar would definitely improve and if the Bar improved, the standard of Judges must also improve. Then I raised my glass, said ‘cheers’ and stopped my speech. Uneasy silence followed for some time, but the Governor rose up to the occasion and kept the party going in a most friendly manner.

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On a few rare occasions as a gust of fresh air there comes a judgment from a superior court where a person on being found guilty for contempt of court was convicted and “....we sentence him till rising of the court and we rise for the day.” The judges left the court immediately after pronouncing their verdict. This kind of judgement shows noble minds at work and inspires reverence and admiration. Unfortunately it has also happened that on the allegation of perjury in a lower court a person was literally pursued by a superior court judge as if he was a police officer and finally since no other law was available to be acted upon, convicted under the Contempt of Courts Act and sent to prison. I am not sure whether the imprisonment imposed was six months or a year and in any case the period of imprisonment is not important. What is disturbing is the way of thinking and ungainly determination of the judge to send the person to prison. While the judgment in the earlier case rightfully invokes feelings of reverence and gratitude, the latter generates revulsion and hate. Well, there lies the difference between nobility and the run of the mill!

Perhaps, the judges of superior courts should be encouraged to exercise with chest-expanders on a regular basis!

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Once I happened to be present at an Official Language Commission meeting in the Ministry of Law at Delhi. I was not connected with that meeting but I was waiting for a friend who was a member to finish his work. The members were busy trying to translate the word 'fact'. The Hindi word being discussed as substitute for 'fact' was 'tathya'. Casually they asked for my opinion. I told them that 'tathya' to me appears to mean 'theory' rather than 'fact'. I further said that this manner of 'word for word' translation from English to Hindi was perhaps not very scientific. After all, Lord Macaulay who drafted the Indian Penal Code in 1860 or Sir James Fitz-James Stephen who drafted the Indian Evidence Act in 1872 had not resorted to word for word translation into their text. My advice to the committee was that professors, jurists and judges should be asked to get together and given as many books as they wanted to read in isolation. When they would be ready, the books must be taken away and they should be asked to write separately from their memory. Their written texts should next be compared and final draft made. That text would certainly qualify as 'original work'. Further I asked the members to make it a rule rather than exception to add as many illustrations as possible to statutory provisions to make their meaning clear.

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At this stage I feel it would not be a bad idea to write a few words about Lord Denning under whom I had the honour of working at London.

**Lord Denning (Alfred Thompson "Tom" Denning)** had lived for more than 100 years. He was born on 23 January 1899 and died on 5 March 1999. He was held in highest regard by the legal fraternity and public. He was a courageous judge who never

bothered whether his judgments ran counter to the law at the time. In 1947 he became legendary for his ‘High Trees’ doctrine. In the case of *Central London Property Trust Ltd. v. High Trees House Ltd* [1947] KB 130 he laid down the doctrine of ‘promissory estoppel’ which indeed was an important milestone in English contract law. He received both praise and criticism for this judgment. Later in another case on ‘promissory estoppel’ he clarified that it could be a ‘shield’ not a ‘sword’; it could be used to defend a claim, but not to create a cause of action where none existed.

In the case of *Rookes v. Barnard* Lord Denning’s judgment awarding Exemplary (punitive) damages to the claimant were overruled by the House of Lords. Lord Devlin writing the House of Lords unanimous judgment held that the only three situations in which damages were allowed to be punitive, i.e. with the purpose of punishing the wrongdoer rather than aiming simply to compensate the claimant, were in cases of,

1. Oppressive, arbitrary or unconstitutional actions by the servants of government;
2. Where the defendant’s conduct was ‘calculated’ to make a profit for himself; and
3. Where a statute expressly authorised the same.

It was perhaps in 1971 that in the case of *Broome v. Cassel & Co.* Lord Denning tore apart the judgment of Lord Devlin in *Rookes v. Barnard* branding it as “hopelessly illogical and inconsistent”. It was only because he was Lord Denning that he got away with these discourteous remarks about the judgment of the House of Lords.

In a way aren’t we lucky that we do not have any Dennings in India! It is important to bear in mind that even if a subordinate

court feels that the judgment of the appellate or superior court is wrong, he may state his reasons why he considers it wrong, but must follow it as it is binding in nature.

All said and done, Lord Denning was a pioneer amongst judges and made reforming judgments in a variety of areas. Some jurists call him maker of the common law.

# A Few Important Words and Expressions

One of the biggest problems that a Judge faces every day in court is to find the correct meaning of ordinary words, even simple words. Consider the following few examples.

