A Rare Judge

—P. P. Rao*

I. Early Years and Elevation

I was a student of law when I first heard his name. He was then the Minister for Law, Home, Prisons etc. in the State of Kerala, in the first ever Communist Government led by Mr. E.M.S Namboodiripad. He was a brilliant man with strikingly original ideas and a crusader committed to the welfare of the common man. In due course, his name became more and more familiar and his subsequent career as a Judge of the Kerala High Court, Member of the Law Commission of India and Judge of the Supreme Court of India is well known. It was only in 1973 after his elevation to the Bench of the Apex court that I came to know Justice Krishna Iyer in a personal capacity.

II. The Appointment Controversy

His elevation to the Supreme Court took place within a few months of Justice A.N. Ray's appointment as Chief Justice of India, superseding three senior most Judges. The entire Bar of India was up in arms against the supersession of Judges following the momentous decision in the *Kesavananda Bharati* case,[1] curtailing the power of Parliament to amend the basic structure of the Constitution. After Justice Iyer had moved to Delhi as a member of the Union Law Commission, his friends and admirers started pressing for his elevation to the Apex court. Chief Justice S.M. Sikri and a section of the Bombay Bar were against the move due to his political antecedents, including his Minister-ship in the Communist Government.[2] Amidst the vehement

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* Senior Advocate, Supreme Court, assisted by Mr. Vasujith Ram, student of the National University of Juridical Sciences, Kolkata.

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1 Kesavananda Bharati Sripadagalvaru v. State of Kerala, (1973) 4 SCC 225.

2 Mr. Soli Sorabjee, former Attorney-General of India, confessed that he had been one of those who protested his appointment to the Apex Court, but after watching his performance on the Bench, he became his admirer.

protests, he was elevated as a Supreme Court Judge on 17 July 1973.[3] Very soon his bitter critics became his ardent admirers appreciating his equipment, ability, qualities and sense of justice.

III. First Day at the Apex Court

Out of curiosity I went and sat in his Court, most probably on the very first day of his tenure in the Supreme Court. In a criminal appeal, arguments were almost over and the only question under consideration was the quantum of sentence. The counsel for the Appellants tried to impress upon the Court that the scuffle had taken place among close relatives in the heat of the moment and resulted in a crime, and that thereafter, the tempers had cooled down on both sides and the victims were in a mood to settle the issue with the assailants. As the offence was not a compoundable one, the Counsel for the convicts appealed for a very nominal sentence. As he started bargaining for a lesser sentence than what the presiding judge suggested, Mr. Justice Iyer broke his silence observing that sentence was a matter of discretion with the court and once that discretion had been exercised by the courts below, there was little scope for the Appellate Court to interfere with the sentence. This at once put the Counsel for the Appellants on the defensive mode and there was not much of bargaining thereafter. The case ended in a few minutes. Not that he did not interfere with sentence in other cases; he did in several, but only for reasons which he believed to be sound.

IV. Predictably Unpredictable

As a Judge he was predictably unpredictable. One could never take him for granted. Very often the order which he dictated in a case was least anticipated by either side. As an Advocate-on-Record, I briefed the late Mr. M.C. Setalvad for one of the respondents to oppose a special leave petition. The petitioner was the President of a Panchayat Samiti who had been removed from office by an order of the State Government after an inquiry into certain charges of corruption, nepotism and favoritism. He challenged his removal in a Writ Petition filed before the High Court of the State on the ground that he had not received any notice of inquiry and that he was denied reasonable opportunity to present his case. The respondent's case was that he had been given every opportunity to participate in the inquiry but he had refused to receive the notice sent by registered post. The High Court by a reasoned judgment dismissed the writ petition. A Letters Patent Appeal to a Division Bench of the High Court also failed. Notwithstanding the concurrent findings of

[3] George Gadbois notes that "his appointment was greeted by mainstream lawyers and many others with a chorus of boos, mainly because of his reputation as a leftist and because many believed that S. Mohan Kumaramangalam was his patron". *See* George Gadbois Jr., Judges of the Supreme Court of India: 1950-1989 213 (2011).

fact against him, he filed a special leave petition and also filed a stay petition. In the conference I had with Mr. Setalvad, towards the end, I mentioned to him about the stay petition and requested him to strongly oppose the stay. Mr. Setalvad smiled and said: "will things go that far?" Pleased with his reaction, I left. The petitions were posted for hearing before the Court of Mr. Justice Iyer. Contrary to our expectations, Mr. Justice Iyer was impressed with the fact that the enquiry was conducted ex-parte and all that the petitioner was praying for was only an opportunity to present his case and nothing more. In his turn, Mr. Setalvad emphasized that both the Courts below had given a concurrent finding of fact to the effect that the petitioner was given a reasonable opportunity but he had not availed it. Therefore, it was not a fit case under Article 136 for the Supreme Court to interfere. After hearing both sides, Mr. Justice Iyer dictated an unusual order to the effect that the order of removal that had been already passed by the Government against the petitioner would be regarded as provisional and the Government would give the petitioner one more opportunity to appear and present his case. Thereafter it would be open to the Government either to confirm the provisional order or to rescind or modify it. Both sides reconciled to the order and went away with the feeling that each side had substantially won the case.

V. Innovative and Quick Justice

Justice Krishna Iyer believed in the administration of quick justice. On countless occasions, he directed the final hearing in the next few days and disposed of cases by short orders. It looked like "spot justice". In numerous cases he passed orders of compromise guided by considerations of equity which largely satisfied the parties.

When I think of his unusual orders I cannot help but refer to the momentous stay order[4] in Smt. Indira Gandhi's Election Appeal. The Supreme Court was in vacation when Justice J.M.L Sinha of the Allahabad High Court had pronounced the historic judgment allowing the Election Petition filled by Mr. Raj Narain and unseating Smt. Gandhi who was the then Prime Minister of India. I was keenly watching that case because during the pendency of the Election Petition before the High Court, the Central Government had issued an Ordinance amending the Representation of the People Act, 1951, with retrospective effect so as to cover all pending cases in order to get over the Judgment of the Supreme Court in *Amar Nath Chawla's* case[5] regarding the election expenses. The Supreme Court had held that expenditure incurred by a political party sponsoring the candidates in connection with his election also has to be treated as expenditure authorized by the candidate for the purpose of S. 123 (6) of the Act. Mr. Raj Narain assailed the validity of the Ordinance

[4] Indira Nehru Gandhi v. Raj Narain, (1975) 2 SCC 159.

[5] Kanwar Lal Gupta v. Amar Nath Chawla, (1975) 3 SCC 646.

in a separate writ petition impleading the Union of India as the first respondent and Smt. Indira Gandhi as a co-respondent. The Union of India engaged the late Mr. Niren De, Attorney General to defend the amendment before the Allahabad High Court and I was engaged to instruct Mr. De. The arguments went on for a few days before Mr. Justice J.M.L. Sinha. Mr. Shanti Bhushan appeared for the petitioner. Mr. Raj Narain himself used to attend the court every day with quite a few of his followers. Mr. Justice Sinha allowed the Election Petition of Raj Narain and unseated Smt. Gandhi, but dismissed his Writ Petition and upheld the impugned amendment to the Representation of the People Act, 1951. However, he granted unconditional stay of the operation of his judgment in the Election Petition for a limited period to enable Smt. Indira Gandhi to approach the Supreme Court.

Smt. Gandhi preferred an appeal before the Supreme Court within a few days and applied for stay of the operation of the impugned judgment. Mr. N.A. Palkhivala moved the stay petition on her behalf before Mr. Justice Krishna Iyer in the vacation Court. Mr. Shanti Bhushan appeared for the respondent and opposed the stay. The stay petition was argued at length by both the Counsels. The court room was packed to capacity throughout the hearing. Finally the order on the stay petition was reserved for the next day and then came an unusually long, reportable conditional stay order from the pen of Mr. Justice Krishna Iyer holding in substance that Smt. Gandhi could continue as Prime Minster but will be subject to certain restrictions in her capacity as a Member of the Parliament. This is a classic example of Justice Iyer's balancing feat. As it happens in such cases, both sides claimed that the order was in their favour. What followed thereafter is now a matter of history. A national emergency was then declared on the ground of internal disturbance threatening the security of India.