**“Reasonable”**: Its ordinary dictionary meaning is ‘of sound judgment’, ‘sensible’, ‘moderate’, ‘agreeable to reason’, ‘not absurd’, ‘tolerable’, ‘fair’, ‘rational’, ‘logical’, etc.

This is one word which is employed in all sorts of situations. Its use stretches to action, conduct, etc. almost to anything and everything. As a Sessions Judge I had tried a case under the Sea Customs Act. A piece of solid gold bar embossed with the marking – “Johnson Mathay-999” had been seized from the house of the accused. I may be wrong, but I don’t think even till to-day gold of 999 purity has been made in India. However, that is not the point. The Customs Act provided that if a contraband item is seized from a person by the police officer in the reasonable belief that it was smuggled, the onus shifted on to the accused to prove that it was not smuggled. In the case before me, counsel for the accused argued that the item of gold seized had actually been procured by the accused’s father who was already dead. The accused had come into its possession by innocent inheritance. In support of this argument, counsel cited a judgment of Chief Justice Young, reported in AIR 1944 Lahore, I do not remember the page. In that case an unlicensed gun was seized by the police from the bedroom of a person and a case under the Arms Act was instituted against him. His father was also roped in by the police solely on the ground that he was the ‘Karta’ of

the undivided family of which the son was a member. In dismissing the charge against the father, in the course of his judgment Chief Justice Young had observed, “a pious Hindu father may have an unmitigated rascal as a son”. However, I rejected the defence contention as there was absolutely no basis for me to hold that as claimed a pious Hindu son had an unmitigated rascal as a father. At the end of the trial I found the accused guilty, convicted and sentenced him to 2 years’ rigorous imprisonment with a fine of Rs.2,000. The accused went up in appeal and my judgment was set aside by the High Court. The prosecution plea that the item of gold had been seized by the police officer in the reasonable belief that it was smuggled was not accepted by the High Court. While I had held that the police had acted on reasonable belief, the High Court held that the police did not act on reasonable belief. So you see, as long as judges are human beings, such differences are bound to occur and judges must give space to each other for honest differences.

Further, there may be a case where a judge is required to decide whether a person’s conduct was reasonable or not. How does one decide that? What help is available to him? What appears reasonable to judge X may not appear so to judge Y. Some say the judge’s experience of men and matters would lead him to the correct conclusion. This assertion is more bravado than genuine. The exasperating nature of the task of finding who is reasonable and who is not had perhaps led a Judge to remark “the reasonable person is the one in the Clapham Bus”. I must leave it at that. At my old age I wish every judge in India the best of luck to deliver a reasonably good judgment.

**“Without prejudice to the generality of the foregoing provision”**: is another expression which requires careful treatment in the hands of Judges. Here, a judge is required first

to consider what the law's overview is. Then he has to focus on the ensuing mainstay of the law and while considering and applying the same to the facts of the case before him he must make sure that his finding has not encroached on the preceding text of the law. Quite often the task narrated above is easier said than done. And in any case by artful use of the beautiful English language a Judge would be able to suitably explain and reconcile both the 'general' and 'specific' and get away with it.

**“Be that as it may”:** is often resorted to by judges in their judgments. Make no mistake; it is a wholly unnecessary and old-fashioned expression even in ordinary English text. It should never be used for jumping from one focus to another.

**“Notwithstanding anything contrary contained in any other law for the time being in force”:**

The gentleman who used this expression in the statute must have been a very shrewd person and a thoroughbred lazybones. In one stroke he absolved himself of all responsibility to cross-check the laws on the same subject enacted earlier. The shirker never had any intention of studying the previous law on the subject and find out which provisions of that law were in conflict with those proposed in the present one and then make such changes in the present law as may be required and finally provide that in case of conflict the present law shall prevail. Perhaps in his school days the said draftsman was not good at 'home work'. Anyway that is modern legislation.

**“May meaning shall and shall meaning may”:**

There can not be any justification why courts and lawyers should rack their brains to find that in the context of its use 'may' must mean 'shall', or, in another case come to hold that 'shall' must

mean ‘may’. This exercise which is wholly unnecessary should be immediately dispensed with. Words should be allowed to retain their ordinary meanings so that ordinary persons may not be bewildered. Parliamentary guidance should be provided in the statute where there is doubt.

**“Capital and revenue expenditure”:**

Now and then the court is required to find whether the expenditure shown by an assessee in his return should be classified as capital expenditure or as revenue expenditure under the income-tax law.