VI. Commitment to Social Justice

Although the outcome of a case or the terms of the final order/Judgment was by and large unpredictable, Justice Iyer's possible attitude towards a variety of issues was broadly predictable. If it was a labour matter, his sympathies would always be with the workmen. His judgment in the *Bangalore Water Supply and Sewerage case*[6] giving the widest possible meaning to the expression "industry" will remain a landmark Judgment in labour law, notwithstanding its far reaching effects on several small scale industries and charitable organisations. It was a common Judgment covering a large number of cases. I appeared for the workmen in one of these cases and even then I had not expected that the judgment would go to the extent of including almost every conceivable organized activity within the definition of "Industry". Shortly thereafter I was to appear for a Gandhi Ashram against its Workmen. The question involved

[6] Bangalore Water Supply and Sewerage Board v. A. Rajappa, (1978) 2 SCC 213.

was whether piece-raters were entitled to paid holidays like regular workmen. The Industrial Tribunal found that the Gandhi Ashram was not in a position to bear any additional burden. In fact, the Ashram was surviving mainly on the contributions made by the Central Government from time to time. Even so the Tribunal ordered payment of wages to piece-raters even for holidays observed by the Ashram. The matter came up before a bench presided over by Mr. Justice Krishna Iyer. To add to my difficulties, Mr. Justice D.A. Desai was also on the bench. His attitude towards workmen was just the same – in fact he was more vocal about it. I was fully conscious of the uphill task before me. Being aware of the acute financial position of the Ashram I also felt that the recent judgment of the Supreme Court on "Industry" might eventually lead to the closure of all such establishments which are basically meant to serve the people in the rural areas with a missionary spirit. Within minutes the appeal was disposed. The only indulgence I could get from the bench was the facility of payment of arrears which had accrued over the years in convenient instalments. The representatives of the Ashram who were present at the hearing saw the writing on the wall. They left with the consolation that at least this much of consideration was shown to the Ashram.

I was once engaged to appear in a service matter for a retired Audit Officer. The order of his compulsory retirement was under challenge. My client after losing the case in two rounds before the High Court, confidently remarked: "It is the last key of the bunch that is sure to open the lock". The Supreme Court granted the special leave. My client was fairly well known for his knowledge of astrology. On the day when his appeal was to be heard finally, he came to me in the morning and predicted his success in the appeal. He was jubilant that the appeal was posted before V.R. Krishna Iyer and R.S. Pathak, JJ. He said that according to his stars the arguments would be brief, the judgment would be pronounced on the same day and it would be in his favour. I thought his predictions were inspired by self interest, but I was wrong. When the case reached within a few minutes of my arguments the Judges felt that the impugned order of retirement was not passed by the competent authority and immediately called upon the other side to reply. The Government Counsel could not satisfy the Court. The stenographer was called and the judgment was dictated on the spot. My client beamed with joy because both his success in the appeal as well as his prediction proved true. I had the satisfaction that at least an astrologer could predict Mr. Justice Iyer's verdict correctly.

In a case pertaining to land ceiling he would not only lean in favour of the legislation, but also find fault with the Government for not implementing the law quickly. I remember once when a stay petition filed by a land owner came up before him in a land ceiling matter, Justice Iyer passed an order directing my client, the respondent Government, to distribute the land already

surrendered by the land owner to the weaker sections in terms of the legislation and report compliance to the court within three months or so.

He was unhappy that the then Land Acquisition Act which assured full market value and a solatium of 15% for the land acquired remained unamended. Once in a Land Acquisition case I was one of the Counsel appearing for the State. The Advocate for the appellant land owner vehemently argued for more compensation than what had already been given progressively by the courts below. When the counsel for the Appellant repeatedly emphasized that the land values in Hyderabad soared high after the formation of the State of Andhra Pradesh, Mr. Justice Iyer asked him what the contribution was of his client either to the formation of the enlarged State or to the rise in the value of the land. If his client's contribution was nil, then the benefit of the automatic rise in land value would go to the State, which acquired it for a public purpose. This clinched the issue and thereafter the judgment was a foregone conclusion. In the judgment Justice Iyer observed:

> *"By way of aside one may say that socio-economic development of a city may enhance the value of space without any of the littlest contribution by its owner and it is, in one sense, unfair that society should pay to an individual a higher price not because he has earned it but because of other developmental factors. Of course, we are concerned with the Land Acquisition Act as it is and this thought thereof need not be pursued"*[7].

His concern for the "small man" in Land Acquisition cases was voiced in *Gurdial Singh's* case[8] when he observed: "It is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter".

If it was a case of eviction of a tenant, his sympathies would be with the tenant. In numerous decisions and orders, he enlarged the scope of statutory protection to the tenant. Even when he felt constrained to dismiss a tenant's petition for special leave, he liberally granted time to vacate in many cases.