The task involved is by no means an easy one. A lot of thinking and very careful consideration by the Court is necessary to find out the correct position under the law. So much so that out of exasperation once a Judge had remarked ‘it was a lot easier and perhaps more appropriate to decide the question by a spin of a coin’.

Sound advice – isn’t it?

I have to stop now. I have no intention of going into an academic exercise on ‘Interpretation of Statutes’. That is indeed a vast subject. I have no inclination or time for that. The few words and expressions referred to above are simply illustrative.

Persons interested to know more about legislative intent and interpretation by the courts may look up a standard book on ‘Interpretation of Statutes’.

I may exit with the following passage from Bernard Shaw’s Intelligent Woman’s Guide to Socialism etc.:

“The institutions under which we live are being changed continually by Parliament, because we are never satisfied with

them. Sometimes they are scrapped for new ones; sometimes they are altered; sometimes they are simply done away with as nuisances. The new ones have to be stretched in the law courts to make them fit, or to prevent them fitting too well if the judges happen to dislike them.”

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# Machiavellians in Disguise

Earlier I had said that I might refer to the ‘Machiavellians in disguise’ in the Judiciary. Now their time has come. They are real-life characters and that is why I have undertaken this exercise. My dear readers! I would crave your indulgence to forgive me for deviating from the truth only as regards the names of these persons. The rest written about them is one hundred per cent true. My pious rationale in doing what I have done is to allow them the privilege of anonymity. Also, to each one of them I would emphatically say, “**Wear the cap if it fits**”.

*Politician-na-banpaya*: was in fact more of a politician than a judge. Although he became the Chief Justice of India; possibly his hidden agenda was to sit on the chair of a Central Minister. A time came around 1980 when he wrote a fulsome letter of congratulations to Indira Gandhi after her victory in the Lok Sabha elections. This immoderate conduct incurred universal contempt and rightly so. The noted jurist HM Seerubhai thought it right to refer to it in his ‘Constitutional Law of India’. Personally I lost almost all respect for him after the following episode. I was then a judge of Orissa High Court and Executive Chairman of the State Legal Aid Board. On the insistence of the said Chief Justice of India the then Chief Justice of Orissa High Court unnecessarily invited the Executive Chairman of the Legal Aid Board of Assam to a legal-aid meeting which was scheduled to be held in the interior part of a tribal district of Orissa.

I had throughout objected verbally and in writing against this move as the gentleman from Assam had nothing to do and was not at all concerned with the meeting in Orissa, but then I was overruled. I never worked out the reason why that gentleman

gave up his judicial work in Assam and unnecessarily came to the meeting in Orissa. The entire costs of his avoidable visit to Orissa were of course paid for by the State Exchequer. I had never before seen such daylight robbery of public money.

**Maikhana:** was Chief Justice of India while I was Chief Justice of Sikkim High Court. One night around 9.30 I received a telephone call from him. He was more than cordial and wanted me to send a responsible officer from Gangtok to Delhi so that he would send a bottle of high quality 'Scotch Whisky' to the then Governor of Sikkim whose guest he was sometime in the past. I was really shocked at the impertinence of the man. I firmly refused to comply with his obnoxious request and put the phone down. I was really surprised how he took it for granted that I would oblige him on his extremely crude request. His conduct was highly disrespectful and unbecoming of the position held by him.

**Rasi Nam Mithyawadi:** was Chief Justice of India whom I had known from childhood. In younger days his problem, or may be our problem, was that he was a compulsive liar. A day seldom passed without his openly and brazenly blabbering away lies after lies. One could never make out the rare occasions when he spoke the truth. He was very well known for his academic brilliance and also for his bottomless stockpile of lies. Later, after joining the Bar, he did not take long to add to his arsenal the age-old weapon of dishonesty.

Strange how he would obtain stay orders from Income Tax Officers by smilingly offering them *Jarda-wala pan* before stating his case. If I were to recall and truthfully describe all his misdeeds while at the Bar and Bench, I would need several reams of paper. However, good sense prevents me from doing that.

***KarNaSaka:*** Probably a couple of years after his retirement as Chief Justice of India, one fine morning he telephoned and suggested that we should meet and have a drink together. I could guess that he had something else in mind and so I asked him if I could do anything for him. He said his son practicing at Allahabad High Court had not yet been recommended for appointment as a High Court Judge. He added that as the then Chief Justice of Allahabad High Court happened to be an ex-student of mine, I could perhaps put in a word for his son. I told him that though the Chief Justice was my student a long time back I had always advised him to remain upright and honest and never allow himself to be influenced by external pressure. I brought the uncomfortable conversation to a close saying that he should leave the matter in the hands of God.

Enough about them.