If it was a case of reservation of posts or seats in favour of Scheduled Castes, Scheduled Tribes or Backward Classes, he was clear in his mind that as far as possible the reservation should be upheld. In the celebrated case *State of Kerala v. N.M. Thomas*[9], I was to instruct the Solicitor-General of India. The question was whether Article 16(1) itself permitted classification of backward classes so as to enable the State to confer certain benefits and grant some concessions in favour of persons belonging to Scheduled Castes and Scheduled

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7 Mirza Nausherwan Khan v. Collector (LA), (1975) 1 SCC 238, 240.

8 State of Punjab v. Gurdial Singh, (1980) 2 SCC 471, 477.

9 (1976) 2 SCC 310.

Tribes. Throughout the hearing one could see how passionately he was committed to the cause of the weaker sections and how keen he was to uphold the rule in question. His judgment is a classic exposition of the constitutional commitment to weaker sections. At the same time, it exposes how all reservations made under Articles 15(4) and 16(4) are being absorbed by the upper most layers of these classes. Thus, the concept of exclusion of creamy layer was born.

In fatal accident cases, he was in favour of strict liability. As a Member of the Law Commission he was a signatory to the 51st Report wherein several recommendations have been made for law reform However, Parliament is not accustomed to move in such matters quickly. In *Darshana Devi's* case[10] he observed:

> *"Hit-and-run cases are common and the time is ripe for the court to examine whether no-fault liability is not implicit in the Motor Vehicles Act itself and for Parliament to make law in this behalf to remove all doubts. A long ago Report of the Central Law Commission confined to hit-and-run cases of auto-accidents is gathering dust. The horrendous increase of highway casualties and the chronic neglect of rules of road-safety constrains us to recommend to the Central Law Commission and to Parliament to sensitize this tragic area of tort law and overhaul it humanistically."*[11]

Dismissing the special leave petition filed by the Haryana State, he said:

> *"Here is a case of a widow and daughter claiming compensation for the killing of the sole bread-winner by a State Transport bus; and the Haryana Government, instead of acting on social justice and generously settling the claim, fights like a cantankerous litigant even by avoiding adjudication through the device of asking for Court fee from the pathetic plaintiffs."*

VII. Lover of Liberty

His deep and abiding respect for life and liberty is reflected in many of his judgments. His concern for prisoners was indeed great. As a Minister in Kerala he had personal knowledge of prison conditions. In several judgments he made constructive and useful suggestions for prison reforms and issued directions for providing more humane treatment to the prisoners within the framework of the existing law. In *Sunil Batra's* case[12] he observed: "*Karuna* is

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[10] State of Haryana v. Darshana Devi, (1979) 2 SCC 236.

[11] *Id.* At 238.

[12] Sunil Batra v. Delhi Administration, (1978) 4 SCC 494, 509.

a component of Jail Justice. Basic prison decency is an aspect of Criminal justice." In this judgment he spelt out extensive guidelines for the exercise of the power under S. 56 of the Prisons Act in the matter of imposition of bar fetters on convicts. A little later, in *Prem Shankar Shukla's* case[13] he ruled that handcuffing of under-trial prisoners is permissible only in very exceptional situations. His passionate pleas for amelioration of prison conditions and for early prison reforms will be remembered for a long time to come.

A. Reformative Justice

His reformative zeal for correcting the convicts led him to suggest new recipes. In *Mohd. Giasuddin's case*[14], I represented the Respondent State. The appellants were convicted under S. 420 IPC for cheating young unemployed persons of a sum of Rs.1200/- by false promises that they would secure jobs for them through politically influential friends. The Trial Court convicted them and awarded a sentence of three years rigorous imprisonment. The first Appellate Court and the High Court confirmed the convictions and sentence. In the Supreme Court the question of sentence alone was appealed to the Bench. Iyer J. in his judgment observed: "The humane art of sentencing remains a retarded child of the Indian criminal system". He further added

> *"that the Gandhian diagnosis of offenders as patients and his conception of prisons as hospitals mental and moral – is the key to the pathology of delinquency and therapeutic role of punishment. The whole man is a healthy man and every man is born good. Criminality is a curable deviance".*

While reducing the sentence to eighteen months and imposing a fine of Rs.1200/- with a direction to pay it over to the victim of cheating, he suggested transcendental meditation propagated by Maharishi Mahesh Yogi as a corrective to the convict.

In an abduction case from Bihar, a girl of seventeen years was pushed into a cab and carried away by the abductor for trading in flesh. She was enslaved in a village and later offered for marital sale. She somehow escaped and reported the matter to the police. The accused was convicted and sentenced to 3 years rigorous imprisonment by the courts below. The convict approached the Supreme Court for special leave to appeal. Dismissing the petition, Iyer J. observed:

> *"All that we can do is to reject the pleas with indignation and follow it up with an Appeal to the State Governments of Bihar and of*

[13] Prem Shankar Shukla v. Delhi Administration, (1980) 3 SCC 526.
[14] Mohd. Giasuddin v. State of Andhra Pradesh, (1977) 3 SCC 287, 289.

Haryana to put a special squad on the trail and hound out every such offender so that the streets of our towns and cities may be sensitized and safe after sunset for Indian womanhood".[15]

In *Kunjukunju's* case[16] the appellant developed sexual relations with a girl and as an offshoot thereof, killed his innocent wife and two children brutally at the dead of night when they were asleep. Iyer J. found there was no material to hold that the accused was a social security risk altogether beyond salvage by therapeutic life sentence. According to him, "a course of anti-aphrodisiac treatment or willing castration is a better recipe for this hyper-sexed human than outright death sentence." In *Rajendra Prasad's* case[17] he reiterated his belief in yoga:

"Yoga in its many forms seems to hold splendid answers. Meditational technology as a tool of criminology is a nascent – ancient methodology. The State must experiment. It is cheaper to hang than to heal, but Indian life- any human life – is too dear to be swung dead save in extreme circumstances."

B. A Vehement Abolitionist of Capital Punishment

His crusade against capital punishment deserves a special mention. He made no attempt to conceal his firm conviction that this extreme punishment is inhuman and should be abolished. In *Ediga Anamma's* case[18] he outlined the positive indicators against death sentence under Indian law and commuted death sentence to life imprisonment. This decision has been followed in several other cases. In *Rajendra Prasad's* case he restricted the scope of death sentence under S. 302 IPC. Even outside the Court he advocated for the abolition of the death sentence. I attended a meeting organised by the Indian Law Institute in which he participated and made a strong plea for abolition of the death sentence.

In *Dalbir Singh's* case[19] his judgment opens with these words: "Death sentence is Parliament's function. Interpretative non-applications of death sentence when legislative alternatives exist is within judicial jurisdiction." He reiterated the principles laid down in *Rajendra Prasad's* case and then concluded:

"Modern neurology has unravelled through research the traumatic truth that aggressive behaviour, even brutal murder, may in all but

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[15] Devki v. State of Haryana, (1979) 3 SCC 760.
[16] Kunjukunju Janardhanan v. State of Kerala, Criminal Appeal No. 511 of 1978 sub nom Rajendra Prasad v. State of Uttar Pradesh, (1979) 3 SCC 646.
[17] Rajendra Prasad v. State of Uttar Pradesh, (1979) 3 SCC 646, 687.
[18] Ediga Anamma v. State of Andhra Pradesh, (1974) 4 SCC 443.
[19] Dalbir Singh v. State of Punjab, (1979) 3 SCC 745, 754.

not negligible cases be traced to brain tumour. In such cases cerebral surgery, not hanging until he is dead, is the rational recipe. This factor is relevant to conviction for crime, but more relevant to the irrevocable sentence of death."

C. A Realist

His approach to appreciation of evidence in rape cases is realistic. In *Krishan Lal's* case[20], he observed:

"We must bear in mind human psychology and behavioural probability when assessing the testimonial potency of the victim's version. What girl would foist a rape charge on a stranger unless a remarkable set of facts or clearest motives were made out? The inherent bashfulness, the innocent naïveté and the feminine tendency to conceal the outrage of masculine sexual aggression are factors which are relevant to improbabilise the hypothesis of false implication."

D. Refreshing Approach to Bail

Mr. Justice Iyer is to some extent responsible for the liberal attitude of the Supreme Court in bail matters in the seventies and the eighties. The practice earlier was generally to refuse bail in cases involving a sentence of about three years or more. In life sentence cases, bail was unthinkable. Now, long delay in disposing of the appeal is considered a relevant factor for granting the bail. In *Gudikanti Narasimhulu's* case[21] Iyer J. opened his order with the poser: "Bail or Jail?" He outlined the relevant factors, which included the period in prison already spent and the prospect of the appeal being delayed for hearing. In his view, bail is the rule and jail is an exception. He was in favour of granting bail stipulating protective and curative conditions. He was definitely against imposing onerous conditions relating to security and sureties. He ruled: "Heavy bail from poor man is obviously wrong. Poverty is society's malady and sympathy, not sternness, is the judicial response."