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# Ideal Judge

He knows very well that witnesses before him always need his support and sympathy. He considers it his solemn duty to ensure that neither the party nor his witnesses suffer any kind of humiliation at the hands of lawyers appearing for the opposite side. He treats the parties and their witnesses as his guests and gives them the respect due to them. He does not allow any lawyer to browbeat witnesses.

He is alert that the responsibility for properly conducting the proceedings in the court rests entirely on his shoulders. He discharges his duties without any fear or favour. He is modest and polite but firm. He always maintains the dignity and majesty of the Court.

He tries his best for early disposal of cases. He comes to court punctually at 10 a.m., informs the parties and lawyers as regards the cases to be taken up on that day and permits others to leave the court if they so wanted.

He is quite strict and refuses adjournment of old cases fixed for final hearing. Without hesitation he rejects applications for adjournment on frivolous grounds even if it makes him unpopular with the Bar. Where law prescribes day-to-day hearing, he sticks to that rule and does not allow lawyers to deviate from that rule.

He recognises that his knowledge of law is his strength. He keeps himself up-to-date with the laws that ordinarily crop up for hearing every day. He reads law books, judgments of superior courts, law journals and even general books of literature and reputed newspapers and maintains a healthy and broad-based outlook on life.

He acquaints himself thoroughly with procedural laws and court technique. He does not rush forward to exercise jurisdiction where it is questioned. Even when it is not raised he first considers whether he has jurisdiction to proceed with the case. He is aware that every court has the inherent jurisdiction to decide the question of its own jurisdiction. Ordinarily he takes it up as a preliminary issue and decides it first. On finding that he has jurisdiction he proceeds to deal with the other issues. He also takes up the question of limitation as a preliminary issue.

He is aware that unless expressly forbidden by law a superior court or tribunal may pass a judicious order for the ends of justice, but an inferior tribunal or court may not pass such an order unless expressly authorized by law.

In court he follows the advice of Socrates to hear courteously, answer wisely, consider soberly and decide impartially.

He has read what Lord Widgery, Lord Chief Justice of Britain (1971-80) had said, “The best judge - a man least known to the readers of the *Daily Mail*...Judges should not court publicity and certainly should not do their work in such a way as to catch the attention of the newsman”.

He appreciates the news report published in a Law Magazine long ago that on the death of Lord Atkinson, a famous Law Lord for 23 years (1905-28), the Lord Chancellor’s office had difficulty tracing his wife in order to pay her his pension.

While at the Bar he was a good social worker and took a lot of interest in public functions. However, after being appointed a Judge, he rightly restricted his movements and reduced his social activities to the barest minimum. He stopped attending dinners at the residence of members of the Bar as some of them were

appearing before him or were likely to appear in future. He has often been misunderstood by friends at the Bar but he carries on as he believes that what he is doing is the correct course of conduct for a Judge.

He does not use greeting cards printed at government expense, nor does he utilise service stamps for sending cards to his well-wishers and friends. He buys his greeting cards and postal stamps and uses them. He believes that using Government stationery is not proper judicial conduct. As a part of his good sense of values he always puts his full name after the message of greetings in the cards and does not merely put his initials on them which are undoubtedly offensive, insolent and in very bad taste.

He does not grease the palms of ministers to arrange daily allowance for his wife accompanying him while he travels on duty.

He never acts to lower the dignity of his office. He doesn't jump up from bed and kick-start preparations on the faintest hint of a free foreign trip ostensibly for attending a conference or seminar only to be snubbed and the proposal turned down by a junior but alert Ministry officer on learning that the rank of official participants in the host country was far below that of the proposed delegation from India.

He does not spend money from the contingency fund at his disposal to pay for farewell parties to his colleagues, as he believes that the sumptuous sumptuary allowance that he receives with his salary every month is enough to give a first-rate farewell dinner to his colleagues.

The list of what comprises a judge's ideal conduct is indeed long. Readers are free and most welcome to add to the list and bring them to the notice of judges.

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# Epilogue

I am told as he writes a good writer can figure out the readers' mind and know precisely where to stop writing. Well!

Unfortunately that is not the case here. First, I am not a good writer and second, dear optimistic readers, I may abruptly stop at the least expected point as I am only a novice at this kind of unrestricted out of syllabus writing. Anyway I assure you the end is not far.

Now I would request you to please leave your worries behind you and steer clear of all distractions for a while. Stretch your mind's eye to as far as it can extend and then read the following poem. The sad and poignant portrayal of a blind boy's emotional moan is exceptional!