In *Moti Ram's* case[22] speaking for the Court, he endorsed the view that the magistrate should always bear in mind that monetary bail is not a necessary element of the criminal process and remarked that:

"if a Magistrate is satisfied after making the enquiry into the condition and background of the accused that the accused has his roots in

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[20] Krishan Lal v. State of Haryana, (1980) 3 SCC 159, 161.
[21] Gudikanti Narasimhulu v. High Court of Andhra Pradesh, (1978) 1 SCC 240.
[22] Moti Ram v. State of M.P., (1978) 4 SCC 47, 54.

the community and is not likely to abscond he can safely release the accused on order to appear or on his own recognizance".

He concluded the judgment observing: "The best guarantee of presence in court is the reach of the law, not the money tag."

VIII. He Stood for Natural Justice

His judgment in *M.S. Gill's case*[23] is a landmark concerning the principles of natural justice. M.S. Gill was the Congress candidate at the 1977 General Elections to the Lok Sabha from Ferozepur Parliamentary Constituency. After the counting of votes in all the Assembly segments was over and while counting of postal ballots was in progress in the office of the Returning Officer, there was an outbreak of violence resulting in loss of some ballot papers. However, according to the result sheets of all Assembly segments available the appellant had established a comfortable lead over his nearest Akali rival. As the result was not declared and subsequently the Election Commission cancelled the poll, Gill challenged the order of the Commission in a petition under Article 226 before the Delhi High Court. A Division bench of the High Court dismissed the petition both on merits as well as on the ground of jurisdiction. In the Supreme Court, I appeared for Gill in his special leave petition and also at the final hearings of the appeal. The matter was heard first by V.R. Krishna Iyer and P.K. Goswami, JJ. They ignored the preliminary objection raised by Mr. Phadke, Counsel for the Akali candidate that the appeal was not maintainable as no petition would lie under article 226 to challenge an order passed in the course of election as held in *Ponnuswamy's* case.[24] A few days after the judgment was reserved, a notice was served on the counsel for the parties asking them to appear in court as the matter was being posted for directions. The Court passed a short order referring the matter to the constitution bench, which was least expected. However, when the matter came up before the constitution bench it became apparent that the two learned Judges who heard the matter earlier had differed. Ultimately, the majority judgment of the constitution bench was delivered by Mr. Justice Krishna Iyer. It is significant *inter-alia* for the propositions of law laid down regarding observance of the principles of natural justice. The Court held that before passing such orders an opportunity, however brief and abbreviated it may be, ought to be given to the persons likely to be affected. He neatly summed up the law:

"Fair hearing is thus a postulate of decision-making. Cancelling a poll, although fair abridgement of the process is permissible. It can be fair without the rules of evidence or forms of trial. It cannot be fair if

[23] Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405.
[24] N.P. Ponnuswami v. Returning Officer, Namakkal Constituency, AIR 1952 SC 64.

apprising the affected and appraising the representations is absent. The philosophy behind natural justice is, in one sense, participatory justice in the process of democratic rule of law."

It is one of the rare cases where the Supreme Court was persuaded to declare the law in general public interest while holding that the writ petition filed under Article 226 was not maintainable. In view of the law declared by the Court the appellant could get relief from the High Court in the election petition. The election held pursuant to the impugned order was set aside by the High Court.

IX. Appreciation of the Bar's Assistance

His unfailing courtesy to the Counsel – Senior and Junior alike, and his spontaneous and unreserved appreciation of the assistance received endeared him to the Bar. Appearing for the Respondent – State in *Mohd. Giasuddin's* case I remember taking a positive stand in line with his reformative approach. That apart, at the conclusion of the hearing when the Counsel for the appellant was seeking time to deposit the amount of fine on the ground that he had the money but did not bring it to the court, I offered to advance the money from my pocket then and there to save the court's time. The judge was pleased. Towards the end of his judgment he expressed his appreciation of the services rendered by the Counsel. In *M.S. Gill's* case[25] also he gave a pat to all the Counsel. In *Ediga Anamma's* case[26] the Counsel who appeared as amicus curiae received due appreciation for presenting a painstakingly meticulous argument on behalf of the prisoner. In *Gurdial Singh's* case[27] he appreciated the attitude of the Government Counsel who dissociated himself from supporting the State action, if any, which in the Court's view was seared with bad faith. He observed in his judgment: *"Counsel in Court are 'robed' representatives, within the parameters of the adversary system, geared to the higher cause of justice, not amoral attorneys paid to ventriloquize the case of the principal."*

X. Inimitable Style of Writing Judgments

His style of writing judgments was inimitable but natural. At times it may appear that he was influenced by the American way of writing judgments. The text of his judgments was an impressive blend of law and literature. Often the point at issue is picturesquely presented in the very first paragraph itself. In this respect, as in some others, he was a trend-setter. His vast learning is reflected in his writings. His judgments abound with quotations from Mahatama Gandhi, Jawaharlal Nehru, Jaya Prakash Narayan, Anatole France,

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[25] *Supra* note 23.
[26] *Supra* note 18.
[27] *Supra* note 8, at 474.

Winston Churchill, President Carter and a host of others. For example, in *Commissioner of Expenditure Tax v P.V.G. Raju*[28], one of the questions to be considered was whether politics is a profession or an occupation. He observed:

> *"Harold Laski treated politics as a science and wrote his well-known book on the Grammar of Politics, but the art of politics at a practical level has also been the subject of comment and has been praised and denounced on the basis that it is a profession. To Gandhiji it is sacred as religion. In Lincoln it rises to noble heights of statesmanship. Lenin, Nehru and a galaxy of other great visionaries and makers and moulders of the modern world have dedicated themselves to politics as a profession. Of course in its vulgar and vicious manifestations, this occupation has been regarded by literary giants like Dr. Johnson as the 'last refuge of a scoundrel'. Robert Louis Stevenson has used barbed words: 'Politics is perhaps the only profession for which no preparation is thought necessary' (Familiar studies of Men and Books, 'Yoshida-Torajiro'). George Bernard Shaw uses stinging language in Major Barbara: 'He knows nothing; and he thinks he knows everything. That points clearly to a political career'. It is thus clear, without reference to the wealth of case-law relied on by the High Court, that politics has been a profession and, indeed, under modern conditions in India, perhaps the most popular and uninhibited occupation-with its perils, of course."*

His language is as unconventional as his approach to the issues. The following passage from his judgment in *Charles Sobraj's* case[29] serves as a sample:

> *"Contemporary profusion of prison torture reports makes it necessary to drive home the obvious, to shake prison top brass from the callous complacency of unaccountable autonomy within that walled-off world of human held incommunicado. Whenever fundamental rights are flouted or legislative protection ignored, to any prisoner's prejudice, this Court's writ will run, breaking through stone walls and iron bars, to right the wrong and restore the rule of law. Then the parrot-cry of discipline will not deter, of security will not scare, of discretion will not dissuade, the judicial process. For if courts 'cave in' when great rights are gouged within the sound-proof, sight-proof precincts of prison houses, where, often, dissenters and minorities are caged, Bastilles will be re-enacted. When law ends tyranny begins; and history whispers, iron has never been the answer to the rights of men. Therefore we affirm that imprisonment does not spell farewell to fundamental rights*

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[28] (1976) 1 SCC 241, 244.

[29] Charles Sobraj v. Superintendent, Central Jail, (1978) 4 SCC 104, 107.

although, by a realistic re-appraisal, courts will refuse to recognise the full panoply of Part III enjoyed by a free citizen."

As a Judge he tried to provide the healing touch in his own way. In his judgments and speeches he sometimes referred to the immortal words of Jawaharlal Nehru about Mahatma Gandhi's mission of wiping every tear from every eye. He observed in *Eswara Iyer's* case,[30]

"Litigants are legal patients suffering from injustices seeking healing for their wounds. Would you tell a sufferer in hospital that because he disclosed a certain symptom very late therefore he would be discharged without treatment for the sin of delayed disclosure? Humanism, which, at bottom sustains justice, cannot refuse relief unless, by entertaining the plea, another may sustain injury."

An unconventional judge is bound to provoke reaction from at least some of his brother Judges. In *Rajendra Prasad's* case[31] A.P. Sen, J. wrote a strong dissenting Judgment. According to him: "the humanistic approach should not obscure our sense of realities. When a man commits a crime against society by committing a diabolical, cold-blooded, pre-planned murder of one innocent person the brutality of which shocks the conscience of the court, he must face the consequence of his act. Such a person forfeits his right to life."[32]

In *Bachan Singh's* case[33] Kailasam, J. took the view that the judgment of Krishna Iyer, J. in Rajendra Prasad's case was in many respects contrary to the law laid down by the Constitution Bench in *Jagmohan Singh's* case[34] and observed:

"The Court has proceeded to make law as regards the conditions that are necessary for imposition of a sentence of death under S. 302 I.P.C. It has proceeded to canalisation of sentencing discretion and has embarked on evolving working rules on punishment bearing in mind the enlightened flexibility of social sensibility. In doing so I feel the court has exceeded its powers conferred on it by law."