## A BLIND BOY'S SONG

Oh ! tell me the form of the soft summer air,  
That tosses so gently the curls of my hair !  
It breathes on my lip, and it fans my warm cheek,  
Yet gives me no answer, tho' often I speak,  
I feel it play o'er me refreshing and kind,  
Yet I cannot touch it – I'm blind ! oh ! I'm blind !

And music, what is it? And where does it dwell?  
I sink, and I mount, with its cadence and swell;  
While touch'd to my heart with its deep thrilling strain,  
Till pleasure, till pleasure is turning to pain,  
What brightness of hue is with music combined?  
Will any one tell me? I'm blind ! oh ! I'm blind !

The perfumes of flowers that are hovering nigh,  
What are they? On what kind of wings do they fly?  
Are not they sweet angels, who come to delight  
A poor little boy, that knows not of sight?  
The sun, moon, and stars are to me undefined,  
Oh ! tell me what light is: I'm blind ! Oh ! I'm blind !

Hannah F. Gould wrote this song.

Blackie & Son, Paternoster Buildings, E/C., London  
Printed at page 30 of “**THE CASQUET of LITERATURE**”  
(1874 edition). Appropriate and beautiful music for this song  
composed by W.R.Dempster, was published by  
R.Cocks & Co., London.

Almost at the end of this random exercise, I would like to make my last trip down the memory lane back to my court to pick up one more truth.

Look! There I am! On my high chair with my glistening black coat and matching gown!

Parties and witnesses came to the court and made statements before me on oath. They spoke in relation to what they knew. Every one said he was speaking the truth, the whole truth and nothing but the truth. But, in reality, it was not so. I am on edge and concerned to ascertain the truth. I think and think over and all over again. Time flies and before I comprehend the day is over. Parties and their witnesses have long left, even my learned friends the lawyers have closed their dialogue, but at the end of it all, where is the truth? I try to recollect and remember all that I had heard with my own ears. From all those who spoke how do I find out who was speaking the truth and who was not? The

axiomatic truth – the truth of all truths, is that truth admits of only one depiction. Its description in court should not vary from one person to another, however high or low he may be. Then how and why is it that in courts of law – also known as temples of justice, statements of parties and their witnesses are almost always at variance? Many of them do not seem to have any respect for truth. However, my exasperation does not absolve me of my responsibility to locate the truth. In a state of perplexity I fervently and eagerly pray for celestial involvement to get to where truth is hiding, but why is it hiding? Who will answer, no one is around, I am all alone, so lonesome and down. Why can't truth emerge clearly and allow me to hold it close to my heart? Why am I always made to presume and guess what the truth is? Could it be because justice is blind or I am unsighted?

At last the perfume of flowers pervaded my senses, the temple bells started ringing in my ears and my train of thoughts which was chugging along so long arrived at the destination station of truth. I proclaimed to the world that I had found the truth. Oh! What relief! Do you want to know who said it was the truth? Well, you know yours is not to question why! I said it was the truth and so it was the truth. As simple as that!

However, finding the truth was not the finale of my mission. It was only a halting station. I floated along to complete my ongoing journey and in the end landed at the verdict. I had carried my thoughts to the stage of finality and carefully positioned them in black and white on thick parchment paper with very imposing seals for every one to see and be impressed.

To one I said 'guilty'; the other I held 'not guilty'. One I sent to the prison house, the other I punished with 'fine', forcing him, some times, to part with his entire life's savings. Those punished glared at me with big and sad eyes as they left.

Well! The law of the land and the evidence before the court led to the decision that was the last word in my court. What must follow was all round obedience! Haven't you seen I sit in the court in my immense chair on the dais far above the ground and look down upon every one else who is unfortunately in there?

Now the judgment has been signed and pronounced in open court in full public view. The ink is already dry and the sweet angels of mercy who had all along flown by my side and given assistance with their caring wings have left for their heavenly abode. Once again I am all alone. But the disposed of case keeps coming back to mind. It seems a larger question remains unrequited. Who will tell me whether my judgment was **JUST** and had stimulated the cause of **JUSTICE**?

No answers, never!

Years ago a distinguished jurist had aptly said, "Justice according to law is like bread in a besieged city". How true! That observation holds good even today.

The sun, moon, and stars remain undefined to the blind boy and so he asks "Oh ! tell me what light is: I'm blind ! oh ! I'm blind !" My moan is almost similar. Judge made justice to me remains undefined. So, I pray,

"Oh ! Tell me what justice is: I am blind ! oh ! justice is blind!"

**Fare well**

**THE END**



**Family reunion, at Bengaluru, December 2008**

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