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30 P.N. Eswara Iyer v. Supreme Court of India, (1980) 4 SCC 680, 694.
31 *Supra* note 17, at 689.
32 *Supra* note 17, at 689.
33 Bachan Singh v. State of Punjab, (1979) 3 SCC 727, 736.
34 Jagmohan Singh v. State of U.P., (1973) 1 SCC 20.

Tulzapurkar, J. also reacted to the style and content of Mr. Justice Iyer's judgments, in the case of *Manohar Nathurao Samarth v. Marotrao*[35]. Mr. H.M. Seervai shared the same view in his book "Constitutional Law of India"[36].

XI. Personal Life

He appeared to be a terribly lonely man after the tragedy of his wife's death. He was visibly affected by the loss of her companionship. In his Gandhi Peace Foundation Lecture, 1976, he observed in passing: "And I, if anything, am a flimsy faggot once feebly afire but now mostly extinguished by tragic personal circumstances."[37]

As a person he was unassuming and intensely humane. In 1976 he underwent a surgery at the Dr. Ram Manohar Lohia Hospital, shortly after I was designated as Senior Advocate by the Supreme Court. I heard that the post-surgical phase in his case was very painful. I went to the nursing home to see him and wish him a speedy recovery. When we entered the room, there he was lying in bed in great pain. As I greeted him, he smiled and told me that all judges unanimously thought that I was deserving of the designation as a Senior Advocate. I was deeply touched by his sentiments and the way he expressed them at a time when I least expected it because of his painful condition.

He was basically a hardcore rationalist. He initially shared the platform with Abraham Kovur to challenge the spiritual powers of Sri Satya Sai Baba. But after he came in contact with Sai Baba, he became his admirer.

He participated in public functions without any reservations. Whenever he was invited by the United Lawyers Association of which I was the founder President, he readily accepted the invitation, participated in our functions and made them a success. The inaugural address delivered by him at the Symposium on conditions of Judiciary with special reference to the subordinate Judiciary' impressed one and all.

A term of over seven years on the Bench of the Supreme Court must be a strenuous engagement considering the amount of reading and writing involved. He left the Supreme Court having made a great impact. His values, his approach, his methods, his remedies and recipes, his language and style of judgment-writing have no doubt raised some controversies. However, the fact remains that during his tenure numerous litigants who may be collectively described as the 'weaker sections' who might as well have lost their cases on

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[35] (1979) 4 SCC 93.

[36] H.M Seervai, Constitutional Law of India vii (2d. ed., Vol III).

[37] V R Krishna Iyer, Jurisprudence and Jurisconscience a la Gandhi 1 (1976).

one technical ground or the other before other benches, got relief from him in the name of social justice. Several lives condemned to death have been saved by him. He sowed some seeds of thought which took root even before his retirement and became a source of inspiration to some of his successors.

In an article written after his retirement, I had mentioned that *"we may reasonably expect that even after his retirement he will continue to work for the causes so dear to him which are none else than the aims and objects of our Constitution"*. My guess was correct. He emerged as the powerful voice of the people to guide and correct the persons in authority without fear or favour, affection or illwill.

When Mr. F S Nariman was invited to speak on pathfinders in the Supreme Court, he named only two Judges- Chief Justice Koka Subba Rao and Justice V R Krishna Iyer.[38] A crusader against injustice and an ardent advocate of change for the better, a person with simple habits, he was a friend of all. He would not hesitate to join any one fighting against injustice. To him, the cause was more important than the persons who espoused it. At one time, he was labelled a communist, later a leftist and finally he was seen as a radical humanist in the real sense. He was an institution. He has inspired many persons with his philosophy of life, his concern for the poor and his insatiable hunger for socio-economic justice to the people of India. Justice Iyer was truly a legend in his lifetime. At the celebration of his birth centenary, organised recently by Lexis Nexis, I strongly supported the proposal for his portrait in the Supreme Court of India and the award of Bharat Ratna to him. By honouring him, "We, The People of India" will be honouring ourselves.

[38] In his autobiography, Nariman writes, "Whilst Subba Rao had an obsessive concern with Fundamental Rights, Krishna Iyer's concern was broader – for the poor and downtrodden". Fali Nariman, Before Memory Fades: An Autobiography 325 (2010